

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition	:	
of	:	
<b>DORIS M. MARTINEZ</b>	:	<b>DETERMINATION</b>
		<b>DTA NO. 830437</b>
for Redetermination of a Deficiency or for Refund of New York State and City Personal Income Taxes under Article 22 of the Tax Law and the Administrative Code of the City of New York for the Year 2019.	:	

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Petitioner, Doris M. Martinez, filed a petition for redetermination of a deficiency or for refund of New York State and City personal income taxes under article 22 of the Tax Law and the Administrative Code of the City of New York for the year 2019.

A hearing was held before Barbara J. Russo, Administrative Law Judge, in Albany, New York, on April 20, 2023 at 10:30 a.m., with the final brief to be submitted by July 20, 2023, which date commenced the six-month period for the issuance of this determination. Petitioner appeared pro se. The Division of Taxation appeared by Amanda Hiller, Esq. (Maria Matos, Esq., of counsel).

***ISSUES***

I. Whether petitioner has established that the Division of Taxation erred in disallowing her claimed earned income credit for the year 2019.

II. Whether petitioner has established that the Division of Taxation erred in disallowing her claimed Empire State child credit for 2019.

### ***FINDINGS OF FACT***

1. Petitioner, Doris M. Martinez, filed a New York State resident income tax return, form IT-201, for the year 2019 (2019 return), reporting two dependent exemptions, business income of \$12,358.00, and requesting a refund in the amount of \$1,880.00. The refund consisted of a New York State earned income credit in the amount of \$1,377.00, Empire State child credit in the amount of \$210.00, New York City earned income credit of \$230.00, and New York City school tax credit of \$63.00.

2. Attached to petitioner's 2019 return was schedule C, Profit or Loss from Business, reporting petitioner's principal business as "cleaning services," gross receipts in the amount of \$13,000.00, expenses of \$642.00, and net profit in the amount of \$12,358.00. The schedule C does not list a business name and lists the same East Elmhurst, New York, address as that listed for petitioner's residence on her 2019 return.

3. Also attached to petitioner's 2019 return were forms IT-215, claim for earned income credit, listing two claimed qualifying children with dates of birth listed as October 27, 2007 and April 21, 1999, and IT-213, claim for Empire State child credit, listing the same children and dates of birth.

4. The Division of Taxation (Division) performed an audit of petitioner's 2019 return and sent an audit inquiry letter to petitioner, dated March 12, 2020, requesting documentation to support the business income, dependents, credits, and claimed refund for 2019.

5. Petitioner did not submit any documentation in response to the audit inquiry letter.

6. The Division issued a notice of disallowance, dated October 15, 2020, disallowing a portion of the claimed refund for 2019 in the amount of \$1,817.00. The Division denied the claimed New York State and City earned income credits and Empire State child credit and allowed a New York City school tax credit in the amount of \$63.00.

7. On October 26, 2020, petitioner responded to the notice of disallowance and provided the following: a copy of a form 1099-MISC, Miscellaneous Income, in the amount of \$13,000.00, listing petitioner as the recipient and reporting the payer's name as Benji Construction Corp., with an address in Schenectady, New York; copies of social security work authorization cards for petitioner and the two claimed dependents; a verification for pupil registration from New York City Public Schools, dated January 9, 2020, indicating that the claimed dependent with the birthdate of October 27, 2007, was admitted on July 2, 2019, listing petitioner as the parent/guardian, and listing petitioner's address; T-Mobile account summaries dated August 17, 2020, September 17, 2020 and October 17, 2020, bearing an account name of Luisa Zapata; and copies of passports for petitioner and the claimed dependents.

8. By letter dated November 13, 2020, the Division informed petitioner that it was unable to issue any additional refund for 2019 and that if she disagreed, she would be required to timely file a request for conciliation conference with the Bureau of Conciliation and Mediation Services (BCMS) or a petition with the Division of Tax Appeals for any further review.

9. Petitioner filed a request for conciliation conference with BCMS. BCMS issued a conciliation default order CMS No. 000325534), dated April 2, 2021, and sustained the statutory notice.

10. Petitioner filed a timely petition with the Division of Tax Appeals on May 5, 2021.

11. At some point subsequent to the issuance of the notice of disallowance, petitioner submitted copies of bank statements for 2019, and a copy of an unnotarized letter from Benji Construction Corp., dated January 31, 2023, and signed by Carlos Argudelo, as president. The letter states that petitioner was an employee of Benji Construction Corp. in 2019 and was paid wages of \$15.00 an hour, for a total of \$13,000.00 in that year. Petitioner's bank statements do not show any payments received from Benji Construction Corp.

12. During the hearing, petitioner provided copies of birth certificates for the claimed dependents and a copy of an immunization record for the claimed dependent with the date of birth of October 27, 2007. The immunization record lists a different address than petitioner's residence listed on her 2019 return.

### ***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 petitioner 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, 843 [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 petitioner's 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* IRC [26 USC] § 32 [c] [2]). Petitioner bears the burden of proof (*see* Tax Law § 689 [e]) to substantiate the amount of earned income reported on her return.

Here, the Division denied petitioner's claim for the earned income credit because she failed to substantiate the business income as reported. Upon review of the record, it is clear that

petitioner has failed to prove her income for the year in issue. Petitioner did not produce sufficient records or testimony to clearly establish the income claimed on her return. The form 1099-MISC is not sufficient to establish petitioner's gross receipts, as the business type and address appearing on it are not consistent with those as reported by petitioner on the schedule C attached to her return. Additionally, the bank statements petitioner offered did not reflect the claimed earned income and petitioner did not offer credible testimony or documentary evidence corroborating employment or the income listed on the form 1099-MISC. Therefore, petitioner has failed to meet her 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 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]; IRC [26 USC] §§ 24 [c]; 152 [c]).

Petitioner's claimed dependent with a birthdate of April 21, 1999, was over age 17 for the tax year at issue, and as such does not qualify for the credit (*see* IRC [26 USC] §§ 24 [c]). Additionally, petitioner has failed to present sufficient evidence to meet her burden of proving that either of the claimed dependents resided with her at the same principal place of abode for more than one-half of the taxable year in 2019. The school record for the dependent with a birthdate of October 27, 2007, indicates that the child was admitted on July 2, 2019, and thus does not show whether the dependent resided with petitioner for more than one-half of 2019. As

such, petitioner has not met her burden of proving that the Division's disallowance of the Empire State child credit was erroneous.

E. The petition of Doris M. Martinez is denied and the notice of disallowance, dated October 15, 2020, is sustained.

DATED: Albany, New York  
December 14, 2023

Barbara J. Russo  
ADMINISTRATIVE LAW JUDGE