

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition

of

**FAWZIA A. MOHAMED AND
IBRAHIM A. HEMEDA**

DETERMINATION
DTA NO. 829696

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 Years 2015 and 2017.

Petitioners, Fawzia A. Mohamed and Ibrahim A. Hemeda, 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 years 2015 and 2017.

A hearing was held in New York City on October 12, 2021, with all briefs to be submitted by February 1, 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. (James Passineau, Esq., of counsel). After reviewing the entire record in this matter, Jessica DiFiore, Administrative Law Judge, renders the following determination.

ISSUE

Whether the Division of Taxation properly disallowed petitioners' New York State and New York City earned income credits claimed on their 2015 and 2017 income tax returns.

FINDINGS OF FACT

1. Petitioners, Fawzia A. Mohamed and Ibrahim A. Hemeda, electronically filed with the Division of Taxation (Division) a New York State resident income tax return, form IT-201, for

2015 (2015 return). On the return, petitioners claimed married filing jointly as their filing status with one dependent, reported business income of \$10,500.00, and requested a refund of \$1,288.00. The refund requested was granted.

The refund consisted of a New York State earned income credit of \$997.00, a New York City earned income credit of \$166.00, and a New York City school tax credit of \$125.00.

Attached to petitioners' return was a schedule C profit or loss from business, form 1040, which showed petitioner Fawzia A. Mohamed had gross receipts and a net profit of \$10,500.00 for a principal business of "baby sitter." No business name or address was provided.

2. Petitioners also filed a New York State resident income tax return, form IT-201 for 2017 (2017 return). On the return, petitioners claimed married filing jointly as their filing status with one dependent, reported business income of \$10,400.00, and requested a refund of \$1,277.00. The refund request was granted.

The refund consisted of a New York State earned income credit of \$987.00, a New York City earned income credit of \$165.00, and a New York City school tax credit of \$125.00.

Petitioners' 2017 return also included a federal form schedule C, profit or loss from business, which showed petitioner Fawzia A. Mohamed had gross receipts and a net profit of \$10,400.00 for a principal business of "baby sitter." No business name or address was provided.

3. The Division performed a desk audit of petitioners' 2015 and 2017 returns. During the audit, the Division sent petitioners two identical letters, dated July 26, 2018, one for each tax year at issue, requesting additional information to verify the income and credits petitioners claimed on their 2015 and 2017 returns. The Division stated it could not verify some of the information on petitioners' returns. The Division asked for documents substantiating the money 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.

4. In response to the Division's document request, petitioners submitted information substantiating their dependent, a social security benefit statement, form SSA-1099 for petitioner Ibrahim A. Hemedha for 2017 listing benefits paid to petitioner of \$7,344.00, and a letter. The letter listed the name "Suki Daycare" with an address, phone number, email and website in the heading. The letter stated that Ms. Mohamed is currently an employee of Suki Daycare and listed her direct supervisor. The letter also provided that Ms. Mohamed earns \$200.00 per week at an hourly rate of \$12.50 and that she gets paid bi-weekly. It explained that she works 3 days out of the week totaling 16 hours each week and her workdays are usually Monday, Wednesday and Friday starting at 8:00 a.m. The letter is then signed and dated September 28, 2017.

5. On August 24, 2018, the Division sent petitioners a statement of proposed audit change for 2017 stating it was unable to verify petitioners' earned income based on the letter from an employer they provided.¹ The statement also provided that petitioners did not provide copies of paystubs, copies of cashed checks and bank statements to substantiate their earned income and therefore, they disallowed petitioners' earned income credits. The Division did, however, allow petitioners' claimed New York City school tax credit. As a result of disallowing

¹ In the statement of proposed audit change, despite listing that it was for the filing period ended 12/31/2017, in the explanation section of the statement, it stated that the Division had reviewed the information sent in response to its audit inquiry letter for tax year 2016. However, this is deemed a typographical error as both the cover page and the computation summary section reflect that the tax due was for 2017.

petitioners' earned income credits, reducing them both to \$0.00, the Division found petitioners owed tax in the amount of \$1,152.00 plus interest for 2017.

6. On October 23, 2018, the Division sent petitioners a statement of proposed audit change for 2015 stating that it was unable to verify petitioners' earned income based on the form schedule C they provided and because they did not provide a copy of a paystub, copies of cashed checks, receipts, invoices or bank or credit card statements to substantiate their income. Because they did not substantiate their income, the Division disallowed the earned income credits claimed. In the statement, the Division also advised that it was allowing the New York City school tax credit of \$125.00. As a result of these changes, the Division recomputed petitioners' 2015 return, adjusted their New York State and New York City earned income credits down to \$0.00, and found a balance of tax due of \$1,163.00 plus interest.

7. On November 15, 2018, the Division issued petitioners notice of deficiency L-048713108 for tax year 2017, assessing tax due of \$1,152.00 plus interest.

8. On December 12, 2018, the Division issued petitioners notice of deficiency L-048927018 for tax year 2015, assessing tax due of \$1,163.00 plus interest.

9. Petitioners requested a conciliation conference with the Bureau of Conciliation and Mediation Services (BCMS) appealing the notices. By BCMS conciliation order number 000305727, dated October 4, 2019, BCMS sustained notices L-048927018 and L-048713108.

10. Petitioners timely filed a petition on November 20, 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. The documents attached to the petition included, in relevant part, petitioners' 2017 federal income tax return, form 1040, listing \$10,400.00 of

business income and deductible self-employment tax of \$735.00, and their 2017 schedule C profit or loss from business.

11. During the hearing, in addition to documents that were already submitted into the record, petitioners offered a form SSA -1099 Social Security benefit statement for petitioner Ibrahim A. Hemedha for 2015, listing benefits paid of \$7,320.00, a 2015 W-2 for petitioners' dependent from B & N College Booksellers, LLC located in Westbury, New York, listing wages of \$394.45, and a letter from Resk E. Uosef. The letter from Mr. Uosef is dated January 29, 2016, and states that "Ms. Fawzi Moustafa is working as a part time baby sitter [sic] to my children and makes \$200.00 per week cash [sic]." The letter is signed and notarized on January 30, 2016. It does not state for what period Ms. Fawzia Moustafa was a part time babysitter or whether Ms. Moustafa is also petitioner Fawzia A. Mohamed.

12. At the hearing, the Division submitted the affidavit of Rachel Major, a Tax Technician III with the Division. Ms. Major's primary responsibilities are to perform audits of individual tax returns based on documentation requests. Ms. Major averred that the taxpayers' 2015 and 2017 returns were audited by the Income/Franchise Desk Audit Bureau of the Division. She stated that during the audit, the Division sent petitioners a Request for Additional Information regarding their 2015 and 2017 returns. After reviewing the documentation petitioners provided in response to the request, the Division found that the dependent claimed on the return was verified and allowed. The Division acknowledged that the taxpayers also provided a letter from a claimed employer but stated that the Division could not verify the information provided without additional information. Because the Division could not verify the business income claimed, petitioners' earned income credits remained disallowed.

13. Ms. Major also averred that the Division contacted the Internal Revenue Service (IRS) to determine if either of the taxpayers had income reported by any third-party. The IRS had no record of income being reported for either taxpayer by a third party.

CONCLUSIONS OF LAW

A. Tax Law § 606 (d) (1) provides for a New York State earned income credit based on a percentage of the earned income credit allowed under the Internal Revenue Code (IRC) (26 USC) § 32. The New York City earned income credit is equal to five percent of the federal earned income credit under IRC (26 USC) § 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 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 employee compensation and earnings from self-employment (*see* IRC [26 USC] § 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' claims for the earned income credit for 2015 and 2017 because they failed to substantiate their business income as reported. Without sufficient documentation to substantiate the claimed business

income for the years at issue, petitioners will fail to meet their burden of proof and are not entitled to the earned income credit for 2015 and 2017 (*see Matter of Espada*).

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 each of their schedule Cs attached to their 2015 and 2017 returns. The only evidence petitioners submitted regarding their earned income for 2015, the letter from Mr. Uosef stating Ms. Fawzi Moustafa was his part time baby-sitter that he paid \$200.00 per week, is not sufficient to substantiate petitioners' claimed earned income for 2015. The letter is an unsworn statement, does not provide the time frame during which Mr. Uosef was paying petitioner, or even that Ms. Fawzi Moustafa is the petitioner in this matter, Fawzia A. Mohamed. Ms. Mohamed also did not testify regarding the provision of her services in 2015. As petitioners did not submit any other documentation such as books, records, or bank statements or any testimony to substantiate the earned income claimed for 2015, they have not established they are entitled to an earned income credit for 2015.

Similarly, for 2017, upon review of the record, it is clear that petitioners have failed to meet their burden of proof with respect to the income reported on their schedule C attached to their return. Petitioners offered a letter under the name "Suki Daycare," stating that Ms. Mohamed is currently an employee of Suki Daycare. The letter also provided that Ms. Mohamed earns \$200.00 per week at an hourly rate of \$12.50 and that she gets paid bi-weekly. It also listed the days and hours she worked each week and was signed and dated September 28, 2017. However, this unsworn statement, without more, is insufficient to establish petitioners' earned income for 2017. Petitioners again did not offer any canceled checks, receipts, bills, or bank statements to substantiate Ms. Mohamed's services and support the income claimed in the letter from Suki Daycare. Ms. Mohamed also did not testify regarding the provision of her

services in 2017. Thus, petitioners provided insufficient evidence to prove their gross receipts for 2017, and, therefore, have failed to substantiate their claimed income for 2017. Accordingly, petitioners have not established they are entitled to New York State and New York City earned income credits for the year 2017.

C. The petition of Fawzia A. Mohamed and Ibrahim A. Hemeda is denied, and the notices of deficiency dated November 15, 2018 and December 12, 2018 are sustained.

DATED: Albany, New York
July 28, 2022

/s/ Jessica DiFiore
ADMINISTRATIVE LAW JUDGE