

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
ANA A. ALMONTE	:	SMALL CLAIMS DETERMINATION DTA NO. 820836
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, Ana A. Almonte, 86 Russell Avenue, Elmont, New York 11003, 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 Timothy J. Alston, Presiding Officer, at the offices of the Division of Tax Appeals, 641 Lexington Avenue, New York, New York, on September 12, 2006 at 1:00 P.M., which date began the three-month period for the issuance of this determination. Petitioner appeared *pro se*. The Division of Taxation appeared by Mark F. Volk, Esq. (Matthew Roberts).

ISSUE

Whether the Division of Taxation properly disallowed petitioner's claimed earned income credit for the 2003 tax year because she failed to substantiate her earned income as reported on her 2003 New York State resident income tax return.

FINDINGS OF FACT

1. Petitioner, Ana A. Almonte, timely filed her 2003 New York State resident personal income tax return. Petitioner filed as “head of household” and claimed two dependent exemptions for her daughters, Ana Maria Ramos, born on November 17, 1983, and Stephanie Flores, born on July 10, 1991. Petitioner’s children lived with her at 86 Russell Avenue, Elmont, New York in 2003.

2. Petitioner’s 2003 tax return reported New York adjusted gross income of \$11,300.00, which consisted of business income of \$12,160.00, less an adjustment to income of \$860.00 for one-half of her Federal self-employment tax. After allowing for the standard deduction and petitioner’s two dependent exemptions, there remained no taxable income and thus no State tax due. Petitioner’s return claimed a refund of \$1,261.00 for New York State earned income credit.

3. The Division of Taxation (“Division”) sent a letter to petitioner dated February 23, 2004 requesting specific documentation to support her claim for earned income credit. By letter dated June 24, 2004, the Division advised petitioner that she did not “provide acceptable documentation to support the business income reported on [her] return.” Pursuant to a Notice of Disallowance dated August 27, 2004, the Division denied petitioner’s refund claim.

4. Petitioner’s 2003 return included a Federal schedule C. Petitioner reported \$30,160.00 in gross receipts, \$18,000.00 in expenses and thus \$12,160.00 in net profit from her hair salon business known as “D’Ana Beauty Salon.” The reported expenses include \$8,723.00 for rental or lease of business property, \$4,286.00 for supplies, \$2,684.00 for utilities, \$1,367.00 for uniforms and dry cleaning, and \$940.00 for telephone.

5. Petitioner began doing business as D'Ana Beauty Salon in May 2003. She leased premises at 106-04 Corona Avenue, Corona, New York. The lease required monthly rental payments of \$1,100.00 beginning May 1, 2003.

6. To substantiate her business income and expenses petitioner submitted an undated list of customers, copies of three 2005 checks from customers in payment to petitioner for services; a copy of a 2004 phone bill and a 2005 phone bill, a 2005 utilities receipt, and copies of eight receipts for purchases of supplies by petitioner's business, all but two dated 2004 or 2005.

7. Petitioner testified that, at one point, she kept a daily record of sales at her salon, but that she no longer had such records. She further testified that she did not turn any records over to her income tax preparer in connection with the preparation of her 2003 return.

8. Petitioner's daughter, Ana Maria Ramos, started as a full-time student at Computer Career Center, Rego Park, New York, in September 2003. She discontinued her enrollment in December 2003.

CONCLUSIONS OF LAW

A. Tax Law § 606(d) provides for a New York State earned income credit based on a percentage of the earned income credit allowed under section 32 of the Internal Revenue Code ("IRC"). 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 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 earnings from self-employment (*see*, IRC § 32[c][2]). Here, the Division denied petitioner's claim for earned income credit because she

failed to substantiate her business income as reported (*see*, Finding of Fact “3”). Thus, the issue in this matter is whether petitioner has sustained her burden of proof (*see*, Tax Law § 689[e]) to show that she had \$12,160.00 of earned income during the 2003 tax year.

C. Upon review of the record it is clear that petitioner has failed to show that she had \$12,160.00 of income from her beauty salon business in 2003 and has thus failed to establish entitlement to the earned income credit at issue. Petitioner offered no documentation of her beauty salon’s gross receipts in 2003 (*see*, Finding of Fact “6”). Furthermore, the accuracy of the amounts reported on petitioner’s 2003 return is properly subject to question since it is unclear from the record how the tax preparer determined the amount of income reported on the return (*see*, Finding of Fact “7”). With respect to petitioner’s claimed expenses for 2003, while the record supports the reported lease expense (*see*, Findings of Fact “4” and “5”), petitioner offered no documentation of any of her other expenses for 2003 (*see*, Finding of Fact “6”). Petitioner has thus failed to establish her net income from her beauty salon business for 2003.

D. At the hearing, the question of whether petitioner’s daughter Ana Maria Ramos was a qualifying child for purposes of the earned income credit was also discussed. Although this question is moot given petitioner’s failure to prove her 2003 earned income, it is noted that Ms. Ramos was not a qualifying child in 2003 because she was 19 years of age and was not a full-time student. A full time student is defined as one enrolled for five calendar months during the year (*see*, IRS Publication 596). Ms. Ramos was a student for only four calendar months in 2003 (*see*, Finding of Fact “8”) and therefore did not meet the definition of a full-time student for purposes of the earned income credit.

E. The petition of Ana A. Almonte is denied and the Division's Notice of Disallowance dated August 27, 2004 is sustained.

DATED: Troy, New York
November 30, 2006

/s/ Timothy J. Alston
PRESIDING OFFICER