

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition	:	
	:	
of	:	
	:	
HUSSAIN S. YAFAI AND RASMIAH N. ABDULLAH	:	DETERMINATION
	:	DTA NO. 830335
for Redetermination of a Deficiency or for Refund of New	:	
York State and New York City Personal Income Taxes under	:	
Article 22 of the Tax Law and the Administrative Code of the	:	
City of New York for the Year 2018.	:	

Petitioners, Hussain S. Yafai and Rasmiah N. Abdullah, filed a petition for redetermination of a deficiency or for refund of New York State and New York City personal income taxes under article 22 of the Tax Law and the Administrative Code of the City of New York for the year 2018.

A videoconferencing hearing via Cisco Webex was held before Kevin R. Law, Administrative Law Judge, on January 26, 2023, with all briefs to be submitted by May 26, 2023, 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. (Jennifer L. Hink-Brennan, 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 26, 2019, petitioners, Hussain S. Yafai and Rasmiah N. Abdullah, filed a New York State Personal Income Tax Return, form IT-201, for tax year 2018 (return) on which

they claimed three children as dependents, with ages of two, six and nine years, as of December 31, 2018. Petitioners reported \$17,680.00 of other income on the return. On the signature line of the return, petitioner Hussain S. Yafai's occupation is listed as a store clerk and petitioner Rasmiah N. Abdullah's occupation is listed as a housewife.

2. On the return, petitioners claimed the New York State earned income credit of \$1,929.00, the New York City earned income credit of \$322.00, the New York City school tax credit of \$125.00, and the Empire State child credit of \$444.00, resulting in a \$2,820.00 refund claim.

3. On March 7, 2019, prior to issuance of the requested refund, the Division of Taxation (Division) sent petitioners an audit inquiry letter requesting verification of the dependents claimed and income reported on the return.

4. Petitioners responded to the March 7, 2019 audit inquiry letter by submitting a copy of a 2018 federal schedule C-EZ for Mr. Yafai which indicated that he operated a grocery store named Bedford Express Deli as a sole proprietorship; a copy of a federal form 1099-MISC from Bedford Gourmet Deli Corp., listing \$17,680.00 of nonemployee compensation paid to Mr. Yafai in 2018; and a handwritten "wage log" detailing amounts alleged to have been paid to Mr. Yafai from Bedford Express Deli in 2018.

5. On June 12, 2019, the Division issued an account adjustment notice allowing a refund of the New York City school tax credit of \$125.00, and disallowing the New York State and New York City earned income credits and the Empire State child credit.

6. Subsequently, on October 4, 2019, the Division issued a formal notice of disallowance denying the New York State and New York City earned income credits and the Empire State child credit.

7. At the outset of the hearing in this matter, the Division's representative indicated that, based upon its review of documents attached to the petition, including birth certificates, school and doctor records for petitioners' children, it stipulated that petitioners had proven that they had three children during 2018, but that only two were aged four or above. Based on this stipulation, the Division conceded that petitioners had proven entitlement to an Empire State child credit of \$200.00. A review of these records confirms the accuracy of the Division's stipulation regarding the children.

8. Scott Moskal, a Tax Technician II with the Division, testified on its behalf. Mr. Moskal testified that the notice of disallowance was issued because it was the Division's determination that petitioners' business income could not be verified. Mr. Moskal stated that petitioners' failure to provide copies of cancelled checks or money orders, bank statements showing dates and amounts deposited along with copies of receipts or transaction ledgers that would match from the employer, formed the basis for the denial of petitioners' refund claim.

9. Mr. Moskal's review of petitioners' bank statements resulted in the Division's determination that such statements failed to substantiate that Mr. Yafai earned income during 2018 because none of the bank statements showed deposit amounts close to the amount of weekly income that was reported on the handwritten wage log. Mr. Moskal also searched the Division's records and determined that Bedford Gourmet Deli Corp. did not take a deduction for the amount that petitioners alleged that such entity paid Mr. Yafai.

10. At the hearing in this matter, Mr. Yafai vaguely testified that he was a food delivery driver for Bedford Gourmet Deli Corp. and was paid \$340.00 weekly for his services. Petitioners did not enter any exhibits into the hearing record, nor did they file a brief.

CONCLUSIONS OF LAW

A. As noted, the notice at issue is a notice of disallowance that denied petitioners' claims for the New York State and New York City earned income credits as well as 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.*, 181 AD2d at 219 [citation omitted]).

B. First, addressing petitioners' eligibility for the earned income credits, Tax Law § 606 (d) (1) provides that the New York State earned income credit for the 2018 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 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 IRC (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 United States 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 [federal earned income credit] 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 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 IRC (26 USC) § 152 (c) and the taxpayer’s AGI. Because the Division stipulated at hearing that petitioners have verified their qualifying children, their eligibility for the earned income credit hinges on whether they have established their earned income, and the amount thereof.

D. Petitioners’ claim for the New York State and New York City earned income credits is based upon \$17,680.00 of self-employment income. Petitioners have failed to meet their burden of establishing, in a clear and convincing manner, that Mr. Yafai earned such amount during 2018, as he presented no persuasive evidence other than his testimony on this score. I have accorded the form 1099-MISC and the handwritten wage log little evidentiary weight. Although the existence of the form 1099-MISC is presumptive evidence that Mr. Yafai earned income from Bedford Gourmet Deli Corp., his handwritten wage log indicates he was paid by Bedford Express Deli. In addition, Mr. Yafai’s schedule C-EZ indicates that his sole proprietorship operated as Bedford Express Deli, and his testimony indicates that he was not the owner of such business but was employed there. These discrepancies, coupled with Mr. Moskal’s testimony that Bedford Gourmet Deli Corp. did not take a deduction for the amount petitioner has alleged that such entity paid him, cast serious doubt as to whether Mr. Yafai actually earned these monies. Petitioners have failed to show clearcut entitlement to the earned income credits based upon their failure to prove, in a clear and convincing manner, they had earned income in 2018. 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 credit, the Division stipulated that it was no longer questioning petitioners' ability to claim two qualifying children. Tax Law § 606 (c-1) (the Empire State child credit) provides for a refundable credit available to full-year New York State residents who have at least one qualifying child who is at least 4 years old and under 17, who meet income limitations. Where the taxpayer does not have any earned income, the taxpayer will not qualify for the child tax credit under IRC (26 USC) former § 24 (d) (1) (B) (i). Taxpayers who do not claim, or qualify for the federal credit, can claim \$100.00 for each child. Since petitioners have not met their burden of establishing they had earned income in 2018, they are only allowed the minimum credit of \$100.00 per qualifying child, in this case \$200.00. Based upon the Division's concession, the Division is directed to modify the notice of disallowance to allow the Empire State child credit in the amount of \$200.00.

F. The petition of Hussain S. Yafai and Rasmiah N. Abdullah is granted to the extent indicated in conclusion of law E, but it otherwise denied, and the October 4, 2019 notice of disallowance, as modified, is sustained.

DATED: Albany, New York
November 16, 2023

/s/ Kevin R. Law
ADMINISTRATIVE LAW JUDGE