

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
VICTOR SANTANA : DETERMINATION
for Redetermination of a Deficiency or for Refund of New : DTA NO. 819438
York State Personal Income Tax under Article 22 of the :
Tax Law for the Year 2001. :

Petitioner, Victor Santana, 765 East 165th Street, Bronx, New York 10456, 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, 90 South Ridge Street, Rye Brook, New York on August 22, 2003 at 1:00 P.M. Petitioner appeared by his daughter Lady Elizabeth Santana. The Division of Taxation appeared by Mark F. Volk, Esq. (Ines Ottaviano).

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 of \$718.50 on the basis that he failed to substantiate that he had received earned income during the tax year at issue.

FINDINGS OF FACT

1. Petitioner herein, Victor H. Santana, filed a timely New York State resident personal income tax return for 2001 whereon he claimed the filing status “head of household.” The only item of income, gain or loss reported on petitioner’s 2001 return was \$7,700.00 of business income. After subtracting the standard deduction and two dependent exemptions 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 \$781.00, which amount included a \$62.50 City of New York school tax credit and a \$718.50 earned income tax credit. Petitioner did not prepare his own return, but instead retained the services of a retired attorney located in Bronx, New York to complete the return.

2. Federal Schedule C, Profit or Loss From Business, was appended to petitioner’s New York State return and reported that Mr. Santana was a sole proprietor engaged in business as a mechanic. Federal Schedule C reported gross receipts of \$7,700.00, and since no deductions were taken for cost of goods sold or expenses, net profit was the same as reported gross receipts.

3. On March 29, 2002, the Division of Taxation (“Division”) issued a Statement of Refund Adjustment to petitioner for the 2001 tax year reducing the claimed refund from \$781.00 to \$62.50. The Statement of Refund Adjustment contained the following explanation:

In order to qualify for the Earned Income Tax Credit and/or Child and Dependent Care Credit, a taxpayer must be able to document that he received earned income during the tax year. In the case of business income, the taxpayer must be able to provide records which support when the income was earned, to whom services were provided, and the exact amount of compensation received from each transaction. Based on this, estimated figures of earnings received during the tax year cannot be used in establishing a claim for either credit. Therefore, your Earned Income Tax Credit and Child and Dependent Care Credit have been disallowed.

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

4. Pursuant to a letter dated April 19, 2002, petitioner protested the Division's disallowance of a portion of his claimed refund stating that:

I am self-employed and have been for some time. I work as a mechanic and work for different people on the street. I have no shop and work when I am call[ed] up to do so. Every penny I earn I report. I feel that it is unjust that those who do things by the book and file their taxes have to suffer for others who have been working illegally. I have been a single parent for the pass [sic] 10 years and have supported my children to the best of my abilities. . . .

5. On June 21, 2002, the Division issued a Notice of Disallowance to petitioner for the 2001 tax year disallowing his claimed refund of \$781.00 in full because his "response to our inquiry letter did not include any documentation to substantiate the business income reported on your return." Pursuant to a Conciliation Order dated January 31, 2003, the Notice of Disallowance was modified to reflect that a refund of \$62.50 had already been allowed and issued and that the balance of the claimed refund of \$718.50 was denied.

6. Petitioner immigrated to the United States from Ecuador on some unknown date subsequent to 1985. For the entire 2001 tax year petitioner maintained a permanent place of abode in New York which served as a full-time residence for his two children, Lady Elizabeth Santana, born in 1983, and Victor Santana, Jr., born in 1985.

7. During the tax year in question petitioner worked as an independent mechanic repairing trucks and automobiles. Petitioner maintained no regular place of business, but instead performed repairs at his customer's location or on the street. Petitioner's customers would purchase any needed parts and would pay petitioner for his labor to effectuate the repair. For the year at issue, petitioner did not maintain any books or records, either formal or informal, itemizing sales made and expenses incurred in the conduct of his activities as a mechanic.

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. . . .” 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 and Federal case law to determine petitioner’s eligibility for the earned income credit.

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 as a percentage of a taxpayer’s “earned income” which includes, *inter alia*, earnings from self-employment. The only issue to be addressed in this proceeding is whether petitioner has sustained his burden of proof (Tax Law § 689[e]) to show that he in fact generated \$7,700.00 of earned income as a self-employed mechanic during the 2001 tax year.

C. Although I do not doubt that petitioner was engaged in the repair of trucks and automobiles 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 could not explain how his tax preparer determined the amount of income as reported on Federal Schedule C. In fact, it appears that the \$7,700.00 of net profit reported on Federal Schedule C was merely an estimated figure. While the affidavits submitted by petitioner provide support that he was involved in a repair business, they contain no evidence to substantiate the amount of income he earned from these activities. 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 2001 and therefore he is not entitled to claim the earned income credit (*Blore v. Commr.*, 80 TCM 559).

D. The petition of Victor Santana is denied and the Division's Notice of Disallowance dated June 21, 2002 is, as modified by the Conciliation Order dated January 31, 2003, sustained.

DATED: Troy, New York
November 20, 2003

/s/ James Hoefler
PRESIDING OFFICER