

STATE OF NEW YORK
TAX APPEALS TRIBUNAL

In the Matter of the Petition

of

**MOHAMMAD IKHMAES AND
MARWA IKHMAYES**

DECISION
DTA NO. 829693

for Redetermination of a Deficiency or for Refund of New
York State and New York City Personal Income Tax under
Article 22 of the Tax Law and the Administrative Code of the
City of New York for the Year 2016.

Petitioners, Mohammad Ikhmaes and Marwa Ikhmayes, filed an exception to the determination of the Administrative Law Judge issued on April 14, 2022. Petitioners appeared pro se. The Division of Taxation appeared by Amanda Hiller, Esq. (Maria Matos, Esq., of counsel).

Petitioners did not file a brief in support of the exception. The Division of Taxation filed a letter brief in opposition. Petitioners did not file a reply brief. Petitioners' request for oral argument was denied. The six-month period for the issuance of this decision began on July 22, 2022, the due date for petitioners' reply brief.

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

ISSUE

Whether petitioners have sustained their burden of proving entitlement to their claims for the New York State and New York City earned income credits and the Empire State child credit.

FINDINGS OF FACT

We find the facts as determined by the Administrative Law Judge. Those facts appear below.

1. On February 7, 2017, petitioners, Mohammad Ikhmaes and Marwa Ikhmayes, filed a joint New York State and New York City personal income tax return for tax year 2016 (the return) on which they claimed five children as dependents with ages ranging from six months to ten years of age as of December 31, 2016. Petitioners reported \$35,320.00 of self-employment income and reported New York State and New York City tax of \$475.00 and \$345.00, respectively. Attached to the return is a schedule C for Mr. Ikhmaes, which reports gross receipts of \$35,320.00 with no corresponding expenses. The business name listed on the schedule C is Alsihan Halal Meat Market, Inc. A South Ozone Park address is listed for the business address. The return lists petitioner Mohammad Ikhmaes' occupation as an HVAC contractor, and petitioner Marwa Ikhmayes' occupation as a housewife.

2. Petitioners reported no tax withheld but claimed the New York State earned income credit of \$1,307.00, the New York City earned income credit of \$218.00, the Empire State child credit of \$886.00, and New York City school tax credit of \$125.00, resulting in a \$1,716.00 refund. This refund claimed on the return was paid.

3. On September 27, 2018, the Division of Taxation (Division) sent petitioners an audit inquiry letter requesting verification of the dependents claimed and income reported on the return. Petitioners did not respond.

4. Because petitioners did not respond to the Division's September 27, 2018 audit inquiry letter, a statement of proposed audit changes dated November 29, 2018 was issued to petitioners that asserted tax due of \$2,757.00 plus interest. The amount asserted due is comprised

of tax due on the income reported on the return without allowance of dependency deductions and disallowance of all credits claimed except for the New York City school tax credit.

5. On January 15, 2019, the Division issued a notice of deficiency, notice number L-049211985, asserting tax due of \$2,757.00 plus interest (the notice). The amount asserted due is based upon disallowance of all the credits claimed on the return plus tax on the reported income with no dependents. On July 12, 2019, a notice of adjusted assessment was issued modifying the notice to assert tax of \$1,591.00. The \$1,591.00 of tax asserted is based upon disallowance of all credits except for the New York City school tax credit of \$125.00.

6. Following a conciliation conference in the Division's Bureau of Conciliation and Mediation Services, the notice, as modified by the July 12, 2019 notice of adjusted assessment, was sustained by conciliation order dated September 20, 2019.

7. Included in the hearing record is a 2016 form 1120 US Corporation Income Tax Return for Alsihan Halal Meat Market, Inc. (the 1120). Mr. Ikhmaes is listed as the corporation's sole shareholder. The 1120 lists the same address and employer identification number for this entity as that listed on Mr. Ikhmaes' schedule C. The 1120 reports gross receipts of \$25,497.00 and cost of goods sold of \$32,289.00. No deductions for salaries and wages or compensation to officers are claimed.

8. At the hearing in this matter, Mr. Ikhmaes testified that he operated Alsihan Halal Meat Market and made \$32,824.00 during 2016 but had no business records from this business as it ceased operating. He also blamed his tax preparer for petitioners' failure to respond to the Division's inquiry letter or otherwise submit any documentation.

9. At the conclusion of the hearing, the record was left open for petitioners to submit documentation to verify the children claimed on their return as dependents and to submit

documentation establishing their income alleged to have been earned in 2016. To that end, petitioners submitted student historical profile reports from the New York City Public school records for 2016 for three of the five children claimed. The school records confirm that the three children were ages 6, 8 and 10 during 2016 and that they lived at the same address as petitioners. Petitioner Marwa Ikhmayes is listed on the school records as each child's guardian. Petitioners also submitted a letter from the children's physician confirming that petitioners were the children's parents and their address. The letter lists the five children claimed on the return. The letter does not specify the children's respective dates of birth.¹ Finally, petitioners submitted a satisfaction of judgment for an assessment issued to Mr. Ikhmaes as responsible person of Alihsan Halal Meat Market, Inc.²

THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE

The Administrative Law Judge determined that petitioners failed to establish that they had earned income during 2016. He noted the irregularity of reported gross receipts and a lack of any reported expenses on the schedule C for petitioner's business, Alsihan Halal Meat Market, Inc.; the absence of any other records of that business in evidence; and the presence of a corporate return for the same apparent business that does not report any compensation of officers or wages. The Administrative Law Judge thus concluded that the Division's denial of petitioners' claimed earned income credit was proper.

As to the claimed Empire State child credit, the Administrative Law Judge determined that petitioners established that three of the five dependents claimed on their return were

¹ Based upon this documentation, the Division has conceded that petitioners are entitled to an Empire State child credit of \$300.00 based upon substantiating three of the five dependents claimed on the return.

² Petitioners did not explain the relevance of the satisfaction of judgment nor is its relevance readily apparent.

“qualifying children” for purposes of the credit. The Administrative Law Judge also determined, however, that petitioners failed to provide any documentation with respect to the remaining two claimed dependents and thus failed to establish that such other persons were “qualifying children” for purposes of the credit. Accordingly, the Administrative Law Judge directed the Division to further modify the deficiency to allow an Empire State child credit of \$300.00 (\$100.00 per qualifying child).

ARGUMENTS ON EXCEPTION

Petitioners claim that they had self-employment income and that all five of their claimed dependents were qualifying children for purposes of the Empire State child credit during the year at issue. With their exception, petitioners submitted a copy of a birth certificate, copies of passports for two minor children, and a letter from a doctor referencing the same two minor children.

The Division agrees with the determination in all respects.

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, generally, for a New York State earned income credit for the 2016 tax year equal to 30% “of the earned income credit allowed under section thirty-two of the

internal revenue code for the same taxable year” less the household credit permitted under Tax Law § 606 (b). Tax Law § 1310 (f) provides for a similar 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.³

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]). The amount of available credit varies depending on the number of “qualifying children” that the claimant has (IRC [26 USC] § 32 [c] [2]). A qualifying child includes a minor child who resides with the taxpayer (IRC [26 USC] §§ 32 [c] [3], 152 [c]).

We agree with the Administrative Law Judge that petitioners have not established the amount of their earned income in 2016 and that, accordingly, their claim for earned income credits must be denied. The credibility of the gross receipts and net profits amounts as reported on the schedule C for Alsihan Halal Meat Market, Inc. is undermined by the absence of any reported expenses for that business (*see* finding of fact 1). Moreover, petitioners provided no books or records for the business to support these reported amounts. Further undermining the credibility of the schedule C is the corporate return for what appears to be the same business, but which reports significantly different amounts than the schedule C (*see* finding of fact 7).

³ For State and City residents, if the earned income credit exceeds tax due, the excess is considered an overpayment and is refundable (Tax Law §§ 606 [d] [2], 1310 [f] [2]).

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 petitioners established entitlement to the credit for three of the five children claimed, but denied the credit for the two remaining children due to the lack of any evidence showing their age.

Given the absence of any evidence in the record establishing that the two remaining children met the definition of a "qualifying child" as required under IRC (26 USC) § 24, we agree with the Administrative Law Judge that petitioners have not shown that they were entitled to the Empire State child credit for the two remaining children.

In reaching our decision in this matter we have not considered the documents submitted with petitioners' exception. "We have held that a fair and efficient hearing process must be defined and final, and that the acceptance of evidence after the record is closed is not conducive to that end . . . [citations omitted]" (*Matter of Ippolito*, Tax Appeals Tribunal, August 23, 2012, *confirmed* 116 AD3d 1176 [3d Dept 2014]). In accordance with this principle, we have long and consistently maintained a policy against considering evidence that was not made part of the record below (*see e.g. Matter of Boniface*, Tax Appeals Tribunal, June 30, 2022; *Matter of Shi Ying Tan*, Tax Appeals Tribunal, October 16, 2014; *Matter of Schoonover*, Tax Appeals Tribunal, August 15, 1991).

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Mohammad Ikhmaes and Marwa Ikhmayes is denied;
2. The determination of the Administrative Law Judge is affirmed;
3. The petition of Mohammad Ikhmaes and Marwa Ikhmayes is denied; and
4. The notice of deficiency, dated January 15, 2019, as modified by the notice of adjusted assessment, dated July 12, 2019, and as further modified by the determination of the Administrative Law Judge, is sustained.

Dated: Albany, New York
January 19, 2023

/s/ Anthony Giardina
Anthony Giardina
President

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

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