

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
MOHAMMAD IKHMAES AND MARWA IKHMAYES	:	DETERMINATION DTA NO. 829693
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 2016.	:	

Petitioners, Mohammad Ikhmaes and Marwa Ikhmayes, 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 2016.

A videoconferencing hearing via Cisco Webex was held before Kevin R. Law, Administrative Law Judge, on June 16, 2021, with all briefs to be submitted by October 15, 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. (Maria Matos, Esq., of counsel).

ISSUE

Whether petitioners have sustained their burden of proving entitlement to their claims for the New York State and New York City earned income credits and the Empire State child credit.

FINDINGS OF FACT

1. On February 7, 2017, petitioners, Mohammad Ikhmaes and Marwa Ikhmayes, filed a joint New York State and New York City personal income tax return for tax year 2016 (the return) on which they claimed five children as dependents with ages ranging from six months to ten years of age as of December 31, 2016. Petitioners reported \$35,320.00 of self-employment income and reported New York State and New York City tax of \$475.00 and \$345.00, respectively. Attached to the return is a schedule C for Mr. Ikhmaes which reports gross receipts of \$35,320.00 with no corresponding expenses. The business name listed on the schedule C is Alsihan Halal Meat Market, Inc. A South Ozone Park address is listed for the business address. The return lists petitioner Mohammad Ikhmaes' occupation as an HVAC contractor, and petitioner Marwa Ikhmayes's occupation as a housewife.

2. Petitioners reported no tax withheld but claimed the New York State earned income credit of \$1,307.00, the New York City earned income credit of \$218.00, the Empire State child credit of \$886.00, and New York City school tax credit of \$125.00, resulting in a \$1,716.00 refund. This refund claimed on the return was paid.

3. On September 27, 2018, the Division of Taxation (Division) sent petitioners an audit inquiry letter requesting verification of the dependents claimed and income reported on the return. Petitioners did not respond.

4. Because petitioners did not respond to the Division's September 27, 2018 audit inquiry letter, a statement of proposed audit changes dated November 29, 2018 was issued to petitioners that asserted tax due of \$2,757.00 plus interest. The amount asserted due is comprised of tax due on the income reported on the return without allowance of dependency deductions and disallowance of all credits claimed except for the New York City school tax credit.

5. On January 15, 2019, the Division issued a notice of deficiency, notice number L-049211985, asserting tax due of \$2,757.00 plus interest (the notice). The amount asserted due is based upon disallowance of all the credits claimed on the return plus tax on the reported income with no dependents. On July 12, 2019, a notice of adjusted assessment was issued modifying the notice to assert tax of \$1,591.00. The \$1,591.00 of tax asserted is based upon disallowance of all credits except for the New York City school tax credit of \$125.00.

6. Following a conciliation conference in the Division's Bureau of Conciliation and Mediation Services, the notice, as modified by the July 12, 2019 notice of adjusted assessment, was sustained by conciliation order dated September 20, 2019.

7. Included in the hearing record is a 2016 form 1120 US Corporation Income Tax Return for Alsihan Halal Meat Market, Inc. (the 1120). Mr. Ikhmaes is listed as the corporation's sole shareholder. The 1120 lists the same address and employer identification number for this entity as that listed on Mr. Ikhmaes' schedule C. The 1120 reports gross receipts of \$25,497.00 and cost of goods sold of \$32,289.00. No deductions for salaries and wages or compensation to officers are claimed.

8. At the hearing in this matter, Mr. Ikhmaes testified that he operated Alsihan Halal Meat Market and made \$32,824.00 during 2016 but had no business records from this business as it ceased operating. He also blamed his tax preparer for petitioners' failure to respond to the Division's inquiry letter or otherwise submit any documentation.

9. At the conclusion of the hearing, the record was left open for petitioners to submit documentation to verify the children claimed on their return as dependents and to submit documentation establishing their income alleged to have been earned in 2016. To that end, petitioners submitted student historical profile reports from the New York City Public school

records for 2016 for three of the five children claimed. The school records confirm that the three children were ages 6, 8 and 10 during 2016 and that they lived at the same address as petitioners. Petitioner Marwa Ikhmayes is listed on the school records as each child's guardian. Petitioners also submitted a letter from the children's physician confirming petitioners were the children's parents and their address. The letter lists the five children claimed on the return. The letter does not specify the children's respective dates of birth.¹ Finally, petitioners submitted a satisfaction of judgment for an assessment issued to Mr. Ikhmaes as responsible person of Alihsan Halal Meat Market, Inc.²

CONCLUSIONS OF LAW

A. As noted, the notice at issue is a notice of deficiency that asserts tax based upon the denial of petitioners' claims for the New York State and New York City earned income credits 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 petitioners' eligibility for the earned income credits, Tax Law § 606 (d) provides that the New York State earned income credit for the 2016 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

¹ Based upon this documentation, the Division has conceded that petitioners are entitled to an Empire State child credit of \$300.00 based upon substantiating three of the five dependents claimed on the return.

² Petitioners did not explain the relevance of the satisfaction of judgment nor is its relevance readily apparent.

earned income credit allowed under section thirty-two of the internal revenue code for the same taxable year. . .” for New York City residents. Since petitioners’ eligibility for the New York State and New York City earned income credits hinges upon their eligibility for the federal credit, their 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 petitioners have verified three of the five dependents claimed, petitioners’ eligibility for the earned income credits hinges on whether they have established Mr. Ikhmaes earned income in 2016, and the amount thereof.

D. Careful review of the record establishes that petitioners have not proven entitlement to the New York State and New York City earned income credits as petitioners have not established that they earned income during 2016. Petitioners’ 2016 return reports \$35,230.00 of income from self-employment as the proprietor of a meat market that had \$35,230.00 of receipts with no corresponding expenses claimed. Petitioners did not submit any books or records for this alleged

business, claiming it ceased operating and that Mr. Ikhmaes could not access the same. In contrast, a 2016 corporate return for a meat market owned by Mr. Ikhmaes with the same business name and address used by him on his schedule C reports no income paid to Mr. Ikhmaes. This entity reported a loss and did not claim any wages paid to officers or employees. This conflicting evidence undermines petitioners' claim that they had earned income during 2016. The amounts reported as earned by Mr. Ikhmaes on petitioners' return appear to be fabricated in order to claim the earned income credits. Based upon the foregoing, petitioners' claim for the New York State and New York City earned income credits is denied.

E. Turning next to petitioners' claimed Empire State child tax credit for 2016, 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]). Petitioners have established entitlement to the credit for three of the five children claimed by submitting school records confirming that petitioners were their guardians and each child's date of birth. They also submitted a letter from the children's physician confirming petitioners were the children's parents and their address. Notably absent is documentation for the two remaining children that substantiates their age, such as a birth certificate. Without such evidence, petitioners have only established entitlement to a credit of \$300.00. The Division is directed to modify the notice of deficiency to allow an Empire State child credit of \$300.00.

F. The petition of Mohammad Ikhmaes and Marwa Ikhmayes is granted in accordance with conclusion of law E, but is otherwise denied, and the January 15, 2019 notice of deficiency, as modified, is sustained.

DATED: Albany, New York
April 14, 2022

/s/ Kevin R. Law
ADMINISTRATIVE LAW JUDGE