

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
TAMMY CARROLL	:	DECISION
	:	DTA NO. 826997
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 2013.	:	

Petitioner, Tammy Carroll, filed an exception to the determination of the Administrative Law Judge issued on April 13, 2017. Petitioner appeared pro se. The Division of Taxation appeared by Amanda Hiller, Esq. (Christopher O'Brien, Esq., of counsel).

Petitioner filed a letter brief in support of her exception. The Division of Taxation filed a letter brief in opposition. Petitioner did not file a reply brief. Oral argument was not requested. The six-month period for issuance of this decision commenced on December 5, 2017, the date that petitioner's reply brief was due.

After reviewing the entire record in this matter, the Tax Appeals Tribunal renders the following decision.

ISSUE

Whether the Division of Taxation properly disallowed the child and dependent care credit claimed by petitioner for tax year 2013.

FINDINGS OF FACT

We find the facts as determined by the Administrative Law Judge. Those findings of fact are set forth below.

1. Petitioner electronically filed with the Division of Taxation (Division) a New York State resident personal income tax return for 2013 claiming head of household filing status. Petitioner reported New York adjusted gross income of \$11,588.00. After subtracting the standard deduction and three dependent exemptions from the reported income, petitioner reported no taxable income and no personal income tax due. Petitioner claimed a child and dependent care credit in the amount of \$1,155.00, in addition to other credits, resulting in a claim for refund in the amount of \$3,607.00.

2. Attached to petitioner's 2013 return was form IT-216, claim for child and dependent care credit, wherein petitioner reported child care expenses paid to Natia Carroll in the amount of \$3,000.00.

3. On February 18, 2014, the Division sent correspondence to petitioner requesting additional information to support petitioner's claim for the child and dependent care credit, including proof of the claimed dependent's relationship and residence, and proof of the expenses claimed.

4. In response to the Division's request for additional information, petitioner submitted to the Division a letter from her son's school, dated February 24, 2014, verifying his attendance and listing the same address for him as that of petitioner, a birth certificate for the claimed dependent indicating a birth date of January 7, 2003, and a notarized letter from Natia Carroll dated February 25, 2014, stating that she babysits petitioner's son and that petitioner pays her \$250.00 a month.

5. By correspondence dated May 12, 2014, the Division denied the child and dependent care credit. The correspondence stated the following basis for the denial:

“The hand written letter that you provided from your care provider, Natia Carrol [sic], to substantiate the child care expenses cannot be verified, and alone does not substantiate the expenses claimed.

To qualify for the child and dependent care credit, you must provide adequate documentation to support the expenses reported on the return. You must be able to prove that you yourself actually paid someone to care for your child or dependent.

Acceptable documentation for the expenses claimed are copies of the front and back of canceled checks, money orders and/or verifiable receipts for payment of child or dependent care services issued by the day care service provider that include the provider’s name, address where the services were provided, telephone number, and the amount of payment.

Based on the above, the Dependent Care Credit has been disallowed.”

6. The Division issued a notice of disallowance, dated July 8, 2014, disallowing petitioner’s claimed dependent care credit in the amount of \$1,155.00.

7. On or about September 25, 2015, petitioner submitted to the Division 17 handwritten receipts from January 11, 2013 through August 23, 2013, indicating that Natia Carroll received from petitioner \$150.00 biweekly, totaling \$2,550.00. The receipts state that they are for “child care for Norman Carroll.”

THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE

The Administrative Law Judge began her determination by setting forth the statute providing for the New York State child and dependent care credit, Tax Law § 606 (c) (1). The Administrative Law Judge noted that the amount of the credit is determined by reference to the corresponding federal credit arising under section 21 of the Internal Revenue Code (IRC) and determined that it would be proper to refer to the IRC to determine petitioner’s eligibility for the New York State credit.

The Administrative Law Judge noted that the only issue in controversy was whether petitioner provided sufficient documentation to substantiate whether she paid child care expenses

in 2013 and, if so, the amount of expenses paid. The Administrative Law Judge observed that the only documentation petitioner provided were handwritten biweekly receipts from January through August 2013, for \$150.00 each, totaling \$2,500.00 and a notarized letter from Natia Carroll dated February 25, 2014, stating that she babysits petitioner's son and that petitioner pays her \$250.00 a month. The Administrative Law Judge characterized the documentation provided as inconsistent, in that the amounts petitioner claimed she paid Natia Carroll did not equal the amount Natia Carroll claims to have received or the amount of child care expenses reported on petitioner's 2013 income tax return. Because petitioner provided no explanation for the discrepancy, the Administrative Law Judge concluded that petitioner failed to sustain her burden of proof in establishing her entitlement to the child and dependent care credit.

Thus, the Administrative Law Judge denied the petition and sustained the notice of disallowance dated July 8, 2014.

SUMMARY OF ARGUMENTS ON EXCEPTION

Petitioner argues that the documentation she provided in response to the request for additional information satisfies her burden in demonstrating entitlement to the child and dependent care credit. She asks this Tribunal to review the record and to find that she had sufficiently substantiated her claim for the credit.

The Division argues that the documentation petitioner provided did not clearly and convincingly show her entitlement to the child and dependent care credit because the documentation provided was not verifiable. It notes that because a taxpayer bears the burden of proving entitlement to a tax credit, the determination of the Administrative Law Judge to sustain the notice of disallowance and deny the petition should be affirmed.

OPINION

We affirm the determination of the Administrative Law Judge.

We observe that under the Tax Law, a petitioner bears the burden of proof in any case before the Division of Tax Appeals, except where that burden has been specifically allocated to the Division (Tax Law § 689 [e]; 20 NYCRR 3000.15 [d] [5]). The burden of proof is on the taxpayer to show by clear and convincing evidence that the determination made by the Division was erroneous (*see Leogrande v Tax Appeals Trib.*, 187 AD2d 768 [3d Dept 1992], *lv denied* 81 NY2d 704 [1993]; *see also Scarpulla v State Tax Commn.*, 120 AD2d 842 [3d Dept 1986]). Here, the only dispute is whether the evidence petitioner provided clearly and convincingly demonstrated that she paid the amount of child care expenses that she claimed on her 2013 New York State personal income tax return. We agree with the Division that the record demonstrates that petitioner's submissions did not meet this standard. As the Division observed in its letter brief, the unnumbered receipts that petitioner submitted had no supporting evidence, which is especially important where those receipts do not equal the amount claimed by petitioner as the amount she paid for dependent care expenses. Without more, we agree with the Administrative Law Judge that petitioner failed to meet her burden of demonstrating her entitlement to the dependent and child care credit under Tax Law § 606 (c) (1).

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Tammy Carroll is denied;
2. The determination of the Administrative Law Judge is affirmed;
3. The petition of Tammy Carroll is denied; and
4. The Division's notice of disallowance dated July 8, 2014 is sustained.

DATED: Albany, New York
May 18, 2018

/s/ Roberta Moseley Nero
Roberta Moseley Nero
President

/s/ Dierdre K. Scozzafava
Dierdre K. Scozzafava
Commissioner

/s/ Anthony Giardina
Anthony Giardina
Commissioner