

STATE OF NEW YORK  
TAX APPEALS TRIBUNAL

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In the Matter of the Petition	:	
of	:	
<b>MOQUAN ALLAH DIVINE</b>	:	DECISION
	:	DTA NO. 830671
for Redetermination of Deficiencies or for Refund of New York State Personal Income Tax under Article 22 of the Tax Law for the Year 2020.	:	

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Petitioner, Moquan Allah Divine, filed an exception to the determination of the Administrative Law Judge issued on May 30, 2024. Petitioner appeared pro se. The Division of Taxation appeared by Amanda Hiller, Esq. (Jennifer L. Hink-Brennan, Esq., of counsel).

Petitioner filed a brief in support of the exception. The Division of Taxation filed a letter brief in opposition. Petitioner did not file a reply brief. Petitioner's request for oral argument was denied. The six-month period for issuance of this decision began on September 13, 2024, 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.

***ISSUES***

- I. Whether the Division of Taxation properly denied petitioner's claimed dependent exemption for tax year 2020.
- II. Whether the Division of Taxation properly denied petitioner's claimed Empire State child credit for tax year 2020.
- III. Whether petitioner has shown reasonable cause for the abatement of penalties.
- IV. Whether a frivolous petition penalty should be imposed under the authority of Tax

Law § 2018 and 20 NYCRR 3000.21.

***FINDINGS OF FACT***

We find the facts as determined by the Administrative Law Judge, which are set forth below.

1. Petitioner, Moquan Allah Divine, filed a New York State resident income tax return, form IT-201, on May 25, 2021, for tax year 2020 (return), claiming one dependent exemption for a minor child and an Empire State child credit of \$330.00 based on the claimed dependent.

Petitioner reported total tax due of \$1,789.00, total payments of \$1,524.00 and additional tax due of \$265.00. Petitioner did not submit any payment with the return or include any account information on the return for an electronic funds withdrawal.

2. The Division's internal records indicated that the same child was previously claimed as a dependent by another individual for tax year 2020.

3. On June 8, 2021, the Division sent petitioner a request for information to support the dependent petitioner claimed on the return.

4. Petitioner responded to the Division's request by letter, dated June 17, 2021, in which petitioner explained the circumstances of his living arrangement with the child and asserted that the child's mother claimed the child without his consent. Petitioner also provided a copy of the child's social security card and an application for a copy of a birth certificate for the child.

5. The Division determined that petitioner's response was not sufficient to verify the dependent petitioner claimed on his return.

6. As a result, the Division issued a statement of proposed audit change, dated July 16, 2021 (statement), to petitioner. The statement denied petitioner's claimed dependent on the basis that the dependent was already claimed by another taxpayer on a different return and, as a

consequence, denied petitioner's claimed Empire State child credit. The statement set forth penalties for late filing and late payment of the tax shown on the return pursuant to Tax Law § 685 (a) (1) and (2). The statement asserted additional tax due in the amount of \$656.00, plus penalties and interest.

7. Petitioner did not provide any additional information to support the claimed dependent in response to the statement.

8. Petitioner filed a request for conciliation conference with the Division's Bureau of Conciliation and Mediation Services (BCMS) in protest of the statement. By letter dated August 13, 2021, BCMS informed petitioner that the statement does not offer formal protest rights and that BCMS would not take any further action regarding the request.

9. On September 1, 2021, consistent with the statement, the Division issued a notice of deficiency, notice number L-053856694 (notice), to petitioner asserting tax due in the amount of \$656.00, plus penalties and interest, for tax year 2020.

10. Petitioner did not provide any additional information to support the claimed dependent in response to the notice.

11. Petitioner timely filed a petition with the Division of Tax Appeals protesting the notice. The petition does not address the issue of the disallowed dependent.

12. A hearing was held on August 22, 2023, in Brooklyn, New York.

13. At the hearing, the Division submitted an affidavit of David Dickerson, Taxpayer Service Specialist II, in the Division's Office of Processing Services. Mr. Dickerson reviewed the Division's files concerning the notice issued to petitioner and determined that petitioner failed to provide sufficient documentation to verify the dependent petitioner claimed on his return.

14. The Division made a motion at the hearing for the imposition of a frivolous petition penalty. The Administrative Law Judge who conducted the hearing advised that she would take such motion under consideration when rendering her determination.

15. At the hearing, petitioner testified that he submitted a “form of tender” to satisfy his tax liability. The record was left open to allow petitioner to submit documents in support of this claim and in response to the affidavit submitted by the Division. When asked whether petitioner had any documents to support the claimed dependent on his return he replied, “[a]s of this, I have no -- have no -- I have no comment, no.”

16. After the hearing, petitioner submitted a federal form 1096, annual summary and transmittal of U.S. information returns. The form is not filled out, except the box for “1099-C” is marked with an “X.” Petitioner also submitted a federal form 1099-C, cancellation of debt. This form is handwritten and lists the New York State Department of Taxation and Finance (Department) as creditor and petitioner as debtor. The box for “[a]mount of debt discharged” is blank, as are all other boxes except box 5, “[c]heck here if the debtor was personally liable for repayment of the debt,” which is marked with an “X.”

17. Petitioner also submitted a copy of a letter, dated May 9, 2022, from the Department’s Record Access Office acknowledging petitioner’s Freedom of Information Law request and providing petitioner with the Department’s federal employer identification number (EIN). That number is included on the form 1099-C noted above for the Department.

18. In petitioner’s response to the affidavit submitted by the Division, petitioner explains that he “tendered form of payment for satisfaction of the alleged debt” after he obtained the EIN for the Department. While petitioner acknowledges that the notice was issued to him

because the Division disallowed his dependent exemption and Empire State child credit, he does not address these issues in his response.

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

The Administrative Law Judge found although petitioner provided a copy of the child's social security card and an application for the child's birth certificate, neither of which establishes petitioner's relationship to the child or the child's age. Petitioner also provided a personal statement as to his living arrangements with the child, but no verifiable documentation to substantiate where the child resided during tax year 2020. Accordingly, the Administrative Law Judge determined that petitioner has failed to meet his burden of proof to support his claim that he had a qualifying child and the Division's denial of the claimed dependent exemption for tax year 2020 was appropriate.

The Administrative Law Judge noted that petitioner did not meet his burden of proving that the child he claimed as a dependent was a qualifying child under Tax Law § 616 (a) for purposes of the dependent exemption. Therefore, the Administrative Law Judge found that the Division properly denied petitioner's claimed Empire State child credit for tax year 2020.

The Administrative Law Judge found that petitioner failed to present any evidence that would constitute reasonable cause for abatement of penalties under Tax Law §§ 685 (a) (1) and (a) (2). The Administrative Law Judge noted that petitioner had attempted to submit a "form of tender" to satisfy his tax liability. This supposed form of tender is a federal form 1099-C, cancellation of debt, which petitioner created on behalf of the Department purportedly discharging the debt he owed to the Department. The Administrative Law Judge found petitioner's actions at best as "not serious" and "lacking a legal basis or legal merit." Therefore, the Administrative Law Judge determined that petitioner's position is frivolous and imposed the

penalty provided for in Tax Law § 2018 in the sum of \$500.00.

***ARGUMENTS ON EXCEPTION***

On exception, petitioner argues that the Administrative Law Judge erred in denying petitioner's claim for the claimed dependent exemption and Empire State child credit for tax year 2020. Petitioner claims that the underlying allegations against petitioner are tainted with fraud and constituted a nullity on the part of the Division and its employees. Petitioner challenges the Division of Tax Appeals' exercise of jurisdiction and claims that the Division of Tax Appeals lacks standing and capacity to collect from petitioner.

The Division opposes petitioner's proposed findings of fact and conclusions of law submitted with petitioner's notice of exception and brief, as they are not supported by law. The Division contends that petitioner did not meet the burden of proof to support his claim that he had a qualifying child and thus, the Division's denial of the claimed dependent exemption and the Empire State child credit for the tax year 2020 was proper. Additionally, the Division asserts that the Administrative Law Judge properly determined that petitioner failed to meet his burden of proof to show that he had reasonable cause for late filing and late payment and as such the penalties imposed by the Division pursuant to Tax Law §§ 685 (a) (1) and (a) (2) were proper. The Division argues that the Administrative Law Judge properly imposed a frivolous petition penalty of \$500.00 as provided under Tax Law § 2018.

***OPINION***

We affirm the determination of the Administrative Law Judge. Pursuant to Tax Law § 689 (e), petitioner bears the burden of proving by clear and convincing evidence that the Division's assessment of additional tax or adjustment of his claimed refund is erroneous (*see Matter of Suburban Restoration Co. v Tax Appeals Trib. of State of N.Y.*, 299 AD2d 751, 752

[3d Dept 2002]; *see also Matter of Almonte*, Tax Appeals Tribunal, November 19, 2020).

Determinations made in a notice of deficiency are presumed correct, and the burden of proof is on petitioner to establish, by clear and convincing evidence, that those determinations are erroneous (*see Matter of Leogrande v Tax Appeals Trib.*, 187 AD2d 768, 769 [3d Dept 1992] *lv denied* 81 NY2d 704 [1993]; *see also* Tax Law § 689 [e]). The burden does not rest with the Division to demonstrate the propriety of the deficiency (*see Matter of Scarpulla v State Tax Commn.*, 120 AD2d 842, 843 [3d Dept 1986]).

Tax Law § 616 (a) provides that a resident individual shall be allowed \$1,000.00 for each exemption for which that taxpayer is entitled to a deduction for the taxable year under Internal Revenue Code (IRC) (26 USC) § 151 (c). IRC (26 USC) § 151 (c), in turn, provides for an exemption for each dependent, as defined by IRC (26 USC) § 152. IRC (26 USC) § 152 defines a dependent, in part, as a qualifying child who meets certain relationship, age and residency requirements (*see* IRC [26 USC] § 152 [a] [1], [c]).

Here, petitioner provided a copy of the child's social security card and an application for a copy of the child's birth certificate along with his petition. We agree with the Administrative Law Judge that neither document provided by petitioner establishes his relationship to the child or the child's age. Petitioner also provided a personal statement as to his living arrangements with the child, but no verifiable documentation to substantiate where the child resided during tax year 2020. Accordingly, we find that petitioner failed to meet his burden of proving that he had a qualifying child and the Division's denial of the claimed dependent exemption for tax year 2020 was not proper.

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] [1]).

As noted above, petitioner did not provide documentation proving that the child he claimed as a dependent was a qualifying child under IRC (26 USC) § 152 (c). Therefore, we agree with the Administrative Law Judge that the Division properly denied petitioner’s claimed Empire State child credit for the tax year 2020.

The Administrative Law Judge sustained penalties on petitioner for late filing and late payment of the tax shown on the return. Tax Law § 685 (a) (1) and (2) provides “for the imposition of penalties for failure to file a return and failure to pay tax shown on a return required to be filed. The penalty may be abated upon a showing by the taxpayer that the failure was due to reasonable cause and not due to willful neglect” (*Matter of Koether*, Tax Appeals Tribunal, December 15, 1994).

Petitioner filed his return for tax year 2020 on May 25, 2021, without payment. Petitioner did not provide any explanation with his petition or exception as to why the return was not filed timely or, when filed, why he did not remit payment of the tax he determined to be due. Accordingly, we agree with the Administrative Law Judge that petitioner failed to present any evidence that would constitute reasonable cause.

The Administrative Law Judge imposed a frivolous petition penalty in the amount of \$500.00 pursuant to Tax Law § 2018. Tax Law § 2018 authorizes the Tax Appeals Tribunal to impose such a penalty “[i]f any petitioner commences or maintains a proceeding . . . primarily for delay, or if the petitioner’s position in such proceeding is frivolous.” A penalty may be



imposed on the motion of the Division (*see* 20 NYCRR 3000.21). The maximum penalty allowable under this provision is \$500.00 (*see* Tax Law § 2018).

Petitioner submitted a “form of tender” to satisfy his tax liability. On behalf of the Division, petitioner created a federal form 1099-C, cancellation of debt, purportedly discharging the debt he owed to the Division. Petitioner’s other arguments on exception are typical “tax protester” claims that have been consistently rejected by the courts (*see Matter of Randle*, Tax Appeals Tribunal, November 29, 2018, citing *Ficalora v Commr*, 751 F2d 85 [2nd Cir 1984]; *Crain v Commr*, 737 F2d 1417 [5th Cir 1984]; *Schiff v Commr*, TC Memo 1992-183; *Woods v Commr*, 91 TC 88 [1988]). Petitioner claims theft of a prepaid envelope provided for actual forms tendered for payment by a Division employee, Mr. James M. Passineau. Petitioner argues that the Division of Tax Appeals lacks jurisdiction over petitioner as the Division failed to show that it has standing and capacity to collect from petitioner. Additionally, in support of his exception, petitioner cites various federal rules and regulations (“the Banking Act of 1863 codified at 12 US Code § 38” and “Trading with the Enemy Act of 1917 [ §§ 1 – 44 ]”), clearly inapplicable to petitioner.

“[T]ax protestor claims such as Plaintiff’s are nothing more than a hodgepodge of unsupported assertions, irrelevant platitudes, and legalistic gibberish. The government should not have been put to the trouble of responding to such spurious arguments, nor this court to the trouble of ‘adjudicating’ this meritless appeal (*Myrick v United States* [217 F Supp 2d 979, 984] citing *Crain*). We, therefore, reject such claims. In light of the circumstances before us and pursuant to Tax Law § 2018, we modify the amount of the frivolous petition penalty imposed below to \$200.00.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Moquan Allah Divine is denied;
2. The determination of the Administrative Law Judge is modified to the extent of the amount of frivolous petition penalty imposed, but is otherwise affirmed;
3. The petition of Moquan Allah Divine is denied; and
4. The notice of deficiency, dated September 1, 2021, is sustained.

DATED: Albany, New York  
February 13, 2025

/s/ Jonathan S. Kaiman  
Jonathan S. Kaiman  
President

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

/s/ Kevin A. Cahill  
Kevin A. Cahill  
Commissioner