

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
ISSA AND SAMIHA ODTALLAH	:	DETERMINATION
for Redetermination of Deficiencies or for Refund of New York State and New York City Personal Income Taxes under Article 22 of the Tax Law and the Administrative Code of the City of New York for the Years 2015, 2016 and 2017.	:	DTA NO. 829576

Petitioners, Issa and Samiha Odtallah, filed a petition for redetermination of deficiencies or for refund of New York State and New York City personal income taxes under article 22 of the Tax Law and the Administrative Code of the City of New York for the years 2015, 2016 and 2017.

A videoconferencing hearing via Cisco Webex was held before Kevin R. Law, Administrative Law Judge, on June 3, 2021, with all briefs to be submitted by November 5, 2021, which date commenced the six-month period for issuance of this determination. Petitioners appeared pro se. The Division of Taxation appeared by Amanda Hiller, Esq. (Amy Seidenstock, Esq., of counsel).

ISSUE

Whether petitioners have sustained their burden of proving entitlement to their claims for the New York State and New York City earned income credits and the Empire State child credit.

FINDINGS OF FACT

1. On March 16, 2016, petitioners, Issa and Samiha Odtallah, filed a joint New York State and New York City personal income tax return for tax year 2015 (2015 return) on which they claimed one child as a dependent.¹ Petitioners reported \$11,250.00 of self-employment income, \$556.00 of real estate income, and \$13.00 of taxable interest income, and claimed a refund of \$1,631.00. Attached to the 2015 return is a federal schedule C-EZ, net profit from business, reporting gross receipts of \$11,250.00 and a net profit of \$11,250.00; the principal business is listed as “UNCLASSIFIED.” The claimed refund is comprised of the New York State earned income credit (\$1,008.00); the New York City earned income credit (\$168.00); the Empire State child credit (\$330.00); and the New York City school tax credit (\$125.00). This refund claimed on the 2015 return was paid.

2. On July 27, 2018, the Division of Taxation (Division) sent petitioners an audit inquiry letter requesting verification of the dependent claimed and income reported on the 2015 return. In response, petitioners provided documentation substantiating their claimed dependent.

3. On September 27, 2018, a statement of proposed audit changes was issued to petitioners that asserted tax due of \$1,406.00 plus interest. The amount asserted due is based upon a recomputation of petitioners’ 2015 return disallowing the reported self-employment income, the net effect was a disallowance of the claimed earned income tax credits and allowing only \$100.00 Empire State child credit. The school tax credit was allowed in full.

4. On January 3, 2019, the Division issued to petitioners a notice of deficiency, notice number L-048803866, asserting tax due of \$1,406.00 plus interest (2015 notice).

¹ Petitioners’ child was born in 2005.

5. Following conciliation conferences in the Division's Bureau of Conciliation and Mediation Services, the 2015 notice was sustained by conciliation orders dated August 23, 2019, and September 13, 2019.²

6. On March 3, 2017, petitioners filed a joint New York State and New York City personal income tax return for tax year 2016 (2016 return) on which they claimed one child as a dependent. Petitioners reported \$11,850.00 of self-employment income, a \$1,612.00 rental real estate loss, \$56.00 of taxable interest income, and claimed a refund of \$1,636.00. Attached to the return is a federal schedule C-EZ, net profit from business, reporting gross receipts of \$11,850.00 and a net profit of \$11,850.00; the principal business is listed as "UNCLASSIFIED." The claimed refund is comprised of the New York State earned income credit (\$1,012.00); the New York City earned income credit (\$169.00); the Empire State child credit (\$330.00); and the New York City school tax credit of (\$125.00). This refund claimed on the 2016 return was paid.

7. On July 27, 2018, the Division sent petitioners an audit inquiry letter requesting verification of the dependent claimed and income reported on the return. In response, petitioners provided documentation substantiating their claimed dependent.

8. On September 27, 2018, a statement of proposed audit changes was issued to petitioners that asserted tax due of \$1,411.00 plus interest. The amount asserted due is based upon a recomputation of petitioners' 2016 return disallowing the reported self-employment income, the net effect of which was a disallowance of the claimed earned income tax credits and allowing only \$100.00 Empire State child credit. The school tax credit was allowed in full.

9. On November 14, 2018, the Division issued to petitioners a notice of deficiency, notice number L-048803867, asserting tax due of \$1,411.00 plus interest (2016 notice).

² The record does not reflect why two separate conciliation orders were issued.

10. Following a conciliation conference in the Division's Bureau of Conciliation and Mediation Services, the 2016 notice was sustained by conciliation order dated August 23, 2019.

11. On February 19, 2018, petitioners filed a joint New York State and New York City personal income tax return for tax year 2017 (2017 return) on which they claimed one child as a dependent. Petitioners reported \$9,850.00 of self-employment income, \$2,398.00 of rental income, \$10.00 of taxable interest income, \$1,477.00 of gambling winnings, and claimed a refund of \$1,522.00. Attached to the return is a federal schedule C-EZ, net profit from business, reporting gross receipts of \$9,850.00 and a net profit of \$9,850.00; the principal business is listed as "UNCLASSIFIED." The claimed refund is comprised of the New York State earned income credit (\$936.00); the New York City earned income credit (\$156.00); the Empire State child credit (\$305.00); and the New York City school tax credit of (\$125.00). This refund claimed on the 2017 return was paid.

12. On July 27, 2018, the Division sent petitioners an audit inquiry letter requesting verification of the dependent claimed and income reported on the return. In response, petitioners provided documentation substantiating their claimed dependent.

13. On September 27, 2018, a statement of proposed audit changes was issued to petitioners that asserted tax due of \$1,297.00 plus interest. The amount asserted due is based upon a recomputation of petitioners' 2017 return disallowing the reported self-employment income, the net effect of which was a disallowance of the claimed earned income tax credits and allowing only \$100.00 Empire State child credit. The school tax credit was allowed in full.

14. On November 14, 2018, the Division issued to petitioners a notice of deficiency, notice number L-048803868, asserting tax due of \$1,297.00 plus interest (the 2017 notice).

15. Following a conciliation conference in the Division's Bureau of Conciliation and Mediation Services, the 2017 notice was sustained by conciliation order dated August 23, 2019.

16. In response to the conciliation orders issued sustaining the 2015, 2016 and 2017 notices, petitioners commenced the instant proceeding in the Division of Tax Appeals. Attached to the petition were petitioners' bank statements from Chase Bank for the years 2016 and 2017 for checking, savings, and a certificate of deposit as well as credit card statements.

17. In addition, on April 17, 2021, prior to the hearing in this matter, petitioners submitted documentation to the Division consisting of a commercial gross lease and New York City property tax and water bills.

18. At the hearing in this matter, the Division presented the testimony of Darrell Wright, a Tax Technician IV with the Division. Mr. Wright was familiar with the audits of petitioners' 2015, 2016 and 2017 returns and testified concerning the issuance of the statutory notices. Mr. Wright reviewed the documentation attached to the petition as well as the documentation submitted on April 17, 2021. Mr. Wright was unable to verify the income reported on petitioners' income tax return for the years in issue.

19. Petitioner, Issa Odtallah, testified at the hearing in this matter and explained that the self-employment income reported on said returns was earned by driving family and friends around for errands. He admitted that he did not document these payments and testified that his other sources of income were social security and rental income.

20. Also entered into evidence by petitioners was an unsworn letter from petitioner, Issa Odtallah, dated May 25, 2021. The contents of the letter mirror his testimony.

CONCLUSIONS OF LAW

A. As noted, the notices at issue are notices of deficiency that assert tax based upon the denial of petitioners' claims for the New York State and New York City earned income credits and reduction of the Empire State child credit. "A tax credit is 'a particularized species of exemption from taxation'" (*Matter of Golub Serv. Sta. v Tax Appeals Trib.*, 181 AD2d 216, 219 [3d Dept 1992], citing *Matter of Grace v State Tax Commn.*, 37 NY2d 193, 197 [1975]) and a taxpayer carries "the burden of showing 'a clear-cut entitlement' to the statutory benefit" (*Matter of Golub Serv. Sta. v Tax Appeals Trib.*, at 219 [citation omitted]).

B. First, addressing petitioners' eligibility for the earned income credits, Tax Law § 606 (d) provides that the New York State earned income credit for the tax years in issue is equal to 30% "of the earned income credit allowed under section thirty-two of the internal revenue code for the same taxable year. . . ." In addition, Tax Law § 1310 (f) provides for a credit equal to 5% "of the earned income credit allowed under section thirty-two of the internal revenue code for the same taxable year. . ." for New York City residents (*see also* Administrative Code of the City of New York § 11-1706 [d] [1]) . Since petitioners' eligibility for the New York State and New York City earned income credits hinges upon their eligibility for the federal credit, their eligibility under federal law is determinative.

C. The federal earned income credit, provided for pursuant to 26 USC § 32, is a refundable tax credit for eligible low-income workers. To be eligible to claim the credit, a taxpayer must have earned income with an adjusted gross income (AGI) below a certain level, must have a valid Social Security number, must use a filing status other than married filing separately, must be a U.S. citizen or resident alien, must have no foreign income, and have investment income less than a certain amount. "A small credit is provided to all eligible

taxpayers, but the principal feature of the EIC is the more substantial credit available to eligible taxpayers who have one or more ‘qualifying’ children” (*Sherbo v Commr.*, 255 F3d 650, 651 [8th Cir 2001], citing 2 Bittker & Lokken, *Federal Taxation of Income, Estate & Gifts* ¶ 37.1 [3d ed. 2000]). The amount of credit varies depending on the number of the taxpayer’s “qualifying children” as defined by 26 USC § 152 (c) and the taxpayer’s AGI. Since the Division has verified petitioners’ qualifying child, their eligibility hinges on whether they have established earned income in 2015, 2016 and 2017, and the amount thereof.

D. Careful review of the record establishes that petitioners have not proven entitlement to the New York State and New York City earned income credits as petitioners have not established that they earned income during any of these years. Mr. Wright was unable to verify petitioners’ earned income and petitioners have candidly admitted that they have no records documenting the income reported on said returns as self-employment income. Based upon the foregoing, petitioners’ claim for the New York State and New York City earned income credits is denied.

E. Turning next to petitioners’ claimed Empire State child tax credit for 2016, Tax Law § 606 (c-1) provides for a credit equal to the greater of \$100.00 times the number of qualifying children of the taxpayer or the applicable percentage of the child tax credit allowed the taxpayer under 26 USC § 24 for the same taxable year for each qualifying child. Pursuant to 26 USC § 24, a taxpayer may claim a child tax credit for an individual who is their “qualifying child” as defined in 26 USC § 152 (c) and has not attained the age of 17 during the taxable year (26 USC § 24 [a], [c]). In this case, because petitioners have not documented their income for the years in issue, they are only entitled to the minimum credit pursuant to Tax Law § 606 (c-1) as was allowed by the Division.

F. The petition of Issa and Samiha Odtallah is denied, and the January 3, 2019 and November 14, 2018 notices of deficiency are sustained.

DATED: Albany, New York
May 5, 2022

/s/ Kevin R. Law
ADMINISTRATIVE LAW JUDGE