

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
NATALIE S. JOHNSON	:	DETERMINATION
	:	DTA NO. 850219
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 2019.	:	

Petitioner, Natalie S. Johnson, 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 2019.

A formal hearing by videoconference was held before Jennifer L. Baldwin, Administrative Law Judge, on July 23, 2024, with all briefs to be submitted by October 30, 2024, 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. (Christopher O'Brien, Esq., of counsel).

ISSUES

I. Whether petitioner has established that the Division of Taxation improperly denied her claimed dependent exemption for tax year 2019.

II. Whether petitioner has established that the Division of Taxation improperly denied her claimed Empire State child credit for tax year 2019.

III. Whether petitioner has established that the Division of Taxation improperly denied her claimed New York State earned income credit for tax year 2019.

FINDINGS OF FACT

1. Petitioner, Natalie S. Johnson, filed form IT-201, New York State resident income tax return, on January 26, 2020, for tax year 2019 (return), as head of household. Petitioner reported wage income of \$15,092.00 and federal and New York State adjusted gross income of the same amount. Petitioner included two federal forms W-2, wage and tax statements, which supported the amount of wage income she reported on her return. Petitioner claimed one dependent exemption for a minor child as well as an Empire State child credit of \$330.00 and a New York State earned income credit of \$983.00 based on the claimed dependent. Petitioner reported total tax due of \$40.00, total payments of \$1,313.00, and requested a refund of \$1,273.00.

2. On February 12, 2020, the Division of Taxation (Division) issued a refund to petitioner in the amount of \$1,273.00.

3. Thereafter, the Division performed a review of petitioner's return and determined that the same child was claimed as a dependent by another taxpayer for tax year 2019.

4. On June 25, 2020, the Division issued a statement of proposed audit change (statement) to petitioner. The statement accepted the amount of federal and New York State adjusted gross income petitioner reported on her return, \$15,092.00, but denied petitioner's claimed dependent on the basis that the dependent was already claimed by another taxpayer on a different return. Consequently, the Division denied petitioner's claimed Empire State child credit and New York State earned income credit. Taking into account the amount previously refunded to petitioner, the statement computed additional tax due in the amount of \$1,368.00, plus interest, for tax year 2019.

5. On September 23, 2020, consistent with the statement, the Division issued a notice of deficiency, notice number L-051580558 (notice), to petitioner asserting tax due in the amount of \$1,368.00, plus interest, for tax year 2019.

6. Petitioner requested a conciliation conference with the Division's Bureau of Conciliation and Mediation Services (BCMS) in protest of the notice. By conciliation order, dated May 27, 2022, BCMS sustained the notice.

7. On July 18, 2022, petitioner timely filed a petition with the Division of Tax Appeals in protest of the conciliation order.

8. At the hearing, the Division submitted an affidavit of Wakenya Bonds, a Taxpayer Service Specialist 2 in the Division's Office of Processing Services. Based on her review, Ms. Bonds determined that petitioner failed to provide proof of residency of her claimed dependent, specifically, that her claimed dependent resided with petitioner at her address at least 183 nights during tax year 2019. Therefore, according to Ms. Bonds, petitioner was not entitled to the dependent exemption, Empire State child credit or New York State earned income credit.

9. Petitioner did not testify at the hearing but submitted two documents she alleged showed that her claimed dependent resided with her during 2019. The first document was a "Housing Assistance Payments Contract Amendment Notice" (housing amendment notice) signed by a representative of the housing agency on March 19, 2018. The housing amendment notice, effective April 1, 2018, appears to indicate that petitioner and her claimed dependent resided together at a Syracuse, New York, address. The second document was two pages of an "Initial Adverse Determination Claims Denial Notice" (denial notice) from United Healthcare Community Plan, dated April 5, 2019. The denial notice was addressed to petitioner's claimed dependent at the same address as is listed on the housing amendment notice.

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 denial of her 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], *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]). Here, the issues are whether petitioner established that the Division improperly denied her claimed dependent exemption, Empire State child credit, and New York State earned income 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 the 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 (*see* IRC [26 USC] § 152 [a] [1], [c]). At issue here is the residency requirement, which provides that the child must have "the same principal place of abode as the taxpayer for more than one-half of [the] taxable year" (IRC [26 USC] § 152 [c] [1] [B]).

In this case, petitioner provided the housing amendment notice and denial notice. While both documents provide some evidence of the child's residency, neither document shows that the

child resided with petitioner for more than one-half of 2019 (*see* IRC [26 USC] § 152 [c] [1] [B]). Accordingly, it is determined that petitioner has failed to meet her burden of proof to support her claim that she had a qualifying child and the Division's denial of the claimed dependent exemption for tax year 2019 was appropriate.

C. Tax Law § 606 (c-1) (1) provides for an Empire State child 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. A qualifying child is a child that meets the definition of qualifying child under IRC (26 USC) § 24 (c) and, for tax year 2019, was at least 4 years old (*see* Tax Law former § 606 [c-1] [1]). Under IRC (26 USC) § 24, a taxpayer may claim a child tax credit for an individual who is a qualifying child as defined in IRC (26 USC) § 152 (c) and has not attained the age of 17 during the taxable year (*see* IRC [26 USC] § 24 [a], [c] [1]).

As noted, petitioner did not meet her burden of proving that the child she 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 2019.

D. Turning to the New York State earned income credit, Tax Law § 606 (d) (1) provides for a credit equal to 30 percent of the earned income credit allowed under IRC (26 USC) § 32. Since the New York 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.

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 wages (*see* IRC [26 USC] § 32 [c] [2] [A] [i]). "A small credit is provided to all eligible taxpayers, but the principal feature of the [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]). A qualifying child, for purposes of the earned income credit, is defined by IRC (26 USC) § 152 (c) (*see* IRC [26 USC] § 32 [c] [3]). Since petitioner did not meet her burden of proving that the child she claimed was a qualifying child under the same provision for purposes of the dependent exemption and the Empire State child credit, she also did not meet her burden for purposes of the earned income credit.

Nevertheless, even without a qualifying child, petitioner is entitled to some earned income credit. For tax year 2019, the earned income credit began to phase out for taxpayers filing as single or head of household with no qualifying children whose adjusted gross income (or, if greater, earned income) exceeded \$8,650.00 and completely phased out at \$15,570.00 (*see* Rev. Proc. 2018-57, 2018-49 I.R.B. 827). Petitioner reported wage income (and adjusted gross income) of \$15,092.00 on her return, which the Division accepted (*see* finding of fact 4). Petitioner's adjusted gross income was less than \$15,570.00, therefore, petitioner is entitled to New York State earned income credit based on \$15,092.00 of earned income and no qualifying children.

E. The petition of Natalie S. Johnson is granted to the extent indicated in conclusion of law D, but is otherwise denied and the notice of deficiency, dated September 23, 2020, as modified by conclusion of law D, is sustained.

DATED: Albany, New York
April 24, 2025

/s/ Jennifer L. Baldwin
ADMINISTRATIVE LAW JUDGE