

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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| In the Matter of the Petition | : | |
| of | : | |
| MURAD K. ALTAFI | : | DETERMINATION |
| | : | DTA NO. 829590 |
| for Redetermination of a Deficiency or for Refund of New York State and New York City Personal Income Tax under Article 22 of the Tax Law and the Administrative Code of the City of New York for the Year 2017. | : | |

Petitioner, Murad K. Altafi, filed a petition for redetermination of a deficiency or for refund of New York State and New York City personal income tax under article 22 of the Tax Law and the Administrative Code of the City of New York for the year 2017.

A videoconferencing hearing via Cisco Webex was held before Kevin R. Law, Administrative Law Judge, on June 7, 2021, with all briefs to be submitted by November 19, 2021, which date commenced the six-month period for issuance of this determination. Petitioner appeared by Small Business Accounting Services (Nassir Hajjawi, EA). The Division of Taxation appeared by Amanda Hiller, Esq. (Christopher O'Brien, Esq., of counsel).

ISSUE

Whether petitioner has sustained his burden of proving entitlement to his 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 7, 2018, petitioner, Murad K. Altafi, and his spouse,¹ filed a joint New York State and New York City personal income tax return for tax year 2017 (the return) on

¹ The petition filed in this matter was filed in the name of petitioner only.

which they claimed five children as dependents with ages ranging from three to sixteen years of age as of December 31, 2017. Petitioner reported \$7,800.00 of wage income and \$14,250.00 of self-employment income. Attached to the return is a schedule C for petitioner which reports gross receipts of \$14,250.00, with no corresponding expenses. The principal activity listed on the schedule C is “Home Centers.”

2. Petitioner reported no tax due, and New York State and New York City tax withheld of \$14.00 and \$46.00, respectively. In addition to the \$60.00 of tax withheld, petitioner claimed the New York State earned income credit of \$1,895.00, the New York City earned income credit of \$316.00, the Empire State child credit of \$714.00, and New York City school tax credit of \$125.00, resulting in a \$3,110.00 refund. This refund claimed on the return was paid.

3. On July 26, 2018, the Division of Taxation (Division) sent petitioner an audit inquiry letter requesting verification of the dependents claimed and income reported on the return.

4. According to the affidavit of Kathleen Loos, a Tax Technician III with the Division, petitioner responded to the July 26, 2018 audit inquiry letter with some information regarding the claimed dependents. Ms. Loos does not specify what information was provided.

5. A statement of proposed audit changes, dated September 26, 2018, was issued to petitioner and his spouse that asserted tax due of \$2,925.00 plus interest. The amount asserted due results from the disallowance of all credits claimed on the return except for the New York City school tax credit.

6. On January 9, 2019, the Division issued a notice of deficiency, notice number L-048793176, asserting tax due of \$2,925.00 plus interest (the notice).

7. Following a conciliation conference in the Division's Bureau of Conciliation and Mediation Services, a conciliation order, dated September 13, 2019, was issued to petitioner sustaining the notice.

8. Attached to the petition filed in this matter are copies of petitioner's bank statements from the year 2017, a birth certificate for one of the children claimed as a dependent, a copy of a 2017 W-2 form issued to petitioner, and a copy of a wage reporting return of 795 Aden Discount Variety, Inc., for the fourth quarter of 2017.

9. The relevance of the bank statements was not addressed by petitioner in the petition nor at the hearing.

10. The 2017 form W-2 attached to the petition reports \$7,800.00 of wages paid to petitioner by 795 Aden Discount, Inc. The 2017 form W-2 indicates \$14.00 and \$46.00 of New York State and New York City tax withheld, respectively. The wage reporting return of 795 Aden Discount Variety, Inc., reports wages paid to petitioner and two other employees by this business during the final quarter of 2017, and reports total wages paid to petitioner of \$7,800.00 during that year. The wage reporting return indicates that it was electronically filed by the business with the Division on January 28, 2018.

11. In her affidavit, Ms. Loos states that, based upon certain documents that petitioner provided subsequent to the notice being issued, petitioner has verified the children claimed as dependents and the Division has agreed to reduce the tax asserted from \$2,925.00 to \$1,293.00. Ms. Loos then states that the self-employment income that petitioner reported on his 2017 remains in issue.²

² It is not clear from Ms. Loos' affidavit as to whether the Division has verified the wage income reported on the return.

12. At the hearing in this matter, petitioner testified that he worked as a manager at Aden Discount Store, Inc., and was paid wages and that the self-employment income reported on his return was from his job as a delivery driver for a deli that paid him cash. He stated he did not keep records nor deposit the cash payments into a bank account because he used such funds to pay current expenses such as rent, etc. He provided no other records to document his reported self-employment income.

CONCLUSIONS OF LAW

A. As noted, the notice at issue is a notice of deficiency that asserts tax based upon the denial of petitioner's claims for the New York State and New York City earned income credits as well as 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 petitioner's eligibility for the earned income credits, Tax Law § 606 (d) (1) provides that the New York State earned income credit for the 2017 tax year 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) (1) 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. Since petitioner's eligibility for the New York State and New York City earned income credits hinges upon his eligibility for the federal credit, his 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 conceded that petitioner has verified the dependents claimed, petitioner’s eligibility for the earned income credits hinges on whether he has established his earned income, and the amount thereof.

D. Petitioner’s claimed earned income credits (and Empire State child tax credit) were based upon \$7,800.00 of wage income and \$14,250.00 of self-employment income. With respect to the wage income, amongst the documents attached to the petition, is a 2017 form W-2 issued to petitioner that corresponds with the wages he reported on his 2017 return. The Division has not challenged the legitimacy of the W-2 and it appears that based upon their agreement to adjust the notice of deficiency based upon documents submitted by petitioner subsequent to the notice being issued, the Division has accepted same. In addition, the wage reporting return that was attached to the petition provides further support for the wages reported by petitioner on his 2017 return.

With respect to the self-employment income, petitioner has failed to meet his burden of establishing that he earned such amount during 2017 as he presented no evidence on this score. Based upon the foregoing, petitioner's claim for the New York State and New York City earned income credits is modified to compute the amount of the credit based upon his claimed dependents and based upon \$7,800.00 of wage income. The Division is directed to recompute the tax asserted in the notice in accordance therewith.

E. Turning next to petitioner's claimed Empire State child tax credit for 2017, 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, the Division has conceded that petitioner has verified his qualifying children, and based upon the holding above, petitioner has documented that he earned \$7,800.00 of wage income. Based upon the foregoing, the Empire State child credit is modified to compute the amount of the credit based upon his claimed dependents and based upon \$7,800.00 of wage income. The Division is directed to recompute the tax asserted in the notice in accordance therewith.

F. The petition of Murad K. Altafi is granted in accordance with conclusions of law D and E, but is otherwise denied, and the January 9, 2019 notice of deficiency, as so modified, is sustained.

DATED: Albany, New York
May 19, 2022

/s/ Kevin R. Law
ADMINISTRATIVE LAW JUDGE