

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition
of
NADER M. AND IKBAL N. SHALODI
for Redetermination of a Deficiency or for Refund of
Personal Income Tax under Article 22 of the Tax Law
and the Administrative Code of the City of New York
for the Year 2017.

DETERMINATION
DTA NO. 829678

Petitioners, Nader M. and Ikbal N. Shalodi, filed a petition for redetermination of a deficiency or for refund of 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 on September 1, 2021, with all briefs to be submitted by January 5, 2022, which date began the six-month period for issuance of this determination. Petitioners appeared pro se and the Division of Taxation appeared by Amanda Hiller, Esq. (Christopher O'Brien, Esq., of counsel). After reviewing the entire record in this matter, Jessica DiFiore, Administrative Law Judge, renders the following determination.

ISSUES

- I. Whether the Division of Taxation properly disallowed petitioners' New York State and New York City earned income credits for 2017.
- II. Whether the Division of Taxation properly disallowed a portion of petitioners' Empire State child credit for 2017.

FINDINGS OF FACT

1. Petitioners, Nader M. and Ikbal N. Shalodi, electronically filed with the Division of Taxation (Division) a New York State resident income tax return, form IT-201, for 2017 (return). On the return, petitioners claimed married filing jointly as their filing status with one dependent, reported business income of \$18,200.00, and requested a refund of \$1,645.00. The refund consisted of an Empire State child credit of \$330.00, a New York State earned income credit of \$1,020.00, a New York City earned income credit of \$170.00, and a New York City school tax credit of \$125.00. Petitioners' 2017 return also included a federal form schedule C-EZ, net profit from business, which showed petitioner Nader M. Shalodi had gross receipts and a net profit of \$18,200.00 for a principal business of "drywall and insulation contractors," and a business name of "Evergreen Wall Paper and Plastering."

2. The Division performed a desk audit of petitioners' 2017 return. During the audit, the Division sent petitioners a letter dated July 26, 2018, requesting additional information to verify the income and credits petitioners claimed on their 2017 return. The Division stated it could not verify some of the information on petitioners' return. The Division asked for documents substantiating the income petitioners earned by working for themselves, including: (i) a copy of a schedule C, profit or loss from business from petitioners' federal income tax return of the same year; (ii) any license, registration, or certification required for the business; (iii) summary documents used to calculate the income and expenses reported on the return, such as ledgers, spreadsheets, or income and expense journals; and (iv) any detailed documentation such as sales slips, invoices, bank statements, or receipts supporting petitioners' business income. The Division also requested information about petitioners' child.

3. On September 21, 2018, the Division sent petitioners a statement of proposed audit change for 2017 stating that because they did not provide any documentation that the Division requested in its audit inquiry letter, it disallowed the business income claimed on their return and the dependent exemptions and refundable credits claimed by petitioners. The statement provided that petitioners were allowed the New York City school tax credit.

4. In the statement, the Division also stated that petitioners were initially allowed a refund of \$1,645.00 as claimed on their original return but as a result of the re-computation, there was a balance due. The Division adjusted petitioners' Empire State child credit and their New York State and New York City earned income credits. Petitioners' Empire State child credit was reduced from \$330.00 to \$0.00. Their New York State earned income credit was reduced from \$1,020.00 to \$0.00, and their New York City earned income credit was reduced from \$170.00 to \$0.00. As a result of the reduction in these credits, the Division found a balance of tax due of \$1,520.00 plus interest.

5. On November 7, 2018, the Division issued petitioners notice of deficiency L-048775000 for tax year 2017, assessing tax due of \$1,520.00 plus interest.

6. Petitioners requested a conciliation conference with the Bureau of Conciliation and Mediation Services (BCMS) appealing the notice. By BCMS conciliation order number 000305466, dated August 30, 2019, BCMS sustained notice L-048775000.

7. Petitioners timely filed a petition on November 4, 2019, asserting they submitted documents with the requests to BCMS, but that the Division never responded, and that they attached documents to the petition showing their income, child's birth certificate, and letters from their doctor and their child's school.

8. It is not clear from the record what, if any, documents petitioners submitted prior to submitting their petition and attached documents to the Division of Tax Appeals. The documents attached to the petition included, in relevant part, petitioners' federal income tax return, form 1040, showing \$18,200.00 of business income and deductible self-employment tax of \$1,286.00, their schedule C-EZ net profit from business for 2017, and bank statements for petitioner Nader M. Shalodi, covering December 14, 2016, through December 13, 2017. Deposits made throughout the statements provided for 2017 were not made at consistent times of the month and were for various amounts.

9. The Division called Kathleen Loos, an auditor for the Division who was familiar with the instant matter, to testify at the hearing. When asked what documentation the Division was looking for to substantiate the earned income credit claimed, Ms. Loos explained that the Division requires the taxpayer to verify self-employment income with copies of paychecks, business records, or documents showing exactly how much money was earned each week or each month. She continued that the Division would also want to see business records to verify the business itself, any expenses claimed, or any license necessary to perform the occupation.

10. Ms. Loos also testified that she reviewed the bank statements that were attached to the petition. She stated that these statements reflected a "variety of past deposits," and that there was no way to know what type of account they came from or whether they were paychecks. She testified that the deposits were for varying amounts on varying dates.

11. Ms. Loos was also asked whether the Division researched the business petitioners asserted provided the income. Ms. Loos testified that the Division attempted to verify Evergreen Wall Paper and Plastering existed, but it was not able to confirm the existence of the business. It was unable to find a website for the business, or any business records.

12. During the hearing, petitioners submitted a birth certificate for the dependent claimed on their 2017 return and a form 1099-Misc, Miscellaneous Income, from “Evergreen Wall Paper Plastring [sic]”, indicating compensation of \$18,200.00.

13. In its brief, the Division advised that petitioners substantiated the dependent portion of their Empire State child credit claimed for 2017, reducing the tax due in the deficiency by \$100.00.

CONCLUSIONS OF LAW

A. Tax Law § 606 (d) (1) provides for a New York State earned income credit of 30% of the earned income credit allowed under the Internal Revenue Code (IRC) (26 USCA) § 32. The New York City earned income credit is equal to five percent of the federal earned income credit under IRC (26 USCA) § 32 (*see* Tax Law § 1310 [f] [1]; Administrative Code of the City of New York § 11-1706 [d] [1]). Since the New York State and City earned income credits are determined based solely upon 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 (*see Matter of Espada*, Tax Appeals Tribunal, January 28, 2016). The federal earned income credit, provided for pursuant to IRC (26 USCA) § 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 employee compensation and earnings from self-employment (*see* IRC [26 USCA] § 32 [c][2] [A]). Thus, the State and City earned income credits require petitioners to prove the amount of their earned income (*see Matter of Espada*).

B. Petitioners bear the burden of proof to show a clear entitlement to the tax credits at issue (*see Matter of Golub Serv. Sta. v. Tax Appeals Trib. of State of N.Y.*, 181 AD2d 216, 219 [3d Dept 1992]; *see also* Tax Law § 689 [e]). Here, the Division denied petitioners’ claim for

the earned income credit because they failed to substantiate their business income as reported. Upon review of the record, it is clear that petitioners have failed to meet their burden of proof with respect to the gross receipts reported on their schedule C-EZ attached to their return. Other than the form 1099-Misc, petitioners have not offered any evidence to show how they earned \$18,200.00 in gross receipts for drywall and insulation contract work. Petitioner did not produce sufficient books, records, receipts, documents or testimony to clearly show that they generated the amount of gross receipts claimed on their 2017 return. Petitioners did not offer canceled checks or bills to substantiate such services and such gross receipts. Petitioners also did not testify regarding the provision of such services, or the manner, frequency and amount of payment for such services. Additionally, as to the evidentiary weight to be accorded to the submitted form 1099-Misc, the auditor could find no record that Evergreen Wall Paper and Plastering existed, causing the credibility of such form to be questionable. As such, the form 1099-Misc, by itself, is insufficient to prove petitioners' gross receipts. Petitioners have therefore failed to substantiate their claimed income for 2017. Without sufficient documentation to substantiate the claimed business income for the years at issue, petitioners have failed to meet their burden of proof and are not entitled to the earned income credit for 2017.

C. Turning next to petitioners' claimed Empire State child tax credit for 2017, the Division concedes that petitioners substantiated their claimed dependent. Tax Law § 606 (c-1) provides for a credit equal to the greater of one hundred dollars times the number of qualifying children of the taxpayer or the applicable percentage of the child tax credit allowed the taxpayer under IRC § 24 for the same taxable year for each qualifying child. Where the taxpayer does not have any earned income, the taxpayer will not qualify for the child tax credit under IRC § former 24 (d) (1) (B) (i).

On their 2017 return, petitioners claimed an Empire State child credit in the amount of \$330.00. Upon receiving substantiation of petitioners' claimed dependent, the Division allowed a credit of \$100.00, based upon no verifiable income and a qualifying child. As petitioners have failed to prove they had any earned income for 2017, they are not entitled to an Empire State child credit in an amount greater than the \$100.00.

D. In light of the Division's concession that petitioners are entitled to \$100.00 of the \$330.00 Empire State child credit claimed on their 2017 return, the Division is directed to recompute its November 7, 2018, notice of deficiency accordingly.

E. The petition of Nader M. and Ikbal N. Shalodi is granted to the extent indicated in conclusion of law D but is otherwise denied and the notice of deficiency dated November 7, 2018, is sustained.

DATED: Albany, New York
June 30, 2022

/s/ Jessica DiFiore
ADMINISTRATIVE LAW JUDGE