

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

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In the Matter of the Petition	:	
of	:	
<b>NIURKA MUNOZ</b>	:	DECISION
	:	DTA NO. 820575
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 2003.	:	

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Petitioner Niurka Munoz, 648 West 160<sup>th</sup> Street, # 21, New York, New York 10032, filed an exception to the determination of the Administrative Law Judge issued on July 20, 2006.

Petitioner appeared *pro se*. The Division of Taxation appeared by Mark F. Volk, Esq. (Andrew S. Haber, Esq., of counsel).

Petitioner filed a brief in support of her exception and the Division of Taxation filed a brief in opposition. Petitioner filed a reply brief. Petitioner's request for oral argument was denied.

After reviewing the entire record in this matter, the Tax Appeals Tribunal renders the following decision.

***ISSUE***

Whether the earned income credit of \$1,261.00 and the child and dependent care credit of \$2,310.00 claimed by petitioner on her 2003 tax return were properly disallowed by the Division of Taxation on the basis that petitioner failed to provide sufficient documentation to substantiate that she was entitled to claim these two credits.

***FINDINGS OF FACT***

We find the facts as determined by the Administrative Law Judge. These facts are set forth below.

On her New York State resident personal income tax return for 2003, petitioner reported business income of \$13,000.00 as a “beautician helper.” Claiming a child and dependent care credit of \$2,310.00, an earned income credit of \$1,261.00 and a City of New York school tax credit of \$63.00 on her return, petitioner sought a refund in the amount of \$3,634.00.

By a letter dated February 23, 2004, the Division of Taxation (“Division”) requested “verifiable information to document” petitioner’s earned income and “any qualifying children claimed.” After reviewing petitioner’s response, the Division by a letter dated May 12, 2004 advised that “the refund you requested cannot be allowed” because either incomplete or unverifiable information was provided. For example, a document described as a “cash income statement” for the year merely shows, in a summary fashion, \$250.00 received weekly over the course of 12 months from Romulo Barber Shop. In addition, such statement conflicted with petitioner’s assertion at a prehearing conference that she worked only ten months a year. Further, “receipts” for child care expenses inexplicably show petitioner’s name on the line “received of” as well as on the line which identified the person who received the payment, while the name of the child care provider is not noted.

By a formal notice of disallowance dated June 25, 2004, the Division disallowed petitioner’s claim for refund on the basis that she did not “provide substantiation for the business income reported,” and “cancelled checks or check stubs” were not provided to substantiate

payments to the child care provider. Petitioner was allowed the City of New York school tax credit of \$63.00.

At the hearing in this matter, petitioner posed no questions for the Division's witness who detailed the inadequacy of the information provided by petitioner to support the credits she claimed on her tax return. Petitioner also declined to testify at the hearing and presented no additional documentation in support of her claim. Furthermore, she chose not to make an argument in support of her claim.

***THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE***

The Administrative Law Judge noted that the Federal earned income credit is a refundable tax credit for eligible low-income workers and is computed based on a percentage of a taxpayer's "earned income," including income from self employment (Treas Reg §1.44A-2[b][2][ii]). Tax Law § 689(e) imposes the burden of proof on petitioner to show that she in fact generated \$13,000.00 of earned income as a "beautician helper" during the 2003 tax year.

The Administrative Law Judge found the evidence in the record to be insufficient to establish that petitioner generated \$13,000.00 of income as a beautician assistant for the 2003 tax year. Petitioner maintained no books and records from which her income and expenses could be determined and no independent proof, such as forms W-2 or 1099, or other reliable evidence, to verify that she received \$13,000.00 of earned income from Romulo Barber Shop. In particular, the Administrative Law Judge found petitioner's "cash income statement" was not a contemporaneous record and was produced solely to support petitioner's claimed credits and may be accorded little or no weight. Furthermore, the Administrative Law Judge deemed significant that at the hearing in this matter petitioner declined to testify under oath in support of

her claim. Accordingly, the Administrative Law Judge found that petitioner must suffer the consequences of her failure of proof (*cf.*, *Matter of Meixsell v. Commissioner of Taxation*, 240 AD2d 860, 659 NYS2d 325, *lv denied* 91 NY2d 811, 671 NYS2d 714) and denied her petition.

### ***ARGUMENTS ON EXCEPTION***

Petitioner, on exception, disagrees with the determination of the Administrative Law Judge and urges that we grant her relief.

The Division argues that the determination of the Administrative Law Judge is correct in all respects and should be affirmed.

### ***OPINION***

We affirm the determination of the Administrative Law Judge for the reasons stated therein. We find that the Administrative Law Judge fully and completely addressed each of the arguments raised by petitioner. Petitioner has offered no evidence below or arguments on exception that would justify our modifying the determination in any respect.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Niurka Munoz is denied;
2. The determination of the Administrative Law Judge is affirmed;
3. The petition of Niurka Munoz is denied; and

4. The notice of disallowance dated June 25, 2004 is sustained.

DATED: Troy, New York  
March 1, 2007

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/s/Charles H. Nesbitt

Charles H. Nesbitt  
President

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/s/Carroll R. Jenkins

Carroll R. Jenkins  
Commissioner

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/s/Robert J. McDermott

Robert J. McDermott  
Commissioner