

STATE OF NEW YORK
DIVISION OF TAX APPEALS

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In the Matter of the Petition	:	
	:	
of	:	
	:	
JOEL WEINBERGER	:	DETERMINATION
	:	DTA NO. 830989
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 2017.	:	
	:	

Petitioner, Joel Weinberger, 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 2017.

A formal hearing by videoconference was held before Winifred M. Maloney, Administrative Law Judge, on September 24, 2024, with all briefs to be submitted by April 2, 2025, which date began 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).

ISSUE

Whether petitioner has established that the Division of Taxation erred in denying the child and dependent care credit claimed on his 2017 New York State personal income tax return.

FINDINGS OF FACT

1. Petitioner, Joel Weinberger, electronically filed a form IT-201, New York State resident income tax return, on June 19, 2018, for the year 2017 (return). On his return, petitioner

listed a Division Avenue, Brooklyn, New York, address and claimed head of household as his filing status with one dependent child, L.W., whose date of birth was listed as August 1, 2006.¹

2. On his return, petitioner reported wage income of \$15,390.00 and federal and New York State adjusted gross income of the same amount. After subtracting out his standard deduction of \$11,200.00 and one dependent exemption of \$1,000.00, petitioner reported taxable income of \$3,190.00, New York State tax due of \$127.00, and New York City tax due of \$98.00. Against these taxes due, petitioner reported New York State and New York City taxes withheld of \$24.00 and \$33.00, respectively, and claimed the following credits: a New York State and New York City household credit totaling together \$125.00; an Empire State child credit of \$330.00; a New York State and New York City child and dependent care credit of \$1,122.00; a New York State earned income credit of \$945.00; a New York City earned income credit of \$170.00; a New York City school tax credit (fixed amount) of \$63.00; and a New York City school tax credit (rate reduction amount) of \$5.00, for a total refund requested of \$2,592.00.

3. With the return, petitioner also filed a form IT-215, claim for earned income credit, a form IT-216, claim for child and dependent care credit, a form IT-213, claim for Empire State child credit, form W-2 information from AB Famous Gefilte Fish, Paterson, New Jersey, reflecting wages of \$11,040.00 and "State Income tax" withheld of \$121.00,² and form W-2 information from Full Time Management LLC, Brooklyn, New York, reflecting wages of \$4,350.00 and New York State and New York City taxes withheld in the amounts of \$24.00 and \$33.00, respectively.

¹ For privacy purposes, the claimed dependent is referred to herein as L.W.

² The State income tax in the amount of \$121.00 reflected on the form W-2 information from AB Famous Gefilte Fish was not included in the New York State tax withholding reported by petitioner on his return. Neither petitioner nor the Division raised an issue regarding the amount of New York State tax withholding claimed and applied against the New York State tax due in this matter.

4. On form IT-215, petitioner indicated that he claimed L.W. as a qualifying child on his federal schedule earned income credit (EIC). He listed \$3,400.00 as the amount of federal EIC claimed. On form IT-213, petitioner claimed the federal child tax credit or additional child tax credit for one qualifying child and listed L.W. as the child that was at least 4 but less than 17 years of age on December 31, 2017.

5. On form IT-216, petitioner listed one qualifying child L.W. Petitioner reported the “United Talmudical Senina”³ as the care provider and the amount paid to the same of \$5,545.00. Petitioner also reported qualified expenses paid to UTA in the amount of \$5,545.00 for his dependent child, L.W.

6. The Division of Taxation (Division) conducted a desk audit review of petitioner’s return. As part of its review, the Division’s Income/Franchise Desk Audit Bureau issued a letter, dated June 28, 2018, to petitioner requesting additional information for it to process his return and determine the amount of his tax refund (audit inquiry letter). The Division requested proof of petitioner’s wages and taxes that each of his employers withheld, such as a copy of petitioner’s form W-2 or the last paycheck he received from each employer, and any self-employed income or loss. The Division requested information about the child or dependent that petitioner claimed, including a copy of the child’s birth certificate, and a “letter from the child’s doctor or school showing the child’s name, date of birth, address, and name of the custodial parent” to prove the residence of such child. The Division also requested proof of petitioner’s payment of childcare expenses for tax year 2017.

³ Documents in the record indicate that “United Talmudical Senina” is also referred to as the United Talmudical Academy (UTA). All future references will use UTA.

7. On July 12, 2018, petitioner submitted documentation in response to the Division's audit inquiry letter. The documentation included: (i) copies of two forms W-2⁴ to prove the income reported on his return; (ii) a copy of the City of New York certification of birth (birth certificate) for L.R.W.⁵ and a letter, dated April 18, 2018, from UTA to prove the relationship and residency of his claimed dependent (2018 UTA letter); and (iii) a copy of two pages, printed on April 18, 2018, of transaction reports for American Express (AmEx) account numbers ending 25005 and 51009, an undated "CASH RECEIPT DETAIL REPORT" issued by UTA (UTA cash receipt detail report), and a copy of the form IT-216 filed with his return to prove the claimed child and dependent care credit.

8. The birth certificate of L.R.W. lists a date of birth of August 1, 2006, and petitioner as the father.

9. The 2018 UTA letter, bearing a signature or initials of the "Secretary," stated the following:

"To whom it may concern

This statement certifies that based on our records the following children,

[L.R.] DOB 08/01/2006

Resided with their parent Mr. Yoel Hillel Weinberger in the year 2017[.]

The current address on file is XXX Division Ave. Brooklyn NY 11211[.]

Any courtesy extended will be greatly appreciated[.]"

10. The AmEx transaction report prepared for Joel Weinberger (JW), account number ending 25005, on April 18, 2018, consists of a printed page that separately listed transaction

⁴ Only the copy of form W-2 issued by Full Time Management LLC to petitioner for tax year 2017 is readable.

⁵ L.W.'s middle name begins with the letter R. Some documents in the record refer to L.W. as L.R.W. or L.R.

details by the date, description and amount for 8 transactions, including among others,⁶ the following 6 transactions:

“DATE	DESCRIPTION	AMOUNT
JAN13 2017	[UTA] - XXX-XXX-XXXX, NY	\$890.00
AUG24 2017	[UTA] - XXX-XXX-XXXX, NY	\$1,590.00
SEP24 2017	[UTA] - XXX-XXX-XXXX, NY	\$310.00
OCT24 2017	[UTA] - XXX-XXX-XXXX, NY	\$310.00
NOV24 2017	[UTA] - XXX-XXX-XXXX, NY	\$310.00
DEC25 2017	[UTA] - XXX-XXX-XXXX, NY	\$310.00”
TOTAL AMOUNT		\$3,720.00

The AmEx transaction report prepared for J.W., account ending 51009, dated April 18, 2018, consists of a printed page that listed the following transaction details:

“DATE	DESCRIPTION	AMOUNT
MAR7 2017	[UTA] - XXX-XXX-XXXX, NY	\$930.00”

A review of the transaction reports for J.W.’s AmEx accounts ending in 25005 and 51009 indicates that UTA was paid a total of \$4,650.00 for the transactions listed for those accounts on various dates in the year 2017.

11. The UTA cash receipt detail report stated as follows:

“WEINB00
Yoel Hillel Weinberger
XXX Division Ave.
(XXX)XXX-XXXX

Date	Receipt	Amount
01/12/2017	U23931	890.00
03/06/2017	U27348	930.00
03/07/2017	U27365	930.00
03/07/2017	U27364	-930.00
08/23/2017	U37454	1,590.00
09/24/2017	U41052	310.00
10/24/2017	U42669	310.00
11/24/2017	U45102	310.00
12/24/2017	U46818	310.00

⁶ Two of the transaction details listed took place in the year 2016.

Grand Total: 4,650.00”

12. After reviewing the documentation submitted in response to its audit inquiry letter, the Division issued an account adjustment notice - personal income tax (account adjustment notice), dated October 18, 2018, to petitioner that granted a refund in the amount of \$1,470.00, and disallowed the claimed refund of the child and dependent care credit in the amount of \$1,122.00. The explanation section of the account adjustment notice stated, in part, that:

“We have reviewed the information you sent in response to our letter dated 06/28/2018. Our letter specifically asked that you provide verifiable information to document your earned income, and any qualifying children claimed and/or dependent care expenses. The information you provided was either incomplete or unverifiable.

The child and dependent care credit claimed on your return has been disallowed. The receipts you provided for tuition expenses paid to [UTA], do not qualify for the Child and Dependent Care Credit. Tuition expenses paid to attend kindergarten or a higher grade are not expenses for childcare.

You have been allowed your New York State and/or New York City Earned Income Credit, Empire State Child Credit, Withholding, and New York City School Tax Credit as claimed.”

13. On February 28, 2019, the Division issued to petitioner a notice of disallowance in the amount of \$1,122.00 for tax year 2017. The notice indicated that an explanation was previously provided to petitioner regarding the disallowance of the child and dependent care credit claimed on his return.

14. Petitioner filed a request for conciliation conference (request) with the Division’s Bureau of Conciliation and Mediation Services (BCMS) in protest of the notice of disallowance. The request was received by BCMS on January 9, 2022. Along with the request, petitioner submitted two pages of documentation.

15. On January 28, 2022, BCMS issued a conciliation order dismissing request (conciliation order) to petitioner. The conciliation order determined that petitioner's request was untimely because such request was not received by BCMS within two years of the issuance of the notice of disallowance.

16. On May 17, 2022, petitioner filed a petition with the Division of Tax Appeals in protest of the conciliation order. On September 15, 2022, then Supervising Administrative Law Judge Herbert M. Friedman, Jr., issued a notice of intent to dismiss petition because the petition appeared to have been filed in excess of 90 days of the date of the issuance of the conciliation order. By letter, dated October 17, 2022, then Supervising Administrative Law Judge Friedman notified petitioner that the Division did not have sufficient documentation to establish the timeliness of his petition. The letter advised that the notice of intent to dismiss petition mailed to petitioner on September 15, 2022 was rescinded. It further advised that the case was now considered in proper form, and that petitioner would receive an acknowledgment letter shortly. Subsequently, the Division of Tax Appeals issued to petitioner an acknowledgment letter for this matter, dated October 21, 2022. The Division filed its answer on December 21, 2022.

17. The Division, in its answer, avers, among other things, the following:

“5. AFFIRMATIVELY STATES that the petitioner submitted documentation, including receipts for tuition expenses, in response to the request for information.

6. AFFIRMATIVELY STATES that the Division reviewed the documentation provided by the petitioner and determined that it was insufficient to support the petitioner's entitlement to the child and dependent care credit because tuition expenses paid to attend kindergarten or a higher grade do not qualify as expenses for childcare for the purposes of the child and dependent care credit.

7. AFFIRMATIVELY STATES that as a result, the Division issued an Account Adjustment Notice - Personal Income Tax, Form DTF-160, dated October 18, 2018, to the petitioner which disallowed the New York State child and dependent care credit and adjusted the return accordingly, resulting in a total refund allowed of \$1,470.00.

8. AFFIRMATIVELY STATES that on February 28, 2019, the Division issued a Notice of Disallowance, Form DTF-170, disallowing \$1,122.00 of the claim for refund for tax year 2017.”

18. At the hearing, the Division introduced its audit file in this matter, that consisted of 56 pages of documents, including documents submitted by petitioner to the Division in response to the audit inquiry letter, to BCMS or to the Division as part of discussions that took place prior to the hearing in this matter. Those documents consisted of copies of: (i) the 4-page audit inquiry letter, dated June 28, 2018, a questionnaire and request for supporting documentation: self-employed, form DTF-973.52-ATT, and a response to inquiry, form DTF-973.61; (ii) the 4-page account adjustment notice, dated October 18, 2018; (iii) petitioner’s request and a 2-page UTA “Statement of Account,” dated 02/13/2020, (02/13/2020 UTA statement of account) listing payments made towards childcare on various dates between May 15, 2014 and September 23, 2019; (iv) the same 2-page 02/13/2020 UTA statement of account listing payments made towards childcare which was previously faxed to BCMS; (v) 4 pages of an AmEx “Blue for Business BEAUTY AND MORE JOEL WEINBERGER” statement (AmEx Beauty and More statement), account ending 24008, with a closing date of August 22, 2017; (vi) one page of a CHASE checking account statement (CHASE statement), account ending in 5485, for the period July 28, 2017 through August 24, 2017; (vii) two pages of a CHASE statement in the name of Joel H. Weinberger, account ending in 5485, for the period March 25, 2017 through April 26, 2017; (viii) two pages of an AmEx Beauty and More statement, account ending 24008, with a closing date of May 22, 2017; (ix) one page of a CHASE statement, account ending in 5485, for the period April 27, 2017 through May 24, 2017; (x) two pages of an AmEx Beauty and More statement, account ending 24008, with a closing date of June 21, 2017; (xi) one page of a CHASE statement, account ending in 5485, for the period May 25, 2017 through June 26, 2017;

(xii) one page of an AmEx Beauty and More statement account ending 24008, with a closing date of November 21, 2017; (xiii) one page of a CHASE statement, account ending in 5485, for the period October 27, 2017 through November 27, 2017; (xiv) two pages of an AmEx Beauty and More statement, account ending 25005, with a closing date of January 22, 2018; (xv) one page of a CHASE statement, account ending in 5485, for the period December 28, 2017 through January 26, 2018; (xvi) one page of a CHASE statement, account ending in 5485, for the period November 28, 2017 through December 27, 2017; (xvii) a page containing an illegible copy of the front side of an AmEx Delta SKYMILES credit card; (xviii) one page of a CHASE statement, account ending in 5485, for the period August 25, 2017 through September 27, 2017; (xix) an UTA statement of account, dated 04/24/2023, listing payments made towards tuition on various dates in the year 2017; (xx) a 2-page UTA statement of account listing payments made towards childcare on various dates between May 15, 2014 and September 23, 2019; (xxi) 3 pages consisting of the BCMS mailing cover sheet, the BCMS letter and the conciliation order, each bearing the date of January 28, 2022 and BCMS number 000335138; and (xxii) 14 pages of documentation previously submitted by petitioner in response to the Division's audit inquiry letter (*see* findings of fact 7 through 11).

19. The first page of the 2-page UTA statement of account stated, in part, as follows:

“Dear parents / guardians:
WEINB00
Yoel Hillel Weinberger
XXX Division Ave.
(XXX)XXX-XXXX

Following are the payments we received from your funds that were paid towards childcare and were not reimbursed in any way.

Date	Amount	Payment Method	Receipt
01/12/2017	890.00	Credit Card ***4008	U23931
03/06/2017	930.00	Credit Card ***1053	U27348

03/07/2017	930.00	Credit Card ***1009	U27365
03/07/2017	-930.00	Credit Card ***1053	U27364
08/23/2017	1,590.00	Credit Card ***4008	U37454
09/24/2017	310.00	Credit Card ***4008	U41052
10/24/2017	310.00	Credit Card ***4008	U42669
11/24/2017	310.00	Credit Card ***4008	U45102”

The second page of the UTA statement of account listed the same salutation, account number and address as appeared on the first page and stated, in part, as follows:

“Date	Amount	Payment Method	Receipt
12/24/2017	310.00	Credit Card ***4008	U46818”

20. A review of the four AmEx Beauty and More statements, account ending 24008, with closing dates of May 22, 2017, June 21, 2017, August 22, 2017 and November 21, 2017 indicates that payments in various amounts were made and credited to the account prior to each closing date. Further review of the statements indicates that the AmEx Beauty and More account number ending 24008 lists petitioner as the named user of such account number.

21. The CHASE statement, account ending in 5485, for the period March 25, 2017 through April 26, 2017 bears petitioner’s name and his Brooklyn, New York, address. A review of the 6 CHASE statements, account ending in 5485, for the periods March 25, 2017 through April 26, 2017, April 27, 2017 through May 24, 2017, May 25, 2017 through June 26, 2017, July 28, 2017 through August 24, 2017, October 27, 2017 through November 27, 2017 and November 28, 2017 through December 27, 2017 indicates that electronic withdrawals for AmEx ACH payments in various amounts were made during each statement period. Further review of those statements indicates that many of those AmEx ACH payments correspond to payments reported and credited as payments on the AmEx Beauty and More statements, account ending 24008, contained in the record.

22. A review of the AmEx Beauty and More statement, account ending 25005, with a closing date of January 22, 2018, indicates that online payments of \$758.14 and \$5,000.00, each made on January 16, 2018, were credited to the account. Further review of this statement indicates that the AmEx Beauty and More, account ending 25005 lists petitioner as the named user of such account number.

23. A review of the CHASE statement, account ending in 5485, for the period December 28, 2017 through January 26, 2018, indicates that electronic withdrawals for AmEx payments in the amounts of \$758.14 and \$5,000.00 took place on January 16, 2018 and January 17, 2018, respectively.

24. At the hearing, the Division presented the testimony of Linda Cichy, a Tax Technician 3 in the Division's personal income tax desk audit bureau, personal income tax credit unit. According to Ms. Cichy, the personal income tax credit unit audits refundable credits including, but not limited to the earned income credit, the Empire State child credit and the child and dependent care credit. Ms. Cichy testified that she thoroughly reviewed petitioner's return, correspondence, work papers and other documents in preparation for the hearing. Ms. Cichy testified that petitioner's return was due on April 16, 2018, however it was electronically filed on June 19, 2018. She further testified that petitioner's return sought a refund in the amount of \$2,592.00. Ms. Cichy explained that petitioner's return was selected through the Division's case identification selection system (CISS). Ms. Cichy further explained that CISS "uses business rules and models to categorize and to score returns to identify cases for audit selection." Ms. Cichy testified that the audit inquiry letter sent to petitioner requested documentation regarding his income, any dependents or qualifying child's relationship, residency and age, and verifiable documentation to substantiate the childcare expenses for the year 2017.

25. Ms. Cichy testified that petitioner replied to the audit inquiry letter submitting two W-2s, L.W.'s birth certificate to prove relationship and age, a letter from UTA to substantiate L.W.'s residency, AmEx transaction reports, a UTA cash detail report and the form IT-216 reporting childcare expenses of \$5,545.00 (*see* findings of fact 7 through 11). Ms. Cichy further testified that the Division issued a notice of disallowance that disallowed a portion of petitioner's requested refund in the amount of \$1,122.00, which amount represents petitioner's child and dependent care credit claim. Ms. Cichy explained that in order to qualify for the New York State child and dependent care credit, a taxpayer "must first have a dependent with a qualifying child that meets the age, relationship and residency requirements. [The taxpayer] must be paying for childcare while working or looking for work and the child must live with the parent for more than six months during the year." Ms. Cichy further explained that in a situation involving divorced parents, the parent with whom the child lives with for more than six months of the year can claim the child for purposes of the child and dependent care credit. Ms. Cichy testified that petitioner claimed L.W. as a dependent. Ms. Cichy confirmed that petitioner submitted proof that L.W. resided with him during tax year 2017.

26. As noted above, petitioner submitted various documents to the Division in support of the childcare expenses that he claimed on form IT-216 for tax year 2017. Based upon her review of all the documentation submitted to audit, to BCMS and to the Division as part of discussions that took place prior to the hearing, Ms. Cichy testified that petitioner did not substantiate the child and dependent care credit claimed on his return. She further testified that none of the UTA statements that list childcare expense payments contain L.W.'s name as the child for whom the childcare expenses were paid. Ms. Cichy explained that petitioner has another child who attended UTA, and it is unclear whether the UTA statements relate to both children. Ms. Cichy

pointed out the discrepancy between the childcare expense amount reported by petitioner on the form IT-216, and the expense amounts listed on the UTA statements. Specifically, on the form IT-216, petitioner reported \$5,545.00 as the amount paid to UTA for childcare during 2017, and the payments reported for childcare on the UTA statements totaled only \$4,650.00 for the same year.

27. Petitioner testified at the hearing. Petitioner explained that he has two children, an older daughter R.W.⁷ and a younger daughter L.W., and that he is divorced from the children's mother. He testified that, as part of their divorce agreement, petitioner and his ex-spouse each take a child. Petitioner further testified that his ex-spouse took R.W. as a dependent and he took L.W. as a dependent. Petitioner testified that the divorce agreement provides that he is solely responsible for all the children's costs "which includes tuition and anything and everything." Petitioner further testified that the only expense that he and his ex-spouse would split is a big medical bill or a child's therapy bill. Petitioner explained that Yoel Hillel Weinberger and WEINB00 listed at the top of the UTA statements refer to himself and his account for purposes of crediting tuition and childcare expense payments that he made for his two daughters.

28. Petitioner testified that Beauty and More is his solely owned business. Although he could not recall exactly when Beauty and More was formed, petitioner testified that he paid a neighborhood company, USACORP, to form Beauty and More for him. Petitioner further testified that he bought merchandise wholesale to sell on Amazon. Petitioner explained that Amazon took care of everything and that he "was just monitoring it." Petitioner testified that Beauty and More sold its merchandise through fulfillment by Amazon. Petitioner claimed that in the end, he lost money on Beauty and More. Petitioner testified that Beauty and More did not

⁷ For privacy purposes, petitioner's other child is referred to herein as R.W.

have a bank account at that time and he used his personal bank account to make payments on the AmEx Beauty and More account. Petitioner explained that he used the AmEx Beauty and More credit card to pay the childcare expenses because he did not have a personal credit card at that time. He further explained that the childcare expenses were never claimed as business expenses by Beauty and More.

29. Petitioner testified that in either January 2024, or July 2024, he supplied the AmEx Beauty and More statements and the CHASE statements in response to requests by the Division's Office of Counsel for verification that Beauty and More was his business and that payments made on the AmEx Beauty and More credit card were made from his personal funds. Petitioner further testified that he supplied the AmEx Beauty and More statements and the CHASE statements to show that the business was his and he was solely responsible for the same.

30. Petitioner testified that he provided everything that the Division requested in connection with this matter. According to petitioner, no one told him that the UTA statements needed to specify the name of the child from whom the childcare was provided, prior to the day of the hearing.

31. At the conclusion of the hearing, petitioner requested and was granted additional time to file documents concerning Beauty and More and petitioner's ownership of the same, the divorce agreement, and a more detailed accounting from UTA regarding the childcare amounts paid for each named child by November 4, 2024. In addition, the Division was granted the right to submit rebuttal documents by November 14, 2014.

32. Petitioner timely submitted the following documents: (i) a copy of the "AMENDMENT TO THE JULY 6, 2010 DIVORCE AGREEMENT (AMENDMENT) made and entered into on August 11, 2014 between petitioner and his ex-spouse; (ii) two letters, dated

November 29, 2023, from UTA regarding the account of “WEINB00” that is for R.W. and L.W. (November 29, 2023 UTA letter 1 and letter 2); (iii) the USACORP invoice, dated February 22, 2012, invoice number 21887, for Beauty and More Inc.’s New York State incorporation; (iv) the certificate of incorporation of Beauty and More Inc.; (v) a Department of the Treasury Internal Revenue Service notice (IRS notice), dated February 23, 2012, assigning an employer identification number (EIN) to Beauty and More Inc.; (vi) the New York State Department of State Division of Corporations and State Records filing receipt for the incorporation of Beauty and More Inc.; (vii) USACORP’s cover letter, dated March 6, 2012, to petitioner regarding the incorporation documents for Beauty and More Inc.; and (viii) a printout tax summary for Beauty and More Inc. for the filing period January 31, 2017.

33. In rebuttal to the documents submitted by petitioner post-hearing, the Division timely submitted the affidavit of Ms. Cichy, sworn to on November 13, 2024.

34. A review of the AMENDMENT indicates that petitioner shares custody of his two daughters with his ex-spouse, he is responsible for child support, tuition and childcare for both his daughters and that he is entitled “to the exemptions and deductions (and all other tax benefits)” on his tax returns for L.W.

35. The November 29, 2023 UTA letter 2 provides as follows:

“RE: The account of ‘**WEINB00**’ which is for [R.W. and L.W.],

To whom it may concern,

This is to confirm that the tuition & childcare throughout the years 2008 until 2023 was always billed and paid by Mr. Joel Weinberger, the father of the two girls, no other payments were processed towards this account.”

The letter bears the signature of the “Secretary.”

The November 29, 2023 UTA letter 1 provides as follows:

“RE: The account of ‘**WEINB00**’ which is for [R.W. and L.W.],

To whom it may concern, below is the breakdown of the cost per child for childcare of year 2017,

- [R.W.] \$2,700.00.
- [L.W.] \$2,700.00.

With Monthly billing of \$200.00 per child and for the month of July & August and [sic] additional charge of \$150.00.”

This letter bears the signature of the “Secretary.”

36. A review of the USACORP invoice number 21887 indicates that the invoice was billed to petitioner at his Brooklyn, New York, address, and that the filing fee for the incorporation of the business with New York State in the amount of \$275.00 was paid. A review of the terms of the certificate of incorporation of Beauty and More Inc., under section 402 of the Business Corporation Law, indicates, among other things, that the address to which the Secretary of State “shall mail a copy of any process accepted on behalf of the corporation” is to Beauty and More Inc., at XXX Division Avenue, Brooklyn, New York 11211. Further review of the certificate of incorporation indicates that it bears petitioner’s electronic signature as well as his name and his Brooklyn, New York, address. Review of the IRS notice assigning Beauty and More Inc.’s EIN indicates that the corporation’s address is XXX Division Avenue, Brooklyn, New York 11211. A review of the New York State Department of State Division of Corporations and State Records filing receipt for the incorporation of Beauty and More Inc. indicates that USACORP Inc. filed Beauty and More Inc.’s incorporation, that the address for process for the corporation is XXX Division Avenue, Brooklyn, New York 11211 and that the fees paid totaled \$160.00. The USACORP’s cover letter, dated March 6, 2012, to petitioner regarding the incorporation documents for Beauty and More Inc. enclosed certain incorporation documents for Beauty and More Inc. that USACORP filed for petitioner. Those documents

consisted of the certificate of incorporation/articles of organization, the original filing receipt from the Department of State and the EIN confirmation letter from the IRS. A review of the printout tax summary for Beauty and More Inc. indicates that there was no corporation tax information to display for the filing period January 31, 2017.

37. In rebuttal to the post-hearing documents submitted by petitioner, the Division submitted the affidavit of Ms. Cichy. In her affidavit, Ms. Cichy claims that petitioner “has not provided verifiable proof that he paid childcare expenses for [L.W.] during tax year 2017.” Ms. Cichy asserts that the November 29, 2023 UTA letters are self-serving and “appear to be fabricated.” There is no evidence attached to Ms. Cichy’s affidavit that supports her assertions regarding the authenticity of the two UTA letters submitted post-hearing.

CONCLUSIONS OF LAW

A. Tax Law § 606 (c) (1) provides that the New York State child and dependent care credit is determined as a percentage of the federal child and dependent care credit “allowable under section twenty-one of the internal revenue code. . . .” Since the allowable New York State child and dependent care credit is based upon the corresponding federal credit, it is appropriate to refer to the provisions of the Internal Revenue Code (IRC) to determine petitioner’s eligibility for the New York State child and dependent care credit (*see Matter of Espada*, Tax Appeals Tribunal, January 28, 2016).

B. The amount of the child and dependent care credit allowed pursuant to IRC (26 USC) § 21, is based upon a percentage of employment related expenses, including expenses for the care of a qualifying child under the age 13, incurred by a taxpayer to be gainfully employed. In the case of divorced parents who share custody of the child, the parent with which the child resides for more than one-half the year may claim the child as a qualifying child. After

reviewing the documentation submitted in response to its audit inquiry letter, the Division determined that L.W. was petitioner's qualifying child for exemption purposes and for purposes of the New York State and New York City earned income, Empire State child and the child and dependent care credits for tax year 2017 as claimed by petitioner on his return for such year. At the hearing, Ms. Cichy confirmed that L.W. resided with petitioner during tax year 2017 (*see* finding of fact 25). The Division disallowed the child and dependent care credit because the Division determined that the UTA cash receipt detail report submitted in response to the audit inquiry letter represented payments made for tuition rather than payments for childcare (*see* findings of fact 7, 11, 12, 17).

C. The only issue is whether petitioner incurred childcare expenses for his qualified dependent, L.W., during tax year 2017 and paid those childcare expenses to UTA for such year. The numerous documents submitted by petitioner clearly establish that he incurred and paid childcare expenses to UTA for both his daughters. The November 29, 2023 UTA letter 2 indicates that petitioner was solely responsible for and paid the tuition and childcare expenses for L.W. and R.W. during tax year 2017 (*see* finding of fact 35). The November 29, 2023 UTA letter 1 states the monthly expense and total expense that UTA charged to the WEINB00 account for each child (*see id.*). Other documents from UTA indicate that childcare expenses paid on the WEINB00 account totaled \$4,650.00 for tax year 2017 (*see* findings of fact 11, 19). Petitioner provided AmEx transaction details for 6 payments made to UTA during tax year 2017 that total the same amount, i.e., \$4,650.00 (*see* finding of fact 10). In addition, petitioner has provided documentation that shows that Beauty and More was his company (*see* finding of fact 36), and that the AmEx Beauty and More credit card accounts were issued in his name. Contrary to the Division's assertions, the AmEx Beauty and More statements do not list any other individuals as

card holders. Petitioner also submitted some of his personal CHASE bank statements issued to him in 2017 that show he made various payments on the AmEx Beauty and More accounts (*see* findings of fact 20 through 23). While it is not good business practice to use a business credit card to pay personal expenses, there is no prohibition from doing so. Petitioner credibly testified about his business, the use of the business card for payments of the childcare expenses, his use of personal funds to pay amounts due on the AmEx Beauty and More statements and that the childcare expenses were not claimed as a business expense by Beauty and More.

Because petitioner paid UTA childcare expenses for both L.W. and R.W., and the monthly amount charged by UTA for each child's care was the same amount (*see* finding of fact 35), it is appropriate to divide the amount that petitioner paid to UTA in half. Specifically, petitioner paid a total of \$4,650.00 to UTA for both children's childcare expenses in tax year 2017 (*see* findings of fact 10, 19), or childcare expenses in the amount of \$2,325.00 for L.W. and childcare expenses in the amount of \$2,325.00 for R.W. for such year.

D. As such, petitioner has proven that he incurred and paid childcare expenses in the amount of \$2,325.00 to UTA for the care of L.W., his qualifying child, during tax year 2017. The Division is directed to use the qualified childcare expenses in the amount of \$2,325.00 paid by petitioner to UTA during tax year 2017 to recompute the child and dependent care credit and issue a refund accordingly.

E. The petition of Joel Weinberger is granted to the extent indicated in conclusions of law C and D, and in all other respects is denied. The Division of Taxation's notice of disallowance, dated February 28, 2019, as modified by conclusion of law D is sustained.

DATED: Albany, New York
October 2, 2025

/s/ Winifred M. Maloney
ADMINISTRATIVE LAW JUDGE