

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
MARIE N. JECROIS : DETERMINATION
for Redetermination of a Deficiency or for Refund of : DTA NO. 820316
New York State Personal Income Tax under Article 22 of :
the Tax Law and the New York City Personal Income Tax :
pursuant to the Administrative Code of the City of New :
York for the Years 2002 and 2003. :

Petitioner, Marie N. Jecrois, 8521 Avenue N, Apartment 2, Brooklyn, New York 11236, 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 and the New York City personal income tax pursuant to the Administrative Code of the City of New York for the years 2002 and 2003.

On October 7, 2005 and October 3, 2005, respectively, petitioner, appearing *pro se*, and the Division of Taxation by Mark F. Volk, Esq. (Michelle W. Milavec, Esq., of counsel), waived a hearing and agreed to submit the matter for determination based on documents and briefs to be submitted by October 3, 2006, which date commenced the six-month period for the issuance of this determination. After review of the evidence and arguments presented, Arthur S. Bray, Administrative Law Judge, renders the following determination.

ISSUE

Whether the Division of Taxation properly disallowed petitioner's claimed earned income credit.

FINDINGS OF FACT

The 2002 Tax Year

1. Petitioner, Marie N. Jecrois, filed a New York State Resident Income Tax Return for the year 2002. On the return, petitioner reported New York adjusted gross income of \$10,195.00 and that neither New York State nor New York City tax was withheld. Petitioner's return claimed a refund of \$1,182.00 based upon a City of New York school tax credit of \$63.00 and a New York earned income credit ("EIC") of \$1,119.00. Attached to petitioner's return was a Federal Schedule C, Profit or Loss from Business, which indicated that her principal business or profession was babysitting. The schedule reported gross receipts of \$12,850.00 less expenses of \$1,880.00 for a net profit of \$10,970.00.¹ Petitioner's return also included a New York Claim for Earned Income Credit (Form IT-215) which showed, among other things, that petitioner's qualifying children were two daughters, who were born in 2000 and 2002, respectively. The form also revealed that the amount of the Federal earned income credit claimed was \$4,070.00.

2. The Division of Taxation ("Division") mailed a letter to petitioner, dated April 4, 2003, which stated that her income tax return had been selected for review. Among other things, the Division explained that it was committed to ensuring that New Yorkers who are entitled to the earned income and dependent care credit programs receive them in an accurate and timely manner. The letter asked petitioner to provide numerous items of information including:

Copies of all business related books and records for any two months of the tax year. Such records should include copies of canceled checks for business related expenses, bank statements listing business related expenses and revenues, accounting journals, ledgers, or appointment books listing when, where, and for

¹ Petitioner's New York return reported business income in the amount of \$10,970.00. This amount was reduced by self-employment tax in the amount of \$775.00 resulting in reported adjusted gross income in the amount of \$10,195.00.

whom services were provided, and receipts for any cash related expenses or revenues. If you provide notarized statements from clients, such statements must include specific information of when services were performed and the dollar amount paid on each occasion. Notarized statements must also include written documentation that would support the information provided. Such documentation should include copies of ledgers or appointment books, canceled checks or receipts.

3. In a letter dated April 18, 2003, petitioner explained that she was a self-employed babysitter and that she calculated her business income by recording her weekly revenue and expenses. At the end of the year she would subtract her total expenses for items such as transportation, candy, toys, carpeting, Pampers, gloves and napkins from her gross receipts to arrive at her net income from self-employment. Petitioner included documentation substantiating that the individuals she claimed on her return were qualifying dependents. However, she did not submit any business books or records.

4. On July 8, 2003, the Division mailed petitioner a Statement of Tax Refund which explained that since petitioner did not provide the requested documentation to support the business income claimed on her return, the business income could not be verified. Therefore, the Division disallowed the earned income credit which had been claimed on the return. The Division further stated that if petitioner did not agree with the adjustment, she was permitted to provide additional information.

5. In response, petitioner submitted to the Division sworn statements from two individuals who stated that petitioner provided babysitting services to their children. Petitioner also offered records of cash receipts for the periods October 12, 2002 through October 28, 2002 and March 2, 2002 through August 18, 2002. Lastly, petitioner presented 19 copies of receipts for cash payments.

6. The Division reviewed the records presented and reached the following conclusions:

The Division reviewed the additional documentation provided and found that it was insufficient to verify petitioner's business income for the year 2002. Although Carline Cantave states in her notarized letter that she paid Marie N. Jecrois \$200.00 each week for two children in 2002, there were only four handwritten cash receipts dated 02/02/02, 02/16/02, 04/13/02, and 05/25/02 for Carline Cantave submitted by petitioner. The Division attempted to contact Carline Cantave to verify the information provided in her notarized letter and found the telephone number provided was no longer in service. The notarized letter from Marie R. Charles does not state how much money she was paying petitioner for services allegedly rendered and only three cash receipts dated 02/06/02, 03/16/02, and 05/18/02 for Marie R. Charles were submitted by petitioner. The Division found multiple discrepancies in the copies of receipts and copy of the log submitted by petitioner. While there were thirty-one (31) log entries, there were only nineteen (19) cash receipts submitted. Out of nineteen handwritten cash receipts submitted by petitioner, seven of these receipts did not have corresponding entries in the log submitted. These seven entries include cash receipts as follows: 2/2/02 Carline Cantave \$200.00, 2/16/02 Carline Cantave \$200.00, 2/26/02 Marie Charles \$90.00, 5/18/02 Marie Charles \$100.00, 5/25/02 Carline Cantave \$200.00, 8/17/02 Caroline Jecrois \$100.00, and 9/14/02 Salgado Solage \$60.00. Further, only four out of the nineteen cash receipts had amounts written on them that matched the amounts listed in the log entry for the corresponding dates correctly. The remaining log entries with dates that matched the dates on cash receipts submitted, did not list amounts that match the amounts listed on the cash receipts. For example, the log entry for 3/16/02 states that petitioner received \$200.00 in cash while the cash receipt submitted dated 3/16/02 for Marie Charles shows \$110.00 received. Similarly, the log entry dated 4/13/02 states that petitioner received \$115.00 in cash on that date while two cash receipts were submitted dated 4/13/02, one to Carline Cantave for \$200.00 and another to Caroline Jecrois for \$75.00.

7. On October 31, 2003, the Division issued a Notice of Disallowance to petitioner which stated that the Division felt that it could not verify either the payments made by petitioner's two clients or the amount of petitioner's business income. Therefore, the earned income credit requested on her return was disallowed.

The 2003 Tax Year

8. Ms. Jecrois filed a New York State Resident Income Tax Return for the year 2003 on which she reported business income of \$12,900.00 less expenses of \$1,855.00 resulting in a net income of \$11,045.00. On this return, petitioner claimed a refund in the amount of \$1,233.00. Petitioner's return included a New York Claim for Earned Income Credit wherein she reported, as she had for the previous year, that she had two qualifying children and that the source of her business income was babysitting.

9. In a letter dated April 19, 2004, the Division requested additional information to assist in the processing of petitioner's refund claim. With respect to the business activity reported on the return petitioner was asked to provide:

Copies of all business related books and records for any two months of the tax year. Such records should include copies of all cancelled checks for business related expenses, bank statements listing business related expenses and revenues, accounting journals, ledgers, or appointment books listing when, where, and for whom expenses were provided, and receipts for any cash related expenses and revenues.

10. In support of her claim for an earned income credit, petitioner offered copies of her children's birth certificates and Social Security cards as well as medical records and a letter from her church. The Division did not consider this response sufficient and therefore closed the case denying the claim for refund.

11. Petitioner filed a petition with the Division of Tax Appeals seeking a refund for the years 2002 and 2003. In support of her claim for the earned income credit, petitioner submitted the following documents which, unlike the receipts for 2002, were not accompanied by a journal of cash receipts:

(a) Petitioner offered a sworn statement from a Caroline Cantave which provided that during the years 2002 and 2003 petitioner was a babysitter who took care of Ms. Cantave's children during her time at work. Ms. Cantave avers that petitioner "received \$200.00 every week at which instance **a receipt** was usually given to me, depending on when I took the children to Marie Jacrois' premises, for two children in 2002 and 2003." (Emphasis in original.)

(b) Petitioner presented a sworn statement from Marie R. Charles, dated September 19, 2005, which states that petitioner has been babysitting her two children since 2001 and that petitioner "has received her weekly self-employment payment on a cash-basis [sic] - on average \$90.00 depending on the number of hours she babysat and then issued a receipt to me on each occasion. For the record, sometime I paid \$90.00, another time \$100.00, and on and on during the years 2002 and 2003."

(c) Petitioner offered a sworn statement from Carolie Jecrois, dated September 22, 2005, stating that she paid petitioner "\$100.00 every week during the years 2002 and 2003 to take care of my daughter. The total amount for 2002 was \$2260.00 and that for 2003 was \$2350.00."

(d) Petitioner presented a sworn statement from Irma Alvarez, dated September 25, 2005, which stated that she paid petitioner "\$90.00 every week on a sporadic basis during the year 2002 and 2003 for babysitting services provided to my child. Based on the record, the amount is the equivalent to \$2,160.00 for the whole year 2002 and \$2,450.00 for 2003."

(e) Petitioner submitted a sworn statement from Solange Salgado which avers that he paid petitioner "an overall amount of \$2080.00 during the year 2002 and \$2,160.00 during the year 2003. The total amount for each year was paid in \$50.00, \$60, \$70.00, sometimes \$80.00 on a weekly basis when applicable FOR LOOKING AFTER MY CHILD." (Emphasis in original.)

(f) Petitioner submitted a series of receipts for 2003 for the following:²

(1) There were receipts indicating that Marie Charles made payments of \$100.00 on May 5, 2003, May 12, 2003 and May 18, 2003; she made payments of \$90.00 on May 10, 2003 and June 7, 2003;

(2) There were receipts in the amount of \$90.00 for payments by Irma Alvarez on March 8, 2003, March 29, 2003 and March 15, 2003;

(3) There were receipts for payments in the amount of \$100.00 by Carolie Jecrois on April 5, 2003, April 12, 2003 and May 10, 2004.

(4) There were seven receipts showing that Solange Salgado made payments which ranged from \$50.00 to \$80.00, depending upon the week, during 2003.

(g) Petitioner submitted a copy of a check drawn on the United States Treasury in support of her claim that the Internal Revenue Service determined that she was eligible for the earned income credit.

SUMMARY OF THE PARTIES' POSITIONS

12. In her petition, Ms. Jecrois states that she was engaged in a bona fide business activity in which she cared for the children of working families in her home for a fee so that people could work. Petitioner further states that personal services were a material income producing factor and that the income was reasonably reported. In a separate letter, petitioner maintains that the Division gives the impression that no income existed in 2003. In response, petitioner submits that her cash receipts, logs and record keeping speak for themselves. Petitioner also asks how she could have survived during the year in issue if she did not have any income given the fact

² Petitioner's submission also included certain receipts which were reviewed earlier for 2002.

that she has never been on public assistance. Petitioner concludes that there is sufficient documentation to substantiate the business income reported on the Federal schedule C which was used to calculate the earned income credit.

13. The Division contends that the evidence is insufficient to establish that petitioner was engaged in a self-employed business as a babysitter in 2002 and 2003. The Division submits that petitioner did not maintain accurate books and records and that there is no credible evidence in the record to support the proposition that she conducted a business and received income therefrom. The Division further contends that petitioner failed to substantiate the amount of the earned income received in 2002 and 2003 and therefore she is not entitled to the earned income credit.

CONCLUSIONS OF LAW

A. Tax Law § 606(d) provided that the New York State earned income credit for the 2002 tax year was equal to 27 ½ percent “of the earned income credit allowed under section thirty-two of the internal revenue code for the same taxable year. . . .” For 2003, the applicable percentage became 30 percent. Since the State earned income credit was 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 by 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, among other things, earnings from self-employment.

C. With regard to the year 2002, assuming that petitioner conducted a babysitting business, the records supplied by petitioner were so confusing and contradictory, it is impossible to determine the amount of the credit to which petitioner is entitled. Among other things, Carline Cantave stated that she paid \$200.00 each week for babysitting. However, petitioner only submitted four cash receipts for Carline Cantave. Further, there were numerous discrepancies between the log and the cash receipts. Although there were 31 entries in the log, only 19 cash receipts were offered by petitioner. Of the 19 cash receipts presented, 7 of the cash receipts did not have a corresponding entry in the log. The remaining log entries, with dates that corresponded with dates on the cash receipts, had different amounts recorded on the logs than the amounts listed on the cash receipts.

D. The documents presented with respect to the 2003 tax year presented greater discrepancies than those for 2002. Petitioner did not offer a cash receipts log or any other contemporaneous recording of total receipts for 2003. As a result, there is no way of knowing how petitioner calculated her business income for 2003.

Moreover, the Division has accurately noted that some of the statements presented in the affidavits offered by petitioner are self-contradictory and shed little light on the issue of substantiating the amount of petitioner's business income. Carline Cantave states that she paid petitioner \$200.00 every week for the care of two children in 2002 and 2003. Unfortunately, this statement is deficient insofar as it omits the total amount paid to petitioner for 2003 and does not include a reliable record of when Ms. Cantave brought her children to petitioner for babysitting.

The statement from Marie R. Charles provides that sometimes she paid \$90.00 and other times she paid \$100.00 for babysitting her two children during 2002 and 2003. As was the case with the statement directly above, the communication from Ms. Charles is lacking insofar as it

omits the number of weeks she brought her children to petitioner during 2003. It also fails to state the total amount paid to petitioner during 2003 or provide a reliable contemporaneous record from which the total amounts paid to petitioner could be verified.

The statement from Carolie Jecrois states that she paid petitioner \$100.00 every week during the years in issue. Ms. Jecrois then states that she paid \$2,260.00 for 2002 and \$2,350.00 for 2003. Obviously, if she paid petitioner \$100.00 a week for 52 weeks she would have paid \$5,200.00 each year. Nevertheless, Ms. Jecrois does not explain the discrepancy or how she arrived at the amount she claimed she paid. Petitioner offered only three cash receipts, each in the amount of \$100.00, dated April 5, 2003, April 12, 2003 and May 10, 2003, to substantiate the payments made by Ms. Jecrois.

The same difficulty noted above is presented with respect to the affidavits of Irma Alvarez and Solange Salgado. Without a reliable contemporaneous, record there is no way to verify how the total amounts were determined or how much was actually paid.

E. Under the circumstances, petitioner has not sustained her burden of proof of showing the amount of her earned income during the years in issue (Tax Law § 689[e]; *see, Blore v. Commissioner*, 80 TCM 559). Contrary to the assertion in petitioner's brief, it would be impossible to make a reasonable estimate of the amount of petitioner's income on the basis of documents presented.

F. The petition of Marie N. Jecrois is denied.

DATED: Troy, New York
March 22, 2007

/s/ Arthur S. Bray

ADMINISTRATIVE LAW JUDGE