

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
RAOUF M. ALOMARI AND : **DETERMINATION**
SHAIMA L. SHARHAN : **DTA NO. 829668**
: :
for Redetermination of a Deficiency 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 Year 2016. :

Petitioners, Raouf M. Alomari and Shaima L. Sharhan, filed a petition for redetermination of a deficiency or for refund of personal income tax under article 22 of the Tax Law and the New York City Administrative Code for the year 2016.

A videoconferencing hearing via CISCO Webex was held before Barbara J. Russo, Administrative Law Judge, on July 8, 2021 at 10:30 a.m., with all briefs to be submitted by November 12, 2021, which date commenced the six-month period for issuance of this determination. Petitioners appeared by Raouf M. Alomari.¹ The Division of Taxation appeared by Amanda Hiller, Esq. (Michael Trajbar, Esq., of counsel).

ISSUES

I. Whether the Division of Taxation properly disallowed petitioners' claimed earned income credit for the year 2016.

II. Whether the Division of Taxation properly disallowed petitioners' claimed Empire State child care credit for the year 2016.

¹ Mr. Alomari is petitioner Shaima L. Sharhan's husband.

FINDINGS OF FACT

1. Petitioners, Raouf M. Alomari and Shaima L. Sharhan, filed a New York State resident income tax return, form IT-201, for the year 2016, reporting two dependent exemptions, business income of \$16,500.00, and requesting a refund in the amount of \$2,687.00. The refund consisted of a New York State earned income credit in the amount of \$1,672.00, Empire State child credit in the amount of \$611.00, New York City earned income credit of \$279.00, and New York City school tax credit of \$125.00.

2. Attached to petitioners' 2016 return was schedule C-EZ, Net Profit from Business, reporting petitioner Raouf M. Alomari's business as "grocery stores" with a business name "East New York Deli," and reporting gross receipts and net profit in the amount of \$16,500.00.

3. Based on petitioners' filed return, the Division of Taxation (Division) issued a refund in the amount of \$2,687.00 for tax year 2016 on April 3, 2017.

4. Petitioners' 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 petitioner, dated July 27, 2018, requesting documentation to support their business income, credits, and claimed refund for 2016. Petitioners did not provide documentation in response to the audit inquiry letter.

5. The Division issued a statement of proposed audit change (statement), dated September 25, 2018, stating, in part, as follows:

"This notice is with regards to your 2016 New York State income tax return.

Since you did not provide any documentation we requested in our audit inquiry letter dated July 27, 2018, in the specified timeframe, we disallowed the business income claimed on your return. We also disallowed the dependent exemption/s and refundable credits claimed by you.

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 Empire State child credit, resulting in tax due of \$2,562.00.

6. The Division issued a notice of deficiency (notice) to petitioners, dated November 13, 2018, asserting tax due of \$2,562.00 plus interest for tax year 2016.

7. Petitioners requested a conciliation conference with the Bureau of Conciliation and Mediation Services (BCMS). By order dated August 2, 2019, BCMS adjusted the assessment to allow for an Empire State child credit of \$200.00, and recomputed the tax due to \$2,362.00 plus interest.

8. Petitioners did not present any documentary evidence during the hearing. Petitioner Raouf M. Alomari testified that he worked at a grocery store and stated that “they used to give me a 1099.” Petitioner did not introduce the form 1099 into the record, nor did he state what time period he worked or the amount he was paid.

9. Attached to the petition were birth certificates for the two children claimed as dependents on the 2016 return, born in 2009 and 2011. Also attached to the petition was a letter from Children’s Medical Services, P.C., dated June 14, 2019, stating that petitioners’ children were patients at the office for 2018 and 2019. The letter listed an address on file for the children that differed from petitioners’ address listed on the 2016 return.

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 Trib.* 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 year in issue. Petitioners did not produce books, records, receipts, documents or testimony to clearly show that they generated the amount of gross receipts claimed on their return for the year in issue. Indeed, petitioners did not provide any documentary evidence at the hearing and the only testimony offered by Mr. Alomari was that he worked for a grocery store that "use to give him" a form 1099. However, petitioners did not present the form 1099 into the record, nor provide any information as to what year the

alleged form 1099 was for or the amount of income. Petitioners therefore failed to substantiate their claimed income for 2016.

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

D. Turning next to petitioners' claimed Empire State child tax credit for 2016, petitioners failed to sustain their burden of proof to establish that they are entitled to this credit. 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 failed to provide documentation showing that the claimed qualifying children had the same principal place of abode as them for more than one-half of the year in 2016. The letter from Children's Medical Services, P.C., does not state where the children resided in 2016. Rather, it states that they were patients in 2018 and 2019, and lists an address on file that differs from the address listed on petitioners' 2016 return. Although the letter states that the patients live with Raouf Alomari and Shaima Sharhan, it does not indicate whether such was the case for the year at issue. As such, petitioners have failed to sustain their burden of proof to establish that they are entitled to the Empire State child tax credit for 2016, and the Division's denial of such credit, as modified by BCMS must be sustained.

E. The petition of Raouf M. Alomari and Shaima L. Sharhan is denied and the notice of deficiency, dated November 13, 2018, as modified by the conciliation order dated August 2, 2019, is sustained.

DATED: Albany, New York
May 5, 2022

/s/ Barbara J. Russo
ADMINISTRATIVE LAW JUDGE