

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
MOHAMED S. FADHLE	:	DETERMINATION
AND RAGA A. MOHAMED	:	DTA NO. 829752
	:	
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, Mohamed S. Fadhle and Raga A. Mohamed, 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 October 21, 2021 at 10:30 a.m., with the final brief to be submitted by January 27, 2022, 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. (James Passineau, Esq., of counsel).

ISSUES

I. Whether petitioners have established that the Division of Taxation erred in disallowing their claimed earned income credit for the year 2016.

II. Whether petitioners have established that the Division of Taxation erred in disallowing their claimed Empire State child credit for 2016.

FINDINGS OF FACT

1. Petitioners, Mohamed S. Fadhle and Raga A. Mohamed, filed a New York State resident income tax return, form IT-201, for the year 2016, reporting three dependent exemptions, business income of \$14,923.00, and requesting a refund in the amount of \$2,398.00. The refund consisted of a New York State earned income credit in the amount of \$1,665.00, Empire State child credit in the amount of \$330.00, New York City earned income credit of \$278.00, and New York City school tax credit of \$125.00.

2. Attached to petitioners' return was schedule C, Profit or Loss from Business, reporting petitioner Mohamed S. Fadhle's business as "taxi and limousine service" and reporting gross receipts and net profit in the amount of \$14,923.00. The schedule C lists the business name as Unter LLC, located at an address in San Francisco, California.

3. Also attached to petitioners' return were forms IT-215, claim for earned income credit, listing two claimed qualifying children with dates of birth listed as March 19, 2002 and July 10, 1998, and IT-213, claim for Empire State child credit, listing one claimed dependent, with a date of birth listed as March 19, 2002.

4. Based on petitioners' return, the Division of Taxation (Division) issued a refund in the amount of \$2,398.00 for tax year 2016.

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

6. Petitioners did not submit any documentation in response to the audit inquiry letter.

7. The Division issued a statement of proposed audit change for tax year 2016, dated September 28, 2018, stating, in part, as follows:

“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 your head of household filing status, dependent exemption/s [sic] and refundable credits claimed by you.

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

The Division denied the claimed New York State and City earned income credits and Empire State child credit.

8. The Division issued a notice of deficiency (notice) to petitioners, dated January 9, 2019, asserting tax due of \$2,273.00 plus interest.

9. Petitioners filed a request for conciliation conference with the Bureau of Conciliation and Mediation Services (BCMS) in protest of the notice. A conciliation conference was held on August 15, 2019 and, by conciliation order, CMS No. 306447, dated October 4, 2019, BCMS sustained the notice.

10. In protest of the conciliation order, petitioners filed a timely petition with the Division of Tax Appeals on November 28, 2019.

11. At the hearing in this matter, petitioner Mohamed S. Fadhle testified that he worked part time in 2016 as a taxi driver, but did not know how much income he earned. He testified that he had no records regarding his income. With regard to the three dependents claimed on petitioners' 2016 return, Mr. Fadhle testified that two of the claimed dependents are his daughters.

12. Petitioners did not present any documentary evidence during the hearing. The record was held open until November 5, 2021 for petitioners to provide birth certificates and information to establish the address of the claimed qualifying children for 2016. Within the time allowed, petitioners provided birth certificates showing that they are the parents of two of the claimed dependents with dates of birth of March 19, 2002 and July 10, 1998, a letter from the

claimed qualifying children's pediatrician stating that the dependents with dates of birth of March 19, 2002 and July 10, 1998 resided with petitioners in 2016, and a Brooklyn Student Copy Undergraduate Record for one of the claimed dependents.

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]). 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 sufficient records or testimony to clearly establish the income claimed on their return. Therefore, 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 credits was erroneous (*see Matter of Espada*, Tax Appeals Tribunal, January 28, 2016).

D. For purposes of the Empire State child tax credit, a taxpayer must establish a qualifying child. 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 the claimed dependent with the date of birth of March 19, 2002 resided with them during the year at issue, that they were the parents/guardians of that child, and that for 2016 the one child met the age requirement. As such, petitioners are entitled to the Empire State child credit for one qualifying child for 2016. The notice of deficiency is to be adjusted accordingly. Petitioners have not met their burden of proof with regard to any other qualifying child.

E. The petition of Mohamed S. Fadhle and Raga A. Mohamed is granted to the extent indicated in conclusion of law D, but is otherwise denied and the notice of deficiency, dated January 9, 2019, as modified, is sustained.

DATED: Albany, New York
July 21, 2022

/s/ Barbara J. Russo
ADMINISTRATIVE LAW JUDGE