

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
MOHAMMED SHAMIM	:	SMALL CLAIMS
	:	DETERMINATION
	:	DTA NO. 820375
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.	:	

Petitioner, Mohammed Shamim, 3520 Dekalb Avenue, Apt. 1D, Bronx, New York 10467, 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 2003.

A small claims hearing was held before Catherine M. Bennett, Presiding Officer, at the offices of the Division of Tax Appeals, 641 Lexington Avenue, New York, New York, on May 3, 2006, at 10:30 A.M., and continued to completion on May 4, 2006. Petitioner appeared *pro se*. The Division of Taxation appeared by Christopher C. O'Brien, Esq. (Susan Parker). Since neither party reserved time to submit a post hearing brief, the three-month period for the issuance of this determination commenced as of the date the hearing was held and completed.

ISSUE

Whether petitioner is entitled to the earned income credit for tax year 2003.

FINDINGS OF FACT

1. Petitioner, Mohammed Shamim, filed Form IT-201, New York State Resident Income Tax Return, claiming an earned income credit for tax year 2003 in the amount of \$1,261.00.

Petitioner's Form IT-201 for 2003 reported Federal and New York adjusted gross income of \$10,604.00, that no tax was withheld for the year at issue and that he was due a refund of \$1,379.00, \$1,261.00 of which represented his claimed earned income credit. The claimed New York State earned income credit of \$1,261.00 is computed by simply multiplying petitioner's originally claimed Federal earned income credit of \$4,204.00 by 30%.

2. Petitioner's reported New York State Schedule C net income of \$11,410.00 consisted of the following items of income and deductions:

ITEM	AMOUNT
Gross Receipts	\$14,772.00
Cost of Goods Sold	(1,000.00)
Gross Profit	13,772.00
Other property	(1,200.00)
Tax and License	(214.00)
Travel	(948.00)
Total Expenses	2,362.00
Net Profit	\$11,410.00

3. The Division of Taxation ("Division") learned from petitioner, after making an inquiry about the source of the business income, that his schedule C business income was generated from the sale of children's books and bottles of religious oil on the streets of Manhattan.

4. The Division issued petitioner a Notice of Disallowance, denying a New York State earned income credit in the amount of \$1,261.00 for tax year 2003, indicating that petitioner did not supply the appropriate information to support the business income generated. The Notice of Disallowance submitted into evidence stated the following:

A self-employed person must maintain accurate books and records which document their revenues and expenditures. Bank statements, canceled checks,

ledgers, expense vouchers, contracts, receipts, appointment books, etc., are all acceptable forms of documentation (one or more forms may be required).

The receipts you provided do not substantiate any income reported on your return, but they may support some of the business expenses indicated on your schedule C.

Departmental records indicate different amounts reported by you for gross sales which are inconsistent with the amounts being claimed as income on your schedule C.

Your certificate of authority indicates your business as Ms. Perfume; however, your return indicates your business as Children Books Accen [sic]. Both list your home address as the business address. The receipts for expenses you provided are neither books nor perfume.

Based on the facts noted above, your claim for the earned income credit has been denied.

5. The Division introduced a certified mailing log dated April 23, 2004, which showed that a document concerning tax year 2003 was mailed to Mohammed Shamim at 3520 Dekalb Ave. #1D, Bronx, NY 10467.

6. Petitioner did not maintain books and records of his business income collected from his sales of children's books and religious oil. Petitioner bought oil, bottles, books and other supplies with cash collected from his sales. He maintained and introduced into evidence receipts from tax year 2003 totaling \$893.00 for purchases of oil and books for his business, acquired from four Manhattan vendors, Nicholas, Nicholas Variety, Horizon Trading, Inc. and J&S Imports.

7. The Division conceded that petitioner established the existence of qualifying children for purposes of the earned income credit.

8. Pursuant to a request made by the Division on April 17, 2006 to the Internal Revenue Service ("IRS") concerning petitioner's Federal tax filing for 2003, the Division obtained an

account transcript of petitioner's Form 1040 for 2003. The transcript showed that an earned income credit in the amount of \$4,204.00 that had originally been claimed with the Federal return as filed, was reversed and not allowed. No explanation of the reversal was provided on the IRS transcript.

SUMMARY OF THE PARTIES' POSITIONS

9. Petitioner maintains that he was granted the earned income credit in prior years and was entitled to it again in 2003. Petitioner maintains that he provided records for 2003 at the hearing that substantiate the existence of his business and the appropriateness of the claimed credit.

10. The Division first argues that since the IRS disallowed the earned income credit, petitioner is not entitled to a New York credit. Further, the Division maintains that petitioner, although requested to do so, did not submit books and records or other sufficient evidence to substantiate that he had earned income as a self-employed sales person during the year in question, and the substantiation of expenses was incomplete.

CONCLUSIONS OF LAW

A. As applicable to this proceeding, Tax Law § 606(d) provides that the New York State earned income credit for the 2003 tax year is equal to 30 percent "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") 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 on a determination of a

taxpayer's "earned income" which includes, *inter alia*, wage income and earnings from self-employment (IRC § 32[c][2]). In order to be eligible for the earned income credit, the eligible individual must have a qualifying child for the taxable year. A qualifying child is one which meets the statutory requirements of age, relationship and residency (IRC § 32[c][3]). The Division does not dispute the existence of qualifying children.

C. The IRS, following an adjustment of petitioner's return as originally filed, denied petitioner's claimed earned income credit for the year 2003. As New York State's earned income credit is based upon the amount allowed for Federal purposes, it must follow that petitioner is not entitled to, and the Division correctly disallowed, the earned income credit claimed for New York State purposes for the tax year 2003.

D. Furthermore, inasmuch as petitioner did not maintain any sales income information and presented incomplete expense information, the Division correctly assessed the inadequacy of petitioner's books and records to substantiate earned income required to claim the credit.

E. The petition of Mohammed Shamim is denied, and the Notice of Disallowance mailed to petitioner April 23, 2004, is sustained.

DATED: Troy, New York
August 3, 2006

/s/ Catherine M. Bennett
PRESIDING OFFICER