

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
MOQUAN ALLAH DIVINE	:	DETERMINATION
	:	DTA NO. 830671
for Redetermination of a Deficiency or for Refund of	:	
New York State Personal Income Tax under Article 22	:	
of the Tax Law for the Year 2020.	:	
	:	

Petitioner, Moquan Allah Divine, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under article 22 of the Tax Law for the year 2020.

A hearing was held in Brooklyn, New York, on August 22, 2023, before Jessica DiFiore, Administrative Law Judge, with all briefs to be submitted by December 11, 2023, which date began the six-month period for issuance of this determination. Petitioner appeared pro se. The Division of Taxation appeared by Amanda Hiller, Esq. (James Passineau, Esq., and Jennifer L. Hink-Brennan, Esq., of counsel). This matter was reassigned to Jennifer L. Baldwin, Administrative Law Judge, pursuant to the authority of the Rules of Practice and Procedure of the Tax Appeals Tribunal (20 NYCRR 3000.15 [f]).

After reviewing the entire record in this matter, Jennifer L. Baldwin, Administrative Law Judge, renders the following determination.

ISSUES

I. Whether the Division of Taxation properly denied petitioner's claimed dependent exemption for tax year 2020.

II. Whether the Division of Taxation properly denied petitioner's claimed Empire State child credit for tax year 2020.

III. Whether petitioner has shown reasonable cause for the abatement of penalties.

IV. Whether a frivolous petition penalty should be imposed under the authority of Tax Law § 2018 and 20 NYCRR 3000.21.

FINDINGS OF FACT

Pursuant to 20 NYCRR 3000.15 (d) (6), the Division of Taxation (Division) submitted 15 proposed findings of fact. The Division's proposed findings of fact 1 through 9 and 11 through 15 are supported by the record and have been substantially incorporated herein, except for the portions of findings of fact 11, 13 and 15 that state that petitioner's arguments are frivolous and meritless and were only meant to delay the proceeding, which are rejected as being conclusory in nature. The Division's proposed finding of fact 10 is rejected as not supported by the record.

1. Petitioner, Moquan Allah Divine, filed a New York State resident income tax return, form IT-201, on May 25, 2021, for tax year 2020 (return), claiming one dependent exemption for a minor child and an Empire State child credit of \$330.00 based on the claimed dependent. Petitioner reported total tax due of \$1,789.00, total payments of \$1,524.00, and additional tax due of \$265.00. Petitioner did not submit any payment with the return or include any account information on the return for an electronic funds withdrawal.

2. The Division's internal records indicated that the same child was previously claimed as a dependent by another individual for tax year 2020.

3. On June 8, 2021, the Division sent petitioner a request for information to support the dependent petitioner claimed on the return.

4. Petitioner responded to the Division's request by letter, dated June 17, 2021, in which petitioner explained the circumstances of his living arrangement with the child and asserted that the child's mother claimed the child without his consent. Petitioner also provided a copy of the child's social security card and an application for a copy of a birth certificate for the child.

5. The Division determined that petitioner's response was not sufficient to verify the dependent petitioner claimed on his return.

6. As a result, the Division issued a statement of proposed audit change, dated July 16, 2021 (statement), to petitioner. The statement denied petitioner's claimed dependent on the basis that the dependent was already claimed by another taxpayer on a different return and, as a consequence, denied petitioner's claimed Empire State child credit. The statement imposed penalties for late filing and late payment of the tax shown on the return pursuant to Tax Law § 685 (a) (1) and (2). The statement asserted additional tax due in the amount of \$656.00, plus penalties and interest.

7. Petitioner did not provide any additional information to support the claimed dependent in response to the statement.

8. Petitioner filed a request for conciliation conference with the Division's Bureau of Conciliation and Mediation Services (BCMS) in protest of the statement. By letter dated August 13, 2021, BCMS informed petitioner that the statement does not offer formal protest rights and that BCMS would not take any further action regarding the request.

9. On September 1, 2021, consistent with the statement, the Division issued a notice of deficiency, notice number L-053856694 (notice), to petitioner asserting tax due in the amount of \$656.00, plus penalties and interest, for tax year 2020.

10. Petitioner did not provide any additional information to support the claimed dependent in response to the notice.

11. Petitioner timely filed a petition with the Division of Tax Appeals protesting the notice. The petition does not address the issue of the disallowed dependent.

12. A hearing was held on August 22, 2023, in Brooklyn, New York.

13. At the hearing, the Division submitted an affidavit of David Dickerson, Taxpayer Service Specialist II, in the Division's Office of Processing Services. Mr. Dickerson reviewed the Division's files concerning the notice issued to petitioner and determined that petitioner failed to provide sufficient documentation to verify the dependent petitioner claimed on his return.

14. The Division made a motion at the hearing for the imposition of a frivolous petition penalty. The former Administrative Law Judge advised that she would take such motion under consideration when rendering her determination.

15. At the hearing, petitioner testified that he submitted a "form of tender" to satisfy his tax liability. The record was left open to allow petitioner to submit documents in support of this claim and in response to the affidavit submitted by the Division. When asked whether petitioner had any documents to support the claimed dependent on his return he replied, "[a]s of this, I have no -- have no -- I have no comment, no."

16. After the hearing, petitioner submitted a federal form 1096, annual summary and transmittal of U.S. information returns. The form is not filled out, except the box for "1099-C" is marked with an "X." Petitioner also submitted a federal form 1099-C, cancellation of debt. This form is handwritten and lists the New York State Department of Taxation and Finance (Department) as creditor and petitioner as debtor. The box for "[a]mount of debt discharged" is

blank, as is all other boxes except box 5, “[c]heck here if the debtor was personally liable for repayment of the debt,” which is marked with an “X.”

17. Petitioner also submitted a copy of a letter, dated May 9, 2022, from the Department’s Record Access Office acknowledging petitioner’s Freedom of Information Law request and providing petitioner with the Department’s federal employer identification number (EIN). That number is included on the form 1099-C noted above for the Department.

18. In petitioner’s response to the affidavit submitted by the Division, petitioner explains that he “tendered form of payment for satisfaction of the alleged debt” after he obtained the EIN for the Department. While petitioner acknowledges that the notice was issued to him because the Division disallowed his dependent exemption and Empire State child credit, he does not address these issues in his response.

CONCLUSIONS OF LAW

A. Pursuant to Tax Law § 689 (e), petitioner bears the burden of establishing, by clear and convincing evidence, that the Division’s assessment of additional tax or adjustment of his claimed refund is erroneous (*see Matter of Suburban Restoration Co. v Tax Appeals Trib.*, 299 AD2d 751, 752 [3d Dept 2002]). Determinations made in a notice of deficiency are presumed correct, and the burden of proof is on petitioner to establish, by clear and convincing evidence, that those determinations are erroneous (*see Matter of Leogrande v Tax Appeals Trib.*, 187 AD2d 768, 769 [3d Dept 1992]; *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]). Here, the issues are whether petitioner established that the Division improperly disallowed the dependent exemption and the Empire State child credit.

B. Tax Law § 616 (a) provides that a resident individual shall be allowed an exemption of \$1,000.00 for each exemption for which that taxpayer is entitled to a deduction for the taxable year under Internal Revenue Code (IRC) (26 USC) § 151 (c). IRC (26 USC) § 151 (c), in turn, provides for an exemption for each dependent, as defined by IRC (26 USC) § 152. IRC (26 USC) § 152 defines a dependent, in part, as a qualifying child who, in part, meets certain relationship, age and residency requirements (IRC [26 USC] § 152 [a] [1], [c]).

In this case, petitioner provided a copy of the child's social security card and an application for a copy of the child's birth certificate, neither of which establishes his relationship to the child or the child's age. Petitioner also provided a personal statement as to his living arrangements with the child, but no verifiable documentation to substantiate where the child resided during tax year 2020. Accordingly, it is determined that petitioner has failed to meet his burden of proof to support his claim that he had a qualifying child and the Division's denial of the claimed dependent exemption for tax year 2020 was appropriate.

C. Turning to the Empire State child credit, 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 IRC (26 USC) § 24 for the same taxable year for each qualifying child. Under IRC (26 USC) § 24, a taxpayer may claim a child tax credit for an individual who is their "qualifying child" as defined in IRC (26 USC) § 152 (c) and has not attained the age of 17 during the taxable year (IRC [26 USC] § 24 [a], [c] [1]).

As noted, petitioner did not meet his burden of proving that the child he claimed as a dependent was a qualifying child under the same provision for purposes of the dependent

exemption. Therefore, the Division properly denied petitioner's claimed Empire State child credit for tax year 2020.

D. The Division imposed penalties on petitioner for late filing and late payment of the tax shown on the return. Tax Law § 685 (a) (1) imposes a penalty for the failure to timely file a return in the amount of 5 percent per month (up to a maximum of 25 percent) or, if the return was filed more than 60 days after the due date, the minimum penalty is the lesser of \$100.00 or 100 percent of the amount required to be shown as tax due on the return. Tax Law § 685 (a) (2) imposes a penalty for failure to timely pay the tax shown on a return in the amount of one-half percent per month (up to a maximum of 25 percent). Penalties may be abated if such failure or delay was due to reasonable cause and not due to willful neglect (Tax Law § 685 [a] [1], [2]).

The burden of proof to show reasonable cause is on petitioner, and in establishing reasonable cause, petitioner faces an “onerous task” (*Matter of Philip Morris, Inc.*, Tax Appeals Tribunal, April 29, 1993). In *Philip Morris*, the Tribunal explained that “[b]y first requiring the imposition of penalties (rather than merely allowing them at the Commissioner’s discretion), the Legislature evidenced its intent that filing returns and paying tax according to a particular timetable be treated as a largely unavoidable obligation [citation omitted]” (*id.*, quoting *Matter of MCI Telecommunications Corp.*, Tax Appeals Tribunal, January 16, 1992, *confirmed* 193 AD2d 978 [3d Dept 1993]).

Petitioner filed his return for tax year 2020 on May 25, 2021¹ without payment.

Petitioner did not provide any explanation as to why the return was not filed timely or, when

¹ In March 2021, the Division announced that personal income tax returns for tax year 2020, originally due on April 15, 2021, would be due on May 17, 2021 (*see* notice N-21-1, announcement regarding extension of the deadline to file personal income tax returns for tax year 2020).

filed, why he did not remit payment of the tax he determined to be due. Accordingly, petitioner has failed to present any evidence that would constitute reasonable cause.

E. The Division moved for the imposition of a frivolous petition penalty pursuant to Tax Law § 2018 and 20 NYCRR 3000.21. Tax Law § 2018 authorizes the Tax Appeals Tribunal to impose such a penalty “[i]f any petitioner commences or maintains a proceeding . . . primarily for delay, or if the petitioner’s position in such proceeding is frivolous.” A penalty may be imposed on the Tribunal’s own motion or on the motion of the Division (*see* 20 NYCRR 3000.21). The maximum penalty allowable under this provision is \$500.00 (*see* Tax Law § 2018). The list of examples of frivolous positions set forth in 20 NYCRR 3000.21 is not exclusive (*see Matter of van Rossem*, Tax Appeals Tribunal, October 24, 2017). The Tribunal has construed the term frivolous pursuant to Black’s Law Dictionary to mean “[l]acking a legal basis or legal merit; not serious; not reasonably purposeful” (*Matter of Michael A. Goldstein A No. 1 Trust*, Tax Appeals Tribunal, October 11, 2011, *affd on other grounds* 101 AD3d 1496 [3d Dept 2012], *lv denied* 21 NY3d 860 [2013]).

Petitioner’s argument is that he submitted a “form of tender” to satisfy his tax liability. This supposed form of tender is a federal form 1099-C, cancellation of debt, which petitioner created on behalf of the Department purportedly discharging the debt he owed to the Department. Petitioner’s actions are at best “not serious” and “lacking a legal basis or legal merit” (*see id.*). Therefore, it is determined that petitioner’s position is frivolous, and the penalty provided for in Tax Law § 2018 is imposed in the sum of \$500.00.

F. The petition of Moquan Allah Divine is denied, the notice of deficiency, dated September 1, 2021, is sustained, and the maximum penalty of \$500.00 for filing a frivolous petition is imposed.

DATED: Albany, New York
May 30, 2024

/s/ Jennifer L. Baldwin
ADMINISTRATIVE LAW JUDGE