

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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| In the Matter of the Petition | : | |
| of | : | |
| FRANCISCA VALOY | : | DETERMINATION |
| | | DTA NO. 819191 |
| 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 2001. | : | |

Petitioner, Francisca Valoy, 544 West 147th Street, Apt. 1A, New York, New York 10031, 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 2001.

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 December 3, 2003 at 1:15 P.M. Petitioner appeared *pro se*. The Division of Taxation appeared by Mark F. Volk, Esq. (Jacob Tiwary).

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 child and dependent care credit of \$1,531.00 and the earned income credit of \$1,002.00 claimed by petitioner on her 2001 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

1. Petitioner herein, Francisca Valoy, filed a timely New York State resident personal income tax return for 2001 whereon she claimed the filing status “head of household (with qualifying person).” Said return reported New York adjusted gross income of \$11,752.00, which amount consisted of interest income of \$600.00, business income of \$12,000.00 and an adjustment to income of \$848.00 for one-half of the social security tax. After subtracting the standard deduction of \$10,500.00 and two dependent exemptions of \$2,000.00 from reported income, there remained no taxable income and thus no New York State personal income tax liability. Petitioner’s return claimed a refund of \$2,596.00, which amount included a child and dependent care credit of \$1,531.00, an earned income credit of \$1,002.00 and a City of New York school tax credit of \$63.00.

2. Attached to petitioner’s return was Federal Schedule C-EZ, Net Profit From Business, which reported that Ms. Valoy was a sole proprietor engaged in business as a “beauty salon helper.” Federal Schedule C-EZ reported gross receipts of \$12,000.00 and since no expenses were claimed, net profit was the same as reported gross receipts. Also attached to petitioner’s return was a sworn statement on Carmen Beauty Salon letterhead whereon Carmen Savigne, the owner of the business, stated that she paid Mrs. Francisca Bautista¹ the amount of \$12,000.00 in 2001 in her position as a beautician. Petitioner’s return also included Form IT-215, Claim for Earned Income Credit, and Form IT-216, Claim for Child and Dependent Care Credit. Form IT-215 indicated that petitioner’s two children, ages ten and eight, lived with her for the entire tax year, that her business income for 2001 totaled \$11,152.00 (\$12,000.00 less \$848.00 for the adjustment to income for one-half of the social security tax), that the amount of her Federal

¹ From the record herein it cannot be determined if Francisca Bautista and petitioner, Francisca Valoy, are the same person.

earned income credit for 2001 was \$4,008.00 and that the New York State earned income credit was 25% of the Federal amount, i.e., \$1,002.00. Form IT-216 claimed that petitioner paid \$4,800.00² to Yuberky Perez Cornelio during 2001 for child care services she provided for her two children, that the Federal child and dependent care credit totaled \$1,392.00 and that the allowable New York State earned income credit was equal to 110% of the Federal credit, or \$1,531.00.

3. On May 10, 2002, the Division of Taxation (“Division”) issued a Statement of Refund Adjustment to petitioner reducing the refund claimed on her 2001 tax return from \$2,596.00 to \$62.50. The Statement of Refund Adjustment contained the following explanation:

To claim the earned income credit, you must have **earned income**. Since your response to our inquiry did not include the requested documentation to substantiate the business income reported on your return, the earned income credit has been disallowed.

Your child and dependent care credit has been disallowed. To claim the credit, you must keep up a home in which you live with one or more qualifying persons. Costs of keeping up a home normally include rent, utility charges, home repairs, insurance on the home, and food eaten at home. Any assistance received from a state agency that you use to keep up your home are funds provided by the state, not by you. You must provide more than half the cost of keeping up your home **from your own funds** to claim the credit for child and dependent care expenses.

Since you do not meet the above requirements, you do not qualify to claim this credit.

You have been allowed the City of New York school tax credit.

4. Pursuant to a letter dated May 23, 2002, petitioner protested the Division’s Statement of Refund Adjustment indicating that she paid more than one-half of the cost to maintain a household for herself and her two dependent children. Specifically, petitioner asserts that she

² The \$4,800.00 claimed on Form IT-216 is the maximum amount allowed by statute. In a letter dated May 23, 2002, petitioner claims to have paid \$5,000.00 for babysitting services and she has also submitted receipts wherein she claims to have paid \$200.00 per week (\$10,400.00 for the year) for babysitting services.

received public assistance in 2001 of \$10,860.00 and that household expenses, as listed below, totaled \$23,374.00:

| ITEM | AMOUNT |
|---------------------|-------------|
| Con Edison | \$1,200.00 |
| Rent | 4,104.00 |
| Food | 7,300.00 |
| Clothing | 2,400.00 |
| Child care provider | 5,000.00 |
| Telephone | 1,440.00 |
| Entertainment | 1,040.00 |
| Miscellaneous | 890.00 |
| Total | \$23,374.00 |

5. On July 12, 2002, the Division issued a Notice of Disallowance to petitioner wherein \$2,533.00 of the refund claimed on her 2001 tax return was disallowed. The amount disallowed represented the child and dependent care credit of \$1,531.00 and the earned income credit of \$1,002.00. The Notice of Disallowance indicated that the refund was denied because petitioner “did not supply the appropriate documentation to support the business income that you reported.”

6. By letter dated July 30, 2002, petitioner responded to the Notice of Disallowance stating that “I am just a simple hair washer that made a total income of \$12,000.00 for the year 2001. The work I perform does not require a sales tax registration number or a professional license.” With her letter petitioner provided the names, addresses and telephone numbers of three individuals whose hair she washed and also a handwritten document entitled “Income Statement” which listed the amount she received each week in 2001 from Carmen Beauty Salon.

The “Income Statement” claimed that petitioner received \$230.00 each week for all 52 weeks of the year, plus an additional \$40.00 labeled as “miscellaneous,” for a total of \$12,000.00.

7. The record herein also contains 52 handwritten receipts indicating that petitioner paid Yuberky Perez Cornelio \$200.00 per week for all 52 weeks in 2001 for “babysitting.” Ms. Cornelio also provided petitioner with a letter dated January 20, 2003 stating that “This letter is to certify that I, Yuberky Perez Cornelio, am the babysitter for Francisca Valoy’s two children. I am paid \$200.00 weekly.”

8. Petitioner did not maintain any books or records, either formal or informal, detailing her activities as a beauty salon helper. The documents which petitioner submitted for review were clearly not contemporaneously kept records but instead represent documents which were produced solely for the purpose of substantiating the child and dependent care credit and earned income credit as claimed on her 2001 tax return.

CONCLUSIONS OF LAW

A. As applicable to this proceeding, Tax Law § 606(d) provides that the New York State earned income credit for the 2001 tax year is equal to 25% “of the earned income credit allowed under section thirty-two of the internal revenue code for the same taxable year. . . .” With respect to the child and dependent care credit, Tax Law § 606(c) provides that the New York State credit is based on the Federal child and dependent care credit “allowable under section twenty-one of the internal revenue code.” Since the allowable New York earned income credit and child and dependent care credit are both determined based solely on the corresponding Federal credit, it is appropriate to refer to the provisions of the Internal Revenue Code, Treasury Regulations and Federal case law to determine petitioner’s eligibility for these two credits.

B. The Federal earned income credit, provided for pursuant to section 32 of the Internal Revenue Code, is a refundable tax credit for eligible low-income workers. The credit is computed based on a percentage of a taxpayer's "earned income" which includes, *inter alia*, earnings from self-employment. The 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 in fact generated \$12,000.00 of earned income as a self-employed beauty salon helper during the 2001 tax year.

The child and dependent care credit allowed pursuant to Internal Revenue Code § 21 is determined based on a percentage of employment related expenses, including expenses for the care of a qualified dependent under the age of 13, incurred by a taxpayer to be gainfully employed. Internal Revenue Code § 21(c)(2) places a \$4,800.00 limitation on employment related expenses for two or more qualifying dependents and Internal Revenue Code § 21(d)(1)(A) further provides that employment related expenses cannot exceed a taxpayer's earned income for the tax year. Earned income, for purposes of Internal Revenue Code § 21, includes earnings from self-employment (Treas Reg § 1.44A-2[b][2][ii]). Thus, to be entitled to claim the child and dependent care credit, petitioner must substantiate the amount of employment related expenses that she paid in 2001 and also show that she had \$12,000.00 of earned income as a self-employed beauty salon helper.

C. The evidence adduced in this matter is clearly insufficient to establish that petitioner generated \$12,000.00 of income as a self-employed beauty salon helper for the 2001 tax year. Petitioner maintained no books and records from which her income and expenses as a self-employed beauty salon helper could be determined and there is no independent proof, such as forms W-2 or 1099, or other reliable evidence, to verify that she received \$12,000.00 of earned

income from Carmen Beauty Salon in 2001. Furthermore, the documents which were offered in evidence were not contemporaneous records; were undoubtedly produced solely to support petitioner's claimed credits and, in my view, are to be accorded little or no weight. The validity of petitioner's claim to have earned \$12,000.00 in 2001 as a self-employed beauty salon helper is also brought into question when one considers that petitioner claims to have earned \$230.00 per week washing hair, yet paid \$200.00 per week, or 87% of her alleged total compensation, for child care expenses.

Since the earned income credit is computed based on a percentage of a taxpayer's earned income and since the child and dependent care credit is limited to the amount of earned income, petitioner must establish the amount of her earned income in order to determine the allowable credits. In the instant matter, petitioner has failed to substantiate that she had any earned income in 2001 and therefore she is not entitled to claim either the earned income credit or the child and dependent care credit (*Blore v. Commr.*, 80 TCM 559).

With respect to the child and dependent care credit, petitioner, in addition to failing to prove she had earned income in 2001, has also failed to sustain her burden of proof to show that she paid employment related expenses or contributed more than one-half of the cost to maintain her household. Accordingly, the child and dependent care credit is also disallowed for these reasons.

D. The petition of Francisca Valoy is denied and the Division's Notice of Disallowance dated July 12, 2002 is sustained.

DATED: Troy, New York

February 19, 2004

/s/ James Hoefer
PRESIDING OFFICER