

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
QIN SHU LIN	:	DETERMINATION
		DTA NO. 823823
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 2008.		

Petitioner, Qin Shu Lin, 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 2008.

On December 28, 2011 and January 11, 2012, respectively, petitioner, appearing pro se, and the Division of Taxation, appearing by Mark F. Volk, Esq. (Marvis A. Warren, Esq., of counsel), waived a hearing and agreed to submit this matter for determination based upon documents and briefs to be submitted by June 8, 2012, which date began 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.

ISSUE

Whether the Division of Taxation properly denied petitioner's claimed earned income credit for the year 2008.

FINDINGS OF FACT

1. Petitioner, Qin Shu Lin, timely filed her 2008 New York State and City resident personal income tax return. On the return, petitioner claimed head of household filing status and two dependent exemptions. Petitioner did not list an occupation on the tax return.

2. Petitioner's 2008 tax return reported federal and New York adjusted gross income of \$11,328.00, which consisted of wages in that amount. 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 \$1,731.00, which included \$1,359.00 for the New York State earned income credit, \$227.00 for the New York City earned income credit and \$145.00 for the New York City school tax credit.¹

3. On the Form IT-215, Claim for Earned Income Credit, attached to her 2008 tax return, petitioner indicated that she had two qualifying children whom she claimed on her 2008 federal schedule EIC: Yu Qing Lin, born in 1988, and Hang Lin, born in 1986.

4. Petitioner attached a Form IT-2, Summary of W-2 Statements, to her 2008 tax return that indicated that He & Jian, Inc., Peachtree Parkway, Peachtree City, Georgia, employed Qin Shu Lin, and reported wages in the amount of \$11,328.00 for the year 2008.

5. After conducting a desk audit of petitioner's 2008 income tax return, the Division of Taxation (the Division) issued a Notice of Disallowance, dated February 5, 2010, denying a portion of petitioner's refund claim for the year 2008 in the amount \$1,586.00. The notice stated, in part, as follows:

We have reviewed the correspondence sent in as a reply to our recent account adjustment notice. We have determined that the additional refund requested on

¹ The New York City school tax credit is not at issue in this matter.

your return for the tax year shown above cannot be allowed based on the information you provided.

Since your response to our notice did not include all of the required documentation to verify the wage income claimed on your return, the Earned Income Credit has been disallowed.

Since you failed to provide proof that Yu Qing was a full time student during the year 2008, you have not proven he/she is your qualifying child. Therefore, the Earned Income Credit cannot be allowed.

6. Petitioner filed a Request for Conciliation Conference, dated February 19, 2010, seeking review of the Notice of Disallowance of her refund claim for the year 2008. Attached to that request was an Enrollment Verification letter, dated February 15, 2010, issued by Angela Kuc, University of Buffalo Student Response Center. This enrollment verification letter confirmed that Yu Qing Lin was a full-time student during the Spring 2008 semester.

7. A Bureau of Conciliation and Mediation Services (BCMS) conciliation conference was scheduled to be held in the above matter on July 15, 2012. However, neither petitioner nor a duly appointed representative of petitioner appeared at the conciliation conference. Therefore, by Conciliation Default Order (CMS No. 237471) dated August 13, 2010, the statutory notice was sustained and petitioner's request was dismissed.

8. In her petition filed with the Division of Tax Appeals, petitioner asserts that she has her child's birth certificate to prove that she was her qualifying child, and her child's college enrollment verification to prove that she was a full-time student in 2008. Petitioner also asserts that she has the check stubs from her employer to verify the wage income reported on her 2008 resident income tax return.

9. The Division submitted the affidavit of Edward Czosnykowski, an Income Tax Technician IV in the Division's Income/Franchise Desk Audit Bureau. Mr. Czosnykowski's

responsibilities include supervising income tax desk audits. In addition, he supervises and reviews income tax credit and refund claims. Mr. Czosnykowski was unable to verify petitioner's wage income on the Division's computerized Wage Reporting and Withholding System (System) that shows all employers for a particular taxpayer. He inputted petitioner's social security number into the System and the System responded with no employers for her. When the System indicates that there are no employers, it means that either the taxpayer is not working for an employer or the employer is not reporting or filing withholding tax returns in New York State.

10. Petitioner submitted no documents or brief.

11. In its letter in lieu of a brief, the Division conceded that petitioner had two qualifying children for earned income credit purposes.

CONCLUSIONS OF LAW

A. Tax Law § 606(d)(1) provides that the New York State earned income credit for the 2008 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 salaries

(IRC § 32[c][2][A]). Since the Division has conceded that petitioner had two qualifying children for earned income credit purposes, the only issue to be addressed herein is whether petitioner has sustained her burden of proof (*see* Tax Law § 689[e]) to show that she generated \$11,328.00 of earned income during the year 2008 from her employment by He & Jian, Inc.

C. As noted above, a Form IT-2, Summary of W-2 Statements, was attached to petitioner's 2008 income tax return, that indicated that petitioner was employed by He & Jian, Inc., and earned wage income in the amount of \$11,328.00 during the year 2008. Following a desk audit, the Division disallowed the earned income credit because it could not verify petitioner's wage income based on the documentation submitted by petitioner. Mr. Czosnykowski's affidavit establishes that the Division searched its computerized Wage Reporting and Withholding System for wage and withholding information for petitioner and found no employers for her. As such, the Division was unable to verify petitioner's wage income for the year 2008. Although petitioner, in her petition, claimed to have documentation regarding her wage income for the year 2008, she failed to submit any documentation concerning such wage income. 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 to show that she earned wage income in the amount of \$11,328.00 from her employment by He & Jian, Inc., during the year 2008 (*see* Tax Law § 689[e]).

D. Since the earned income credit is computed based upon a percentage of a taxpayer's earned income, it is imperative that the amount of earned income be established in order to determine the taxpayer's allowable credit. In the instant matter, petitioner has failed to substantiate the amount of earned income received in 2008, and therefore she is not entitled to claim the earned income credit (*Blore v. Commr.*, 80 TCM 559 [2000]).

E. The petition of Qin Shu Lin is denied, and the Notice of Disallowance dated February 5, 2010 is sustained.

DATED: Troy, New York
November 1, 2012

/s/ Winifred M. Maloney
ADMINISTRATIVE LAW JUDGE