

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
BARBARA ANN BROWN : DETERMINATION
for Redetermination of a Deficiency or for Refund of New : DTA NO. 819023
York State Personal Income Tax under Article 22 of the :
Tax Law for the Year 1996. :

Petitioner, Barbara Ann Brown, 108 Christopher Avenue, Apt. 22B, Brooklyn, New York 11212, 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 1996.

A small claims hearing was held before James Hoefer, Presiding Officer, at the offices of the Division of Tax Appeals, 1740 Broadway, New York, New York on February 19, 2004 at 1:15 P.M. Petitioner appeared *pro se*. The Division of Taxation appeared by Mark F. Volk, Esq. (Susan Parker).

Since neither party herein elected to reserve time to file a post-hearing brief, the three-month period for the issuance of this determination began as of the date the hearing was held.

ISSUE

Whether the Division of Taxation properly disallowed petitioner's claimed earned income credit on the basis that she failed to substantiate the receipt of earned income during the 1996 tax year.

FINDINGS OF FACT

1. On September 3, 1999, petitioner herein, Barbara Ann Brown, filed a New York State resident personal income tax return for 1996 whereon she claimed the filing status “head of household.” Petitioner’s 1996 return reported adjusted gross income of \$3,640.00, which amount included interest income of \$16.00, business income of \$3,900.00 and an adjustment to income of \$276.00 for one-half of the self-employment tax. After subtracting the standard deduction and two dependent exemptions from reported adjusted gross income, there remained no taxable income and thus no New York State personal income tax liability. Petitioner’s return claimed a refund of \$290.00, which amount represented her claimed earned income credit.

2. Federal Schedule C-EZ, Net Profit From Business, was appended to petitioner’s 1996 New York State return and indicated that Ms. Brown was a sole proprietor engaged in business as a “babysitter.” Federal Schedule C-EZ also reported that petitioner generated gross receipts of \$3,900.00 from her babysitting activities and since no deductions were taken for cost of goods sold or expenses, net profit was the same as reported gross receipts.

3. Also attached to petitioner’s 1996 return was Form IT-215, Claim for Earned Income Credit. Form IT-215 revealed that petitioner’s Federal earned income credit for the 1996 tax year equaled \$1,450.00 and that the corresponding New York State earned income credit was 20% of the Federal credit, to wit, \$290.00.

4. On December 3, 1999, the Division of Taxation (“Division”) issued a Notice of Disallowance to petitioner for the 1996 tax year disallowing the claimed refund of \$290.00 in full because “[y]ou have not provided the information requested from you to substantiate your business.”

5. On August 2, 2000, petitioner filed a second New York State personal income tax return for the 1996 tax year.¹ This second return reported wage income of \$2,400.00 and claimed a refund of \$330.00, which amount included \$105.00 for the New York State household credit, \$60.00 for the New York City household credit and \$165.00 for the earned income credit. No wage and tax statements were attached to the second return evidencing petitioner's receipt of wage income in the sum of \$2,400.00 for the 1996 tax year. The second return also contained Form IT-215 which reflected that the New York State earned income credit of \$165.00 was computed to be 20% of the \$825.00 Federal earned income credit.

6. The Division, on December 22, 2000, issued another Notice of Disallowance to petitioner, this one denying in full the \$330.00 refund claimed on the second return filed on August 2, 2000. The December 22, 2000 Notice of Disallowance provided petitioner with the following explanation:

The household credit for New York State and City is not a refundable credit. The household credit can only be applied against an amount of tax due. It may not exceed the amount of tax due and the unused portion is not refundable.

The earned income credit claimed on your return also cannot be allowed. You have not substantiated the business income claimed on your return. This request was made when you filed your original 1996 income tax return in September of 1999.

SUMMARY OF THE PARTIES' POSITIONS

7. The Division maintains that petitioner, although requested to do so, submitted no documentary evidence to substantiate that she generated \$3,900.00 from her alleged babysitting activities during the 1996 tax year. Furthermore, the Division contends that no wage and tax statements were submitted to show that petitioner had wage income in 1996 and that a search of

¹ Although the second return was not labeled on its face as an amended return, petitioner testified that she intended this second return to be an amended return.

its records failed to locate any wage and tax statements issued to petitioner under her social security number by reporting employers. Accordingly, the Division asserts that petitioner has failed to show that she had any earned income during the 1996 tax year and therefore is not entitled to claim the earned income credit.

8. Petitioner asserts that she in fact performed babysitting activities during the 1996 tax year for unrelated individuals who resided in her apartment building. While petitioner admits that she kept no record of her babysitting activities and that she estimated the amount of income that she received from these activities, she argues that her sworn testimony is sufficient to meet her burden of proof to establish that she received \$3,900.00 of earned income in 1996.

CONCLUSIONS OF LAW

A. As applicable to this proceeding, Tax Law § 606(d) provides that the New York State earned income credit for the 1996 tax year is equal to 20% “of the earned income credit allowed under section thirty-two of the internal revenue code for the same taxable year. . . .” 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 Internal Revenue Code (“IRC”) and Federal case law to determine petitioner’s eligibility for the earned income credit.

B. The Federal earned income credit, provided for pursuant to IRC § 32, is a refundable tax credit for eligible low-income workers. The credit is computed based as a percentage of a taxpayer’s “earned income” which includes, *inter alia*, wage income and earnings from self-employment (IRC § 32[c][2]). The only issue to be addressed with respect to the claimed earned income credit is whether petitioner has sustained her burden of proof (Tax Law § 689[e]) to show that she generated earned income during the 1996 tax year.

C. Although petitioner may have in fact provided babysitting services during the year in question, the evidence adduced in this matter is clearly insufficient to establish the amount of income that petitioner generated from these activities. Petitioner maintained no books and records from which income and expenses could be determined, and she readily admits that the \$3,900.00 net profit reported on Federal Schedule C-EZ was merely an estimated figure. Since the earned income credit is computed based on a percentage of a taxpayer's earned income, the amount of earned income must be established in order to determine the allowable credit. In the instant matter, petitioner has failed to substantiate the amount of earned income received in 1996, and therefore she is not entitled to claim the earned income credit (*Blore v. Commr.* 80 TCM 559).

D. Turning next to petitioner's claim for a refund of the household credit, it is concluded that said claim must be rejected. Tax Law § 606(b)(1) clearly provides that the household credit is not a refundable credit as it cannot "exceed the tax determined under subsections (a) through (d) of section six hundred one for the taxable year. . . ."

E. The petition of Barbara Ann Brown is denied and the Division's notices of disallowance dated December 3, 1999 and December 22, 2000 are sustained.

DATED: Troy, New York
April 29, 2004

/s/ James Hoefler
PRESIDING OFFICER