

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

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In the Matter of the Petition :  
of :  
**SIDI O. TIYEB AND** : DECISION  
**LALLA ABDEL WAHAB** : DTA NO. 829649  
:  
for Redetermination of Deficiencies or for Refund of New  
York State and City Personal Income Tax under Article 22 :  
of the Tax Law and the Administrative Code of the City  
of New York for the Years 2015, 2016, and 2017. :

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Petitioners, Sidi O. Tiyeb and Lalla Abdel Wahab, filed an exception to the determination of the Administrative Law Judge issued on June 2, 2022. Petitioners appeared pro se. The Division of Taxation appeared by Amanda Hiller, Esq. (Michael Trajbar, Esq., of counsel).

Petitioners filed a brief in support of the exception. The Division of Taxation filed a letter brief in opposition. Petitioners did not file a reply brief. Neither party requested oral argument. The six-month period for the issuance of this decision began on August 23, 2022, the due date for petitioners' reply brief.

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

***ISSUES***

I. Whether the Division of Taxation properly disallowed the earned income credit claimed by petitioners for the years 2015, 2016 and 2017.

II. Whether the Division of Taxation properly disallowed petitioners' claimed Empire State child credit for the year 2017.

***FINDINGS OF FACT***

We find the facts as determined by the Administrative Law Judge. We have added footnote 1 and modified footnote 2 (footnote 1 in the determination) to reflect the record more fully. As so modified, the facts appear below.

1. Petitioner, Sidi O. Tiyeb, timely filed a New York State resident income tax return, form IT-201, for the year 2015 (2015 return), as head of household, reporting one dependent exemption. Petitioner calculated and reported total New York State and City taxes due, in the amount of \$623.00, versus payment and refundable credits in the amount of \$1,276.00, thus resulting in an overpayment in the amount of \$653.00 that was claimed and paid as a refund to petitioner. The \$1,276.00 consisted of a New York State earned income credit in the amount of \$748.00, a New York City school tax credit in the amount of \$63.00, a New York City earned income credit in the amount of \$135.00, and an Empire State child credit in the amount of \$330.00.

2. Attached to petitioner's 2015 return was a schedule C, Profit or Loss from Business, which reported gross receipts in the amount of \$118,683.00 and total expenses in the amount of \$94,736.00, resulting in net profit in the amount of \$23,947.00. The schedule C described the business as a "taxi and limousine service" and reported its name as Unter LLC with an address in San Francisco, California.

3. Also attached to petitioner's 2015 return was form IT-215, claim for earned income credit, and form IT-213, claim for Empire State child credit, listing the claimed dependent, with a date of birth as December 16, 2010.

4. Petitioners, Sidi O. Tiyeb and Lalla Abdel Wahab, timely filed a New York State resident income tax return, form IT-201, for the year 2016 (2016 return) as married joint return,

reporting two dependent exemptions. Petitioners calculated and reported total New York State and City taxes due in the amount of \$295.00, versus payment and refundable credits in the amount of \$2,656.00, thus resulting in an overpayment in the amount of \$2,361.00 that was claimed and paid as a refund to petitioners. The \$2,656.00 consisted of a New York State earned income credit in the amount of \$1,592.00, a New York City school tax credit in the amount of \$125.00, a New York City earned income credit in the amount of \$279.00, and an Empire State child credit in the amount of \$660.00.

5. Attached to petitioners' 2016 return was a schedule C, Profit or Loss from Business, which reported gross receipts in the amount of \$110,235.00 and total expenses in the amount of \$85,088.00, resulting in net profit in the amount of \$25,147.00. The schedule C described the business as a "taxi and limousine service" and reported its name as Unter LLC with an address in San Francisco, California.

6. Also attached to petitioners' 2016 return were form IT-215, claim for earned income credit, and form IT-213, claim for Empire State child credit, listing the two claimed dependents, with the dates of birth as December 16, 2010 and February 27, 2004.

7. Petitioners timely filed a New York State resident income tax return, form IT-201, for the year 2017 (2017 return) as married joint return, reporting four dependent exemptions. Petitioners calculated and reported total New York State and City taxes due in the amount of \$576.00, versus payment and refundable credits in the amount of \$3,224.00, thus resulting in an overpayment in the amount of \$2,648.00 that was claimed and paid as a refund to petitioners. The \$3,224.00 consisted of a New York State earned income credit in the amount of \$1,541.00, a New York City school tax credit in the amount of \$140.00, a New York City earned income credit in the amount of \$264.00, and an Empire State child credit in the amount of \$1,279.00.

8. Attached to petitioners' 2017 return was a schedule C, Profit or Loss from Business, which reported gross receipts in the amount of \$115,164.00 and total expenses in the amount of \$84,143.00, resulting in net profit in the amount of \$31,021.00. The schedule C described the business as a "taxi and limousine service" and reported its name as Uber Technologies Inc., with an address in San Francisco, California.

9. Also attached to petitioners' 2017 return were form IT-215, claim for earned income credit, listing three of the four claimed dependents, and form IT-213, claim for Empire State child credit, listing the four claimed dependents, with the dates of birth as December 16, 2010, September 3, 2008, October 30, 2006, and February 27, 2004. The oldest dependent was not listed on form IT-215.

10. Petitioner's 2015 return and petitioners' 2016 and 2017 returns were selected for a desk audit by the Division after the issuance of the requested refunds. Petitioners were asked to substantiate the credits claimed on their tax returns. Although petitioners substantiated their claimed business income, they were unable to substantiate all their claimed expenses and, thus, the Division disallowed the earned income credits for all three years.

11. On October 10, 2018, the Division issued a statement of proposed audit change for tax year 2015 (2015 statement), that stated, in part, as follows:

"We have reviewed the information you sent in as a response to our audit inquiry letter for tax year 2015.

Based on the available tax department records, you are allowed the business income as claimed on your Federal Schedule C.

You are also allowed \$24,461 in commissions and fees, \$8,478 in taxes and licenses, \$5,404 in tolls, \$2,624 in black car fund, \$27 in drug test fee and \$49 in safe ride split fare.

We disallowed lease of \$33,800 since you did not provide copies of cashed checks along with bank statements to substantiate that you rented the vehicle.

Since you did not provide any documentation, we allowed you \$5,616 (52 weeks x \$108/week) in gas and \$520 (52 weeks x \$10 per week) in car wash.

The rest of the expenses such as DDC, cell phone, device fee, MISC, and parking are disallowed since you did not provide any documentation to substantiate these expenses.

We adjusted your return to allow \$71,504 in net income. You are allowed \$5,049 in one half of self employment tax deduction as federal adjustment to income.”

The Division disallowed the New York State and City earned income credit since petitioner’s federal adjusted gross income was increased. The Division allowed both the Empire State child credit and the New York City school tax credit as claimed.

12. The Division issued a notice of deficiency, assessment number L-048872041, to petitioner, dated November 27, 2018, asserting tax due of \$5,109.00 plus interest for tax year 2015 (2015 notice).

13. On October 10, 2018, the Division issued a statement of proposed audit change for tax year 2016 (2016 statement) to petitioners, that stated, in part, as follows:

“We have reviewed the information you sent in as a response to our audit inquiry letter for tax year 2016.

You are allowed the business income as claimed on your Federal Schedule C based on the copies of Form 1099-K and 1099-MISC provided.

You are also allowed \$26,204 in commissions and fees, \$7,250 in taxes and licenses, \$3,148 in tolls, \$2,247 in black car fund, \$26 in drug test fee and \$33 in safe ride split fare.

We disallowed lease of \$31,200 since you did not provide copies of cashed checks along with bank statements to substantiate that you rented the vehicle.

Since you did not provide any documentation, we allowed you \$4,374 (9 x 4.5 weeks/month x \$108/weeks) in gas and \$405 (9 x 4.5 weeks/month x \$10) in car

wash based upon 9 months you worked as a UBER driver which shows on the 1099-K Form you provided.

The rest of the expenses such as DDC, cell phone, device fee, Misc, and parking are disallowed since you did not provide any documentation to substantiate these expenses.

We adjusted your return to allow \$66,548 in net income. You are allowed \$4,699 in one half of self employment tax deduction as federal adjustment to income.”

The Division disallowed the New York State and City earned income credit since petitioner’s federal adjusted gross income was increased. The Division allowed both the Empire State child credit and the New York City school tax credit as claimed.

14. The Division issued a notice of deficiency, assessment number L-048872042, to petitioners, dated November 27, 2018, asserting tax due of \$5,150.00 plus interest and penalty for tax year 2016 (2016 notice).

15. On October 5, 2018, the Division issued a statement of proposed audit change for tax year 2017 (2017 statement) to petitioners, that stated, in part, as follows:

“We have reviewed the information you sent in response to our inquiry letter. Our letter specifically asked that you provide verifiable information to document your earned income and any qualifying dependents claimed. The information you provided was either incomplete or unverifiable.

We have allowed the gross business income of \$115,164.00 as reported on your schedule C.

Based on the receipts provided, you paid \$500.00 - \$550.00 per week for vehicle lease. We have allowed \$27,300.00 for lease expenses.

All other expenses have been disallowed at this time because you did not provide valid proof of payment, or they are not deductible business expenses. The net business income has been adjusted to \$87,864.00. The 1/2 self-employment tax deduction has been adjusted accordingly.

You did not provide valid address verification for the dependents claimed on your return. Therefore, they have been disallowed as qualifying children, and the Empire State child credit has been disallowed.

The earned income credit has been adjusted based on your verified earned income with no qualifying children.<sup>1</sup>

You have been allowed the New York city school tax credit.”

The Division has conceded that petitioners have four qualifying children despite this language contained in the 2017 statement.

16. The Division issued a notice of deficiency, assessment number L-048862724, to petitioners, dated November 21, 2018, asserting tax due of \$5,221.00, plus interest and penalty for the tax year 2017 (2017 notice).

17. Petitioners filed a request for conciliation conference (request) with the Bureau of Conciliation and Mediation Services in protest of the three notices. A conciliation conference was held on June 5, 2019, and a conciliation order, CMS No. 305453, dated August 2, 2019, was issued to petitioners denying their request and sustaining the notices. Thereafter, on October 7, 2019, petitioners filed a timely petition with the Division of Tax Appeals.

18. At the hearing in this matter, petitioner testified that he was not given credit for lease payments made for cars that he used while driving for Uber for the years 2015 and 2016.<sup>2</sup> He requested, and was granted, the opportunity to submit cancelled checks, post hearing, for the years 2015 and 2016 to verify these lease payments. This evidence was received on August 24, 2021.

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<sup>1</sup> The adjustment reduced petitioners' earned income credit to zero.

<sup>2</sup> As noted, petitioners were given credit for lease payments of \$27,300.00 for the 2017 tax year (*see* finding of fact 15).

For the year 2015, petitioners submitted 47 cancelled checks for payments made to lease a vehicle. All 47 checks can be verified through the Chase checking account bank statements for the year that were attached to their petition. These 47 checks represent payments made in the amount of \$21,291.00.

For the year 2016, petitioners submitted 34 cancelled checks for payments made to lease a vehicle. All 34 checks can be verified through the Chase checking account bank statements for the year that were attached to their petition. These 34 checks represent payments in the amount of \$19,075.00.

#### ***THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE***

The Administrative Law Judge found that petitioners established vehicle lease payments of \$21,291.00 for 2015 and \$19,075.00 for 2016 and directed the Division to modify the notices of deficiency for those years accordingly. The Administrative Law Judge found that petitioners did not prove any other disallowed expenses with respect to any of the years at issue. The Administrative Law Judge also found that petitioners were entitled to Empire State child credit for 2017 in the minimum amount of \$100.00 for each of their four children and directed the Division to modify petitioners' 2017 notice of deficiency accordingly.

#### ***ARGUMENTS ON EXCEPTION***

Petitioners assert that they provided all requested documentation and request that we grant their petition. The Division agrees with the Administrative Law Judge's modifications to the subject notices of deficiency and requests that we affirm the determination.<sup>3</sup>

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<sup>3</sup> The Division also objected to petitioners' inclusion of documents with their exception. According to petitioners, the documents so included are copies of documents previously submitted to the Division and to the Administrative Law Judge. We have not considered such documents in reaching our decision in this matter in accordance with our well-established rule (*see e.g. Matter of Richardson*, Tax Appeals Tribunal, November 17, 2022).



**OPINION**

Tax Law § 681 (a) authorizes the Division to issue a notice of deficiency “[i]f upon examination of a taxpayer’s return . . . [it] determines that there is a deficiency of income tax.” A taxpayer may protest such a notice by timely filing a petition in the Division of Tax Appeals (Tax Law § 689 [b]). A presumption of correctness attaches to a properly issued notice of deficiency and the petitioner bears the burden of proving that the deficiency is erroneous (Tax Law § 689 [e]; 20 NYCRR 3000.15 [d] [5]; *Matter of Gilmartin v Tax Appeals Trib.*, 31 AD3d 1008, 1010 [3d Dept 2006]).

Tax Law § 606 (d) provides for a New York State earned income credit for tax years at issue equal to 30% “of the earned income credit allowed under section thirty-two of the internal revenue code for the same taxable year . . . .” Tax Law § 1310 (f) provides for a credit equal to 5% “of the earned income credit allowed under section thirty-two of the internal revenue code for the same taxable year . . . .” for New York City residents.

Petitioners’ eligibility for the New York State and New York City earned income credits thus depends upon their eligibility for the credit under the Internal Revenue Code (IRC) (26 USC) § 32. Eligibility for the federal credit and the amount of the federal credit depend on several factors, one of which is having “earned income” within certain limitations (IRC [26 USC] § 32). Earned income means income from work, such as wages or net earnings from self-employment (IRC [26 USC] § 32 [c] [2]). Petitioner’s net earnings from his self-employment as an Uber driver is thus considered earned income. The amount of available credit varies depending on the number of “qualifying children” that the claimant has (IRC [26 USC] § 32 [b]). A qualifying child includes a minor child who resides with the taxpayer (IRC [26 USC] §§ 32 [c] [3], 152 [c]).

Regarding petitioners' claimed Empire State child credit, Tax Law § 606 (c-1) provides for a credit equal to the greater of \$100.00 times the number of qualifying children of the taxpayer or the applicable percentage of the child tax credit allowed the taxpayer under IRC (26 USC) § 24 for the same taxable year for each qualifying child. Under IRC (26 USC) § 24, a taxpayer may claim a child tax credit for an individual who is their "qualifying child" as defined in IRC (26 USC) § 152 (c) and has not attained the age of 17 during the taxable year (IRC [26 USC] § 24 [a], [c]).

As noted, the Administrative Law Judge determined that petitioner had vehicle lease expenses of the amount of \$21,291.00 and \$19,075.00 in 2015 and 2016, respectively (*see* finding of fact 18). Petitioners have not shown that any other adjustments for those years are warranted. Accordingly, the Division is directed to recompute petitioners' income tax liability for the 2015 and 2016 tax years to reflect such expenses. As part of such recomputation, the Division is directed to calculate petitioners' available New York State and New York City earned income credit, if any, at the modified adjusted gross and earned income amounts resulting from those adjustments.

For 2017, the Administrative Law Judge determined that petitioners had four qualifying children for purposes of the Empire State child credit. Petitioners have not shown that any other adjustments for that year are warranted. The Division is directed to recompute petitioners' tax liability for 2017 accordingly. As part of such recomputation, the Division is directed to calculate petitioners' Empire State child credit and also petitioners' New York State and New York City earned income credit, if any, with four qualifying children.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Sidi O. Tiyeb and Lalla Abdel Wahab is denied;

2. The determination of the Administrative Law Judge is affirmed;
3. The petition of Sidi O. Tiyeb and Lalla Abdel Wahab is granted to the extent indicated in the determination of the Administrative Law Judge, but is otherwise denied; and
4. The notices of deficiency, as modified by the determination of the Administrative Law Judge, are sustained and the Division is directed to recompute petitioners' liability for the years at issue in accordance with this decision.

DATED: Albany, New York  
February 16, 2023

/s/ Anthony Giardina  
Anthony Giardina  
President

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

/s/ Cynthia M. Monaco  
Cynthia M. Monaco  
Commissioner