

STATE OF NEW YORK
DIVISION OF TAX APPEALS

In the Matter of the Petitions :
of :
MOUSA M. CHAHIN AND : **DETERMINATION**
TIMA M. BERJAWI : **DTA NOS. 829657**
: **AND 829667**
for Redetermination of Deficiencies or for Refund of New :
York State Personal Income Tax under Article 22 of the :
Tax Law and the New York City Administrative Code :
for the Years 2015, 2016, and 2017. :

Petitioners, Mousa M. Chahin and Tima M. Berjawi, filed petitions for redetermination of deficiencies or for refund of personal income tax under article 22 of the Tax Law and the New York City Administrative Code for the years 2015, 2016, and 2017.

A consolidated videoconferencing hearing via CISCO Webex was held before Barbara J. Russo, Administrative Law Judge, on May 13, 2021 at 10:30 a.m., with the final brief to be submitted by September 2, 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. (Colleen McMahon, Esq., of counsel).

ISSUES

I. Whether the Division of Taxation properly disallowed petitioners' claimed earned income credit for the years 2015, 2016, and 2017.

II. Whether the Division of Taxation properly adjusted petitioners' claimed Empire State child credit for the years 2015, 2016, and 2017.

FINDINGS OF FACT

1. Petitioners, Mousa M. Chahin and Tima M. Berjawi, filed a New York State resident income tax return, form IT-201, for the year 2015 (2015 return), reporting three dependent exemptions,¹ business income of \$18,500.00, and requesting a refund in the amount of \$3,013.00. The refund consisted of a New York State earned income credit in the amount of \$1,873.00, Empire State child credit in the amount of \$703.00, New York City earned income credit of \$312.00, and New York City school tax credit of \$125.00.

2. Attached to petitioners' 2015 return was schedule C-EZ, Net Profit from Business, reporting petitioner Mousa Chahin's business as "paper and paper product merchant wholesalers" and reporting gross receipts and net profit in the amount of \$18,500.00. The schedule C-EZ does not list a business name, address or employer identification number (EIN).

3. Also attached to petitioners' 2015 return were forms IT-215, claim for earned income credit, and IT-213, claim for Empire State child credit, listing the three claimed dependents, A.S., M.S., and K.S., with dates of birth listed as May 10, 2007, October 23, 1999, and September 14, 2002, respectively.

4. Based on petitioners' 2015 return, the Division of Taxation (Division) issued a refund in the amount of \$3,013.00 for tax year 2015 on April 1, 2016.

5. Petitioners' 2015 return was selected for a desk audit by the Division after the issuance of the requested refund. The Division sent an audit inquiry letter to petitioners, dated July 27, 2018 requesting documentation to support the business income, credits, and claimed refund for 2015.

6. In response to the Division's inquiry letter for 2015, petitioners provided a copy of the 2015 schedule C-EZ and a copy of a 2015 form 1099-MISC, miscellaneous income, listing

the payer as Home of All American Brands and Pro and the recipient as Mousa M. Chahin. The 1099-MISC lists the same address for the payer and recipient and lists nonemployee compensation of \$18,500.00.

Petitioners also provided to the Division copies of birth certificates for two of the claimed dependents, M.S. and K.S., showing dates of birth of October 23, 1999, and September 14, 2002, respectively; a verification of pupil registration from New York City Public Schools, dated February 10, 2016, stating that M.S.'s parent/guardian is Ms. Berjawi, that the pupil is currently registered at the school, listing an admit date of July 2, 2013, and listing the same address for the student as petitioners' address; a letter from McKinley Park School dated February 9, 2016, stating that A.S., with date of birth May 10, 2007, is registered at the school, was admitted on September 16, 2015, and listing the same address for the student as petitioners' address; and a New York City Public School Student Attendance Report for K.S. for the school year 2015-2016 (2015-2016 RISA). The 2015-2016 RISA lists K.S.'s date of birth, lists petitioner Tima Berjawi as the parent/guardian, lists the student's admission date as July 2, 2014, and lists petitioners' address for the student.

7. The Division issued a statement of proposed audit change for tax year 2015 (2015 statement), dated October 3, 2018, stating, in part, as follows:

“We received the information you sent in response to our audit inquiry letter for tax year 2015.

We are unable to verify your earned income based on the copy of Form 1099-MISC you provided. You did not provide a copy of your last paystub and copies of cashed checks, receipts/invoices and bank/Credit card statements to substantiate your income claimed on Federal Schedule C. Therefore, we disallowed the earned income credit claimed by you.

We adjusted your Empire State Child Credit based upon two verified dependents and no verifiable income.

¹ For purposes of privacy, the claimed dependents are referred to herein as A.S., M.S., and K.S.

You are allowed the New York City School Tax Credit of \$125.00.”

The Division disallowed the New York State and City earned income credit and adjusted the Empire State child credit, resulting in tax due of \$2,588.00 for 2015.

8. The Division issued a notice of deficiency to petitioners, dated November 20, 2018, asserting tax due of \$2,588.00 plus interest for tax year 2015 (2015 notice).

9. Petitioners filed a New York State resident income tax return, form IT-201, for the year 2016 (2016 return), reporting three dependent exemptions, business income of \$22,375.00, and requesting a refund in the amount of \$2,903.00. The refund consisted of a New York State earned income credit in the amount of \$1,808.00, Empire State child credit in the amount of \$660.00, New York City earned income credit of \$313.00, and New York City school tax credit of \$125.00.

10. Attached to petitioners’ 2016 return was schedule C-EZ, Net Profit from Business, reporting petitioner Mousa Chahin’s business as “paper and paper product merchant wholesalers” and reporting gross receipts and net profit in the amount of \$22,375.00. The schedule C-EZ does not list a business name, address or employer identification number (EIN).

11. Also attached to petitioners’ 2016 return were forms IT-215, claim for earned income credit, listing the three claimed dependents, A.S., M.S., and K.S., and IT-213, claim for Empire State child credit, listing A.S. and K.S. as the children claimed for the credit.

12. Based on petitioners’ 2016 return, the Division issued a refund in the amount of \$2,903.00 for tax year 2016 on April 3, 2017.

13. Petitioners’ 2016 return was selected for a desk audit by the Division after the issuance of the requested refund. The Division sent an audit inquiry letter to petitioners, dated

July 27, 2018 requesting documentation to support the business income, credits, and claimed refund for 2016.

14. In response to the Division's inquiry letter for 2016, petitioners provided another copy of the 2016 schedule C-EZ listing the principal business as "paper and paper product merchant wholesalers" and a copy of a handwritten 2016 form 1099-MISC, miscellaneous income, listing the payer as Tommy Tours Corp. with an address in Staten Island, New York, and reporting nonemployee compensation of \$22,375.00.

Petitioners also provided a copy of a New York City Public School Student Attendance Report for K.S. for the school year 2016-2017 (2016-2017 RISA). The 2016-2017 RISA lists K.S.'s date of birth, lists petitioner Tima Berjawi as the parent/guardian, lists the student's admission date as July 2, 2014, and lists petitioners' address for the student. Petitioners provided verification of pupil registration from New York City Public Schools, for M.S. and A.S., dated February 7, 2017 and February 13, 2017, respectively, stating that the children's parent/guardian is Ms. Berjawi, that the pupils are registered at the school, listing admission dates of July 2, 2013 and September 16, 2015, respectively, and listing the same address for the students as petitioners' address. Petitioners also provided copies of the birth certificates for K.S. and A.S.

15. The Division issued a statement of proposed audit change for tax year 2016 (2016 statement), dated October 4, 2018, stating, in part, as follows:

"We received the information you sent in response to our audit inquiry letter for tax year 2016.

We are unable to verify your earned income based on the copy of Form 1099-MISC you provided. You did not provide copies of cashed checks, receipts/invoices and bank/Credit card statements to substantiate your income and expenses claimed on Federal Schedule C. Therefore, we disallowed the earned income credit claimed by you.

We adjusted your Empire State Child Credit based upon two verified dependents and no verifiable income.

You are allowed the New York City School Tax Credit of \$125.00.”

The Division disallowed the New York State and City earned income credit and adjusted the Empire State child credit, resulting in tax due of \$2,581.00 for 2016.

16. The Division issued a notice of deficiency to petitioners, dated November 20, 2018, asserting tax due of \$2,581.00 plus interest for tax year 2016 (2016 notice).

17. Petitioners filed a New York State resident income tax return, form IT-201, for the year 2017 (2017 return), reporting three dependent exemptions, business income of \$23,400.00, and requesting a refund in the amount of \$2,862.00. The refund consisted of a New York State earned income credit in the amount of \$1,795.00, Empire State child credit in the amount of \$660.00, New York City earned income credit of \$316.00, and New York City school tax credit of \$125.00.

18. Attached to petitioners’ 2017 return was schedule C-EZ, Net Profit from Business, reporting petitioner Mousa Chahin’s business as “traveler accommodation,” listing the business name as Tommy Tours Corp., with an address in Staten Island, New York, and reporting gross receipts and net profit in the amount of \$23,400.00.

19. Also attached to petitioners’ 2017 return were forms IT-215, claim for earned income credit, listing the three claimed dependents, A.S., M.S., and K.S., and IT-213, claim for Empire State child credit, listing A.S. and K.S. as the children claimed for the credit.

20. Based on petitioners’ 2017 return, the Division issued a refund in the amount of \$2,862.00 for tax year 2017 on February 14, 2018.

21. Petitioners' 2017 return was selected for a desk audit by the Division after the issuance of the requested refund. The Division sent an audit inquiry letter to petitioners, dated September 28, 2018 requesting documentation to support the business income, credits, and claimed refund for 2017.

22. Petitioners did not respond to the Division's audit inquiry letter for 2017.

23. The Division issued a statement of proposed audit change for tax year 2017 (2017 statement), dated November 29, 2018, stating, in part, as follows:

"This notice is with regards to your 2017 New York State income tax return.

Since you did not provide any documentation we requested in our audit inquiry letter dated September 28, 2018, in the specified timeframe, we disallowed the business income claimed on your return.

We adjusted your Empire State Child Credit based upon two verified dependents and no verifiable income.

You are allowed the New York City School Tax Credit of \$125.00."

The Division disallowed the New York State and City earned income credit and adjusted the Empire State child credit, resulting in tax due of \$2,537.00 for 2017.

24. The Division issued a notice of deficiency to petitioners, dated January 15, 2019, asserting tax due of \$2,537.00 plus interest for tax year 2017 (2017 notice).

25. Petitioners did not present any documentary evidence during the hearing. Petitioner Mousa Chahin testified that he was self-employed during the years at issue.

26. Attached to the petitions were birth certificates for the three children claimed as dependents, M.S., K.S. and A.S., showing birthdates of October 23, 1999, September 14, 2002, and May 10, 2007, respectively, and listing petitioners as the children's parents. Also attached to the petition, in addition to documents previously provided to the Division in response to the 2015 and 2016 inquiry letters, was a copy of a 2017 form 1099-MISC showing Tommy Tours

Corp. as the payer, petitioner Mousa Chahin as the recipient, and nonemployee compensation of \$23,400.00; and New York City Public School Verification of Pupil Registration for K.S. and A.S., dated January 17, 2018 and September 27, 2017, respectively, listing petitioner Mousa Chahin as the parent/guardian, and listing petitioners' address.

CONCLUSIONS OF LAW

A. It is initially noted that determinations made in a notice of deficiency are presumed correct, and the burden of proof is upon petitioners to establish, by clear and convincing evidence, that those determinations are erroneous (*see Matter of Leogrande v Tax Appeals Tribunal*, 187 AD2d 768 [3d Dept 1992], *lv denied* 81 NY2d 704 [1993]; *see also* Tax Law § 689 [e]). The burden does not rest with the Division to demonstrate the propriety of the deficiency (*see Matter of Scarpulla v State Tax Commn.*, 120 AD2d 842 [3d Dept 1986]). There is a presumption of correctness of a notice of deficiency that has been properly issued under the Tax Law (*see Matter of Tavolacci v State Tax Commn.*, 77 AD2d 759 [3d Dept 1980]). A taxpayer who fails to present any evidence to show that the notice is incorrect surrenders to this presumption (*id.*).

B. Tax Law § 606 (d) provides for a New York State earned income credit based on a percentage of the earned income credit allowed under section 32 of the Internal Revenue Code (IRC). Since the state earned income credit is determined based solely on a percentage of the federal credit, it is appropriate to refer to the provisions of the IRC to determine petitioners' eligibility for the earned income credit.

C. The federal earned income credit, provided for pursuant to IRC (26 USC) § 32, is a refundable tax credit for eligible low-income workers. The credit is computed based on a determination of a taxpayer's "earned income," which includes earnings from self-employment

(*see* 26 USC § 32 [c] [2]). Petitioners bear the burden of proof (*see* Tax Law § 689 [e]) to substantiate the amount of earned income reported on their return.

Here, the Division denied petitioners' claim for the earned income credit because they failed to substantiate the business income as reported. Upon review of the record, it is clear that petitioners have failed to prove their income for the years in issue. Petitioners did not produce sufficient books, records, receipts, or testimony to clearly show that they generated the amount of gross receipts claimed on their returns for the years in issue. As to the evidentiary weight to be accorded the forms 1099-MISC which were submitted, the credibility of such forms is questionable, given that for both 2015 and 2016, Mr. Chahin's business was listed as "paper and paper product merchant wholesalers" with no business name, address or employer identification number on the schedules C-EZ, while the 2015 1099-MISC listed the payer as Home of All American Brands and Pro with petitioners' address, and the 2016 1099-MISC listed the payer as Tommy Tours Corp. with an address in Staten Island, New York. For 2017, the schedule C-EZ listed Mr. Chahin's business as "traveler accommodation" and the business name as Tommy Tours Corp. The 2017 1099-MISC shows the payer as Tommy Tours Corp. with an address in Staten Island, New York. There is no explanation in the record as to why petitioner's business description for both 2015 and 2016 is listed as "paper and paper product merchant wholesalers" but the payer on the 1099-MISC changes from Home of All American Brands and Pro for 2015 to Tommy Tours Corp. for 2016, and then in 2017 petitioners' business description is listed as "traveler accommodation" and Tommy Tours Corp. is again listed as the payer for this business description. Petitioners providing no explanation as to the differing business descriptions and names, and no testimony regarding the employment or income, other than stating that Mr. Chahin was self-employed. While petitioner could have changed his type of business over the

years, there is no explanation as to why the business description for Tommy Tours Corp. is listed as “paper and paper product merchant wholesalers” for 2016 but it listed as “traveler accommodation” for 2017. It is concluded that the forms 1099-MISC alone are insufficient to prove petitioners’ gross receipts. Petitioners therefore failed to substantiate their claimed income for the years at issue.

Without sufficient documentation to substantiate the claimed business income for the years in issue, petitioners have failed to meet their burden of proof to show that the Division’s denial of the New York State and City earned income credit was erroneous (*see Matter of Espada*, Tax Appeals Tribunal, January 28, 2016).

D. Turning next to petitioners’ claimed Empire State child tax credit, for the year 2015 petitioners claimed three children for the credit, M.S., K.S., and A.S. For 2016 and 2017, petitioners claimed two children for the credit, K.S. and A.S. The Division concedes in its brief that petitioners are entitled to the maximum credit for two dependents with respect to the Empire State child credit for 2015, 2016, and 2017. However, the Division argues that petitioners did not prove that K.S. resided with them during the years at issue.

To qualify for the credit, a taxpayer must establish a qualifying child. For purposes of the Empire State child tax credit, a qualifying child must be a child of the taxpayer, a descendent of the taxpayer’s child, a sibling or step-sibling of the taxpayer or a descendent of such relative; must have the same principal place of abode as the taxpayer for more than one-half of the taxable year, and must be between four and seventeen years of age (Tax Law § 606 [c-1]; 26 USC §§ 24 [c]; 152 [c]).

Petitioners have provided sufficient documentation to show that M.S., K.S., and A.S. resided with them during the years at issue, that petitioners were the parents/guardians of the

children, that for 2015 all three children met the age requirement, and that for 2016 and 2017 the two children claimed for the credit, K.S. and A.S., met the age requirement. As such, petitioners are entitled to the Empire State child credit for three qualifying children for 2015, and for two qualifying children for 2016 and 2017. The notices of deficiency are to be adjusted accordingly.

E. The petitions of Mousa M. Chahin and Tima M. Berjawi are granted to the extent indicated in conclusion of law D, but are otherwise denied and the notices of deficiency, dated November 20, 2018 and January 15, 2019, as modified, are sustained.

DATED: Albany, New York
February 24, 2022

/s/ Barbara J. Russo
ADMINISTRATIVE LAW JUDGE