

STATE OF NEW YORK
DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
NAGLAA IBRAHIM	:	DETERMINATION
	:	DTA NO. 829591
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, Naglaa Ibrahim, 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 April 19, 2021, with all briefs to be submitted by July 19, 2021, which date commenced the six-month period for issuance of this determination. Petitioner appeared pro se. The Division of Taxation appeared by Amanda Hiller, Esq. (Christopher O'Brien, Esq., of counsel).

ISSUE

Whether petitioner has sustained her burden of proving entitlement to her claim for the New York State and New York City earned income credits, the New York City school tax credit, and the Empire State child credit.

FINDINGS OF FACT

1. On January 26, 2018, petitioner, Naglaa Ibrahim, filed a New York State and New York City personal income tax return for tax year 2017 as head of household and claimed her

three children, ages 9, 15 and 23, as dependents. Petitioner reported \$13,000.00 of self-employment income and claimed a refund in the amount of \$2,414.00. The claimed refund is comprised of the New York State earned income credit of \$1,630.00, the New York City earned income credit of \$272.00, the Empire State child credit of \$449.00 and the New York City school tax credit of \$63.00. The return lists petitioner's home address in Brooklyn, New York.

2. Petitioner's return was selected for a desk audit by the Division of Taxation (Division) prior to the issuance of the requested refund. On February 21, 2018, the Division sent petitioner a letter requesting verification of the dependents she claimed on her return and verification of her income reported on the return.

3. At the hearing, the Division introduced the affidavit of Matthew Roberts, a Tax Technician 2 with the Division. Mr. Roberts explained that the dependents were properly verified but claims that no verifiable proof of income was provided. According to Mr. Roberts, petitioner provided form 1099-MISC issued to petitioner reporting \$13,000.00 of income paid by Kawthar Demes, but this was not reported to the Internal Revenue Service and no other business records were provided. Therefore, on December 31, 2018, a notice of disallowance denying petitioner's refund claim was issued.

4. At the hearing in this matter, petitioner credibly testified that she worked for Kauthar Demes¹ since 2010 as a babysitter and would occasionally clean Ms. Demes' house. Petitioner further testified that Ms. Demes paid her \$250.00 in cash weekly and that she would immediately spend this money on groceries and other expenses.

5. Petitioner also presented the testimony of her employer, Ms. Demes. Ms. Demes credibly testified confirming that petitioner worked for her as a babysitter continuously since

¹ It is noted that the form 1099 misspelled Ms. Demes first name.

2010 and that she paid petitioner \$250.00 weekly. In 2017, Ms. Demes was employed as a registered nurse at Lutheran Medical Center in Brooklyn, New York. Copies of Ms. Demes 2017 federal and New York State personal income tax returns were submitted into evidence. The federal returns confirm that Ms. Demes reported the amounts paid to petitioner in calculating her eligibility to receive the federal child and dependent care credit in 2017 for the care of her youngest child. Ms. Demes was apologetic for paying petitioner in cash and stated that she wished she paid petitioner via check so that there would be a documentary record of said payments.

CONCLUSIONS OF LAW

A. As noted, the notice at issue is a notice of disallowance denying petitioner's claims for the New York State and New York City earned income credits, the New York City school tax credit, and 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) 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) 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 her eligibility for the federal credit, her 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 her claimed dependents, petitioner’s eligibility for the earned income credit depends solely on whether she has established she earned income in 2017, and the amount thereof.

D. Careful review of the record, including the credible testimony of petitioner and Ms. Demes, establishes petitioner has proven that she earned \$13,000.00 of income during the tax year 2017 as Ms. Demes’ childcare provider and (occasional) housekeeper. Although the form 1099 given to petitioner by Ms. Demes was not filed with the Internal Revenue Service (or there was no record of same), the testimony adduced at hearing, coupled with Ms. Demes’ 2017 personal income tax returns, confirms that petitioner earned \$13,000.00 in that year.

Accordingly, petitioner has met her burden of establishing entitlement to the New York State and New York City earned income credits.

E. Turning next to the Division's disallowance of petitioner's claim for the New York City school tax credit, Tax Law § 606 (ggg) provides a refundable credit to a full-year or part-year New York City resident who cannot be claimed as a dependent on another taxpayer's federal income tax return and had income of \$250,000.00 or less. Since petitioner lives in Brooklyn, New York and earned \$13,000.00 during 2017, petitioner has sustained her burden of proving her entitlement to this credit.

F. 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 her "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]). Since the Division has conceded that petitioner provided sufficient documentation to substantiate the children claimed as her dependents on her 2017 personal income tax return, petitioner is likewise entitled to this credit.

G. The petition of Naglaa Ibrahim is granted, the December 31, 2018 notice of disallowance is cancelled, and the refund claim is granted.

DATED: Albany, New York
January 13, 2022

/s/ Kevin R. Law
ADMINISTRATIVE LAW JUDGE