

STATE OF NEW YORK

DIVISION OF TAX APPEALS

---

In the Matter of the Petition :  
of :  
**CARLINA A. WHITE** : DETERMINATION  
for Redetermination of a Deficiency or for Refund of New :  
York State and New York City Personal Income Taxes :  
under Article 22 of the Tax Law and the Administrative :  
Code of the City of New York for the Year 2005. :  
DETERMINATION  
DTA NO. 821616

---

Petitioner, Carlina A. White, filed a petition for redetermination of a deficiency or for refund of New York State and New York City personal income taxes under Article 22 of the Tax Law and the Administrative Code of the City of New York for the year 2005.

On October 10, 2007 and February 5, 2008, respectively, petitioner by Waverly Lane, Jr., Enrolled Agent, and the Division of Taxation by Daniel Smirlock, Esq. (Peter B. Ostwald, Esq., of counsel), waived a hearing and agreed to submit the matter for redetermination based upon documents and briefs to be submitted by July 8, 2008, which date commenced the six-month period for issuance of this determination. After review of the evidence and arguments presented, Winifred M. Maloney, Administrative Law Judge, renders the following determination.

***ISSUES***

I. Whether the Division of Taxation properly disallowed \$33.20 of petitioner's claimed \$1,540.00 New York State and New York City earned income credit on the basis that she failed to substantiate business expenses claimed on her federal Schedule C-EZ for the year 2005.

II. Whether the Division of Taxation properly disallowed petitioner's claimed \$483.00 child and dependent care credit for the year 2005.

***FINDINGS OF FACT***

1. On or before March 20, 2006, petitioner, Carlina A. White, electronically filed her New York State and City resident income tax return for the 2005 tax year. On the return, petitioner claimed head of household filing status and two dependent exemptions, one for her son, Carlian A. White, born in 2002, and the second for her brother, Avery D. McLean, born in 2000. Petitioner listed her occupation as administrative assistant on the tax return.

2. Petitioner's 2005 tax return reported New York adjusted gross income of \$11,877.00, which consisted of wages of \$633.00, business income of \$12,099.00, and an \$855.00 adjustment to income for 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 or city tax due. Petitioner's return claimed a refund of \$2,086.00, which included \$1,320.00 for the New York State earned income credit, \$220.00 for the New York City earned income credit, \$483.00 for the New York child and dependent care credit, and \$63.00 for the New York City school tax credit.

3. By letter dated March 20, 2006, petitioner was advised by the Division of Taxation (Division) that her income tax return for the year 2005 had been selected for review in order to "protect the integrity" of the claimed earned income and dependent care credits. In its letter, the Division requested that petitioner substantiate her wage and business income and that she had two qualifying dependents for earned income credit purposes. The letter also requested substantiation of the amount paid for child care expenses during the 2005 tax year.

4. On May 1, 2006, petitioner responded to the Division's letter. However, the Division found petitioner's response to be inadequate to prove her business income, the address at which her two qualifying dependents resided, and her qualifying child care expenses during the 2005 tax year. Accordingly, on July 28, 2006, the Division sent a Notice of Disallowance to petitioner advising her that the earned income and child and dependent care credits claimed on her 2005 income tax return were denied.<sup>1</sup>

5. Petitioner received \$633.00 in wage income in 2005 from the City University of New York. Petitioner attached a form W-2 to her electronically filed return documenting such wage income.

6. Petitioner also attached a Form IT-216, Claim for Child and Dependent Care Credit, to her 2005 tax return which reported \$1,225.00 in qualified child care expenses and identified First Union Baptist Church, 2046 Grand Concourse, Bronx, New York, as her son's care provider. Petitioner did not submit any cancelled checks or receipts reflecting payments for child care services during the year 2005.

7. Attached to petitioner's federal income tax return for the year 2005 was a Schedule C-EZ, Net Profit From Business, on which petitioner reported \$13,807.00 in gross receipts, \$1,708.00 in total expenses and a resulting net profit of \$12,099.00 from "secretarial services."

8. To substantiate her claim for the earned income credit, petitioner submitted a Form 1099-MISC indicating payment of \$13,807.00 in nonemployee compensation from Accountancy Lane, Ltd., a business owned and operated by petitioner's representative herein, Waverly Lane, Jr. Petitioner did not submit any books or records related to this nonemployee compensation.

---

<sup>1</sup> On March 21, 2006, the Division refunded to petitioner the City of New York school tax credit as claimed on her return, and therefore this item is not at issue in this proceeding.

9. Petitioner protested the denial of her claimed earned income and dependent care credits by filing a Request for Conciliation Conference with the Division's Bureau of Conciliation and Mediation Services (BCMS). Her representative appeared at the conciliation conference held on December 5, 2006, and submitted documentation showing that petitioner was entitled to claim her brother as a dependent, as well as her son, during the 2005 tax year. No documentation was submitted concerning petitioner's claimed business or child care expenses.

10. After reviewing its computer database of information return records and the documentation supplied by petitioner, the Division accepted that petitioner received wage income of \$633.00 and nonemployee compensation of \$13,807.00 during the 2005 tax year. It also allowed petitioner the two dependent exemptions claimed on her 2005 income tax return. The Division disallowed petitioner's claimed Schedule C-EZ business expenses and child and dependent care credit because she did not submit any documentation reflecting payments of any business related expenses or child care expenses during the 2005 tax year.

11. On March 9, 2007, BCMS issued a Conciliation Order (CMS No. 215209) to petitioner allowing her an earned income credit of \$1,506.80 (New York State earned income credit of \$1,313.80 plus New York City earned income credit of \$193.00), which amount was computed based upon a gross earned income figure of \$14,440.00.<sup>2</sup> The Conciliation Order disallowed the remainder of the claimed earned income credit in the amount of \$33.20 and the claimed child and dependent care credit in the amount of \$483.00 because petitioner failed to

---

<sup>2</sup> After deducting a standard deduction of \$10,500.00 and two exemptions totaling \$2,000.00 from federal adjusted gross income of \$14,440.00, the Division determined petitioner's New York taxable income to be \$1,940.00, and calculated New York State and City tax due on such taxable income in the amount of \$134.00 less New York State and City household credit of \$105.00, for a balance due of \$29.00. The Division also determined petitioner's allowable New York State and City earned income credit to be \$1,535.80 and subtracted the balance due of \$29.00 to arrive at a net earned income credit of \$1,506.80.

submit documentation necessary to verify the business and child care expenses claimed on her 2005 income tax return.

12. Petitioner did not submit any documentary evidence in support of her position.

#### ***CONCLUSIONS OF LAW***

A. Tax Law § 606(d)(1) provides that the New York State earned income credit for the 2005 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. . . .” The New York City earned income credit is equal to five percent of the federal earned income credit (*see* Tax Law § 1310[f][1]; Administrative Code of the City of New York § 11-1706[d][1]). Since the New York State and City earned income credits are determined based solely on a percentage of the federal credit, it is appropriate to refer to the provisions of the Internal Revenue Code (IRC) and federal case law 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 upon a determination of a taxpayer’s “earned income,” which includes, among other things, wage income and earnings from self-employment (IRC § 32[c][2][A]). Petitioner’s 2005 tax return claimed, among other things, a refund of a \$1,540.00 New York State and City earned income credit, which was disallowed by the Division on July 28, 2006. After a conciliation conference, BCMS issued a Conciliation Order to petitioner allowing a \$1,506.80 New York State and City earned income credit, but disallowing the remainder of the claimed earned income credit in the amount of \$33.20. In order to show that she was entitled to the earned income credit as claimed on her 2005 return, it was petitioner’s burden of proof (*see* Tax Law § 689[e]) to show that she had \$11,877.00 of earned income during the 2005 tax year.

C. As noted above, as a result of a review of its computer database information return records and documentation supplied to the conciliation conferee, the Division determined that petitioner received a total of \$14,440.00 in earned income during the year 2005, and computed the New York State and City earned income credit based upon that amount. In reaching its determination, the Division accepted that petitioner received wage income of \$633.00 and nonemployee compensation of \$13,807.00, to wit, the amount of gross receipts claimed on petitioner's Schedule C-EZ, during the 2005 tax year. However, the Division disallowed petitioner's claimed Schedule C-EZ business expenses of \$1,708.00 because no documentation was submitted to support such expenses. Although her petition challenged the Division's disallowance of the claimed business expenses and the reduction in the amount of the earned income credit allowed, petitioner failed to submit any documentation concerning these claimed business expenses. In fact, although the parties agreed to have this matter considered on submission, petitioner failed to respond at all. As such, petitioner has failed to meet her burden of proof to show that she incurred business expenses in the amount of \$1,708.00 associated with her activities as a self-employed administrative assistant during the year 2005 (*see* Tax Law § 689[e]).

D. The child and dependent care credit allowed pursuant to IRC § 21 is determined based upon 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. IRC § 21(c)(1) places a \$3,000.00 limitation on employment-related expenses for one qualifying dependent, and IRC § 21(d)(1)(A) further provides that employment-related expenses cannot exceed a taxpayer's earned income for the tax year.

In this case, the Division determined that petitioner's earned income was \$14,440.00 for the year 2005. However, petitioner failed to sustain her burden of proving that she spent \$1,225.00 on child care in 2005 as claimed on her return. Petitioner did not submit any receipts or cancelled checks to substantiate such child care. Since petitioner has failed to substantiate the child care expenses incurred in 2005, she is not entitled to claim the child and dependent care credit.

E. The petition of Carlina A. White is denied and the Division of Taxation's Notice of Disallowance dated July 28, 2006, as modified by the Conciliation Order (CMS No. 215209) dated March 9, 2007, is sustained.

DATED: Troy, New York  
October 2, 2008

/s/ Winifred M. Maloney  
ADMINISTRATIVE LAW JUDGE