

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
TANDERIA M. DANIELS : DETERMINATION
for Redetermination of a Deficiency or for Refund of New : DTA NO. 824592
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 2010. :
:

Petitioner, Tanderia M. Daniels, 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 2010.

On January 3, 2013 and January 4, 2013, respectively, petitioner, by her former representative, Waverly Lane, Jr., EA,¹ and the Division of Taxation appearing by Amanda Hiller, Esq. (Christopher O'Brien, Esq., of counsel), waived a hearing and agreed to submit the matter for determination based on documents and briefs to be submitted by July 10, 2013, which date commenced the six-month period for the 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 disallowed petitioner's claimed child and dependent care credit for the 2010 tax year.

¹ By letter dated February 16, 2013, Waverly Lane, Jr., EA, withdrew as petitioner's representative. In a letter dated February 28, 2013, the administrative law judge advised petitioner that Mr. Lane had withdrawn as her representative in this matter, and that she could proceed in this matter pro se, or retain a new representative. Although petitioner was asked to notify the Division of Tax Appeals of her decision, she failed to do so.

FINDINGS OF FACT

1. On February 16, 2011, petitioner, Tanderia M. Daniels, electronically filed a 2010 New York State and City resident income tax return, reporting her filing status as head of household and claiming two dependent exemptions. Attached to petitioner's return were a form IT-215, Claim for Earned Income Credit, and a form IT-216, Claim for Child and Dependent Care Credit.

2. On her return, petitioner reported federal and New York adjusted gross income of \$19,548.00. After deducting the standard deduction of \$10,500.00 and two dependent exemptions of \$2,000.00, petitioner reported taxable income of \$7,048.00, and reported total New York State and City tax due for the year 2010 of \$350.00, consisting of New York State tax due in the amount of \$191.00 and New York City resident tax due in the amount of \$159.00. Against tax computed due of \$350.00, petitioner showed credits and payments totaling \$5,011.00, consisting of an Empire State child credit of \$330.00, a New York State and City child and dependent care credit of \$2,376.00, a New York State earned income credit of \$1,226.00, a New York City school tax credit of \$63.00, a New York City earned income credit of \$219.00, New York State tax withheld of \$481.00 and New York City resident tax withheld of \$316.00, and claimed a refund of \$4,661.00.

3. On the Claim for Earned Income Credit, petitioner indicated she had two qualifying children, a daughter, Taniah I. Singleton, born in 2007, and a nephew, Tyrese J. Gibbs, born in 2002. The children's social security numbers were listed on the form.

4. On the Claim for Child and Dependent Care Credit, petitioner indicated that Sharron Daniels had provided care for two qualifying children, Taniah I. Singleton and Tyrese J. Gibbs,

and had been paid \$4,500.00 during the year for such care.²

5. By letter dated March 7, 2011, the Division requested more information and documentation from petitioner to substantiate the claimed child and dependent care credit for the year 2010. Petitioner was requested to complete and return an enclosed questionnaire, form DTF-973.74, whose directions stated that the following documents should be provided:

1. A copy of the birth certificate for the children listed on Form IT-216.
2. Verification of address for the children listed on Form IT-216: a statement on school's or physician's letterhead indicating the child's name, date of birth, address of record, and the name of the parent/legal guardian of record.
3. Copies of canceled checks (front and back) and/or money orders payable to your care provider (cash paid without receipts is not acceptable) or a statement showing automated payments to your care provider.
4. If you've claimed this credit using expenses for care provided for a child or dependent after the age of 13, send us a statement from the treating physician that indicates that the dependent was unable to care for himself or herself.

6. In response to the Division's request for additional information and documentation, petitioner's former representative submitted the following documentation:

- a. a copy of the Division's March 7, 2011 letter;
- b. the form DTF-973.74 that was not completed;
- c. a birth certificate for petitioner's daughter, Taniah Imani Kimora Singleton, showing her date of birth as May 9, 2007 and listing Tanderia Mona Daniels as the mother;
- d. copies of social security cards issued to Tyrese James Gibbs and Taniah Imani Kimora Singleton;
- e. correspondence from Montefiore Medical Center - Fordham Family Practice, dated

² The Form IT-216 listed qualified expenses paid in the amount of \$3,000.00 and \$1,500.00 for the care of Taniah I. Singleton and Tyrese J. Gibbs, respectively.

March 11, 2011, listing petitioner's daughter's name and address of record, which is the same as petitioner's address, and stating that Taniah Singleton is a patient at the family practice and that she lives with petitioner;

f. correspondence from Bronx-Lebanon Hospital Center, dated March 11, 2011, stating that Tyrese Gibbs is a patient treated at the Bronx Lebanon facility and that according to their records, he lives with his aunt, Tanderia Daniels;

g. a notarized statement from Sharron Daniels stating that she provided childcare services for Taniah Singleton and Tyrese Gibbs for the year 2010, and was paid \$4,500.00 total in cash for the year; and

h. a copy of the Account Adjustment Notice - Personal Income Tax, dated March 15, 2011, issued to petitioner for the year 2010, in which the Division calculated the New York State child and dependent care credit to be zero dollars "based on the information available," and adjusted the refund requested on her 2010 income tax return accordingly.

7. After reviewing the information provided by petitioner's former representative, the Division determined that the documents were incomplete or insufficient. The Division issued a Notice of Disallowance, dated July 18, 2011, disallowing the claim for the child and dependent care credit in the amount of \$2,376.00. The notice stated that "[t]he refund requested cannot be allowed based on the following:"

The documentation provided to support the child or dependent care expenses reported on the return was incomplete or insufficient.

To qualify for the child and dependent care credit, you must be able to document that you incurred the child or dependent care expenses. You must be able to prove that you yourself paid someone to care for your child or dependent.

Based on the information you submitted, and a further review of New York State Tax department records we cannot verify your claimed child or dependent care

expenses.

Therefore, the child and dependent care credit has been disallowed.

You have not provided verifiable documentation, such as cancelled checks and bank statements to substantiate the child care expenses claimed. The copies of the checks cannot be verified without the corresponding bank statement.

If you paid in cash you must submit copies of your bank statement showing the date and amount of cash withdrawn to pay your care provider, along with your signed and dated receipts to match. A letter from a provider is not acceptable verification.

You did not provide copies of all birth certificates necessary to prove your relationship to the dependent Tyrese Gibbs.

8. Petitioner filed a petition challenging the disallowance of the claimed child and dependent care credit. In her petition, petitioner asserts that during the Division's examination of her dependent care expenses, she submitted the requisite documentation to substantiate her entitlement to the dependent care credit. Petitioner further asserts that, as she "paid for the services of a dependent care provider that further allowed her to engage in meaningful employment within the state," she is entitled to the child and dependent care credit.

9. In January 2013, the parties, by their respective representatives, agreed to proceed in this matter by written submission. In a letter dated February 12, 2013, the administrative law judge established a schedule for the submission of documents and briefs by the parties.

Petitioner submitted no documents or brief.

CONCLUSIONS OF LAW

A. Tax Law § 606(c) provides that the New York State credit is based on the federal child and dependent care credit "allowable under section twenty-one of the internal revenue code." Therefore, it is appropriate to refer to the provisions of the Internal Revenue Code (IRC) to determine petitioner's eligibility for this credit.

B. The amount of the child and dependent care credit allowed pursuant to IRC § 21 is based upon a percentage of the employment related expenses, including expenses for the care of a qualified dependent under age 13, incurred by a taxpayer who is gainfully employed, while maintaining a household that includes the qualified dependent. IRC § 21(c)(2) places a \$6,000.00 limitation on employment related expenses for two or more qualifying dependents.

C. A qualified dependent includes a qualifying child (IRC § 152[a][1]). IRC §152(c) provides, in relevant part, as follows:

(1) In general

The term “qualifying child” means, with respect to any taxpayer for any taxable year, as an individual—

(A) who bears a relationship to the taxpayer described in paragraph (2),

(B) who has the same principal place of abode as the taxpayer for more than one-half of such taxable year,

(C) who meets the age requirements of paragraph (3),

(D) who has not provided over one-half of such individual’s own support for the calendar year in which the taxable years of the taxpayer begins, and

(E) who has not filed a joint return (other than only for a claim for refund) with the individual’s spouse under section 6013 for the taxable year beginning in the calendar year in which the taxable year of the taxpayer begins.

(2) Relationship

For purposes of paragraph (1)(A), an individual bears a relationship to the taxpayer described in this paragraph if such individual is—

(A) a child of the taxpayer or a descendant of such a child, or

(B) a brother, sister, stepbrother, or stepsister of the taxpayer or a descendant of any such relative.

(3) Age requirements

(A) In general

For purposes of paragraph (1)(C), an individual meets the requirements of this paragraph if such individual is younger than the taxpayer claiming such individual as a qualifying child and –

(I) has not attained the age of 19 as of the close of the calendar year in which the taxable year of the taxpayer begins, or

(ii) is a student who has not attained the age of 24 as of the close of such calendar year.

* * *

(C) No parent claiming qualifying child

If the parents of an individual may claim such individual as a qualifying child but no parent so claims the individual, such individual may be claimed as the qualifying child of another taxpayer but only if the adjusted gross income of such taxpayer is higher than the highest adjusted gross income of any parent of the individual.

D. In this case, petitioner claimed that she spent a total of \$4,500.00 on child and dependent care for two qualifying dependents, her daughter, Taniah I. Singleton, and Tyrese J. Gibbs, during the year 2010. The record includes petitioner's daughter's birth certificate. However, petitioner failed to substantiate her relationship to Tyrese J. Gibbs. She did not submit Tyrese J. Gibbs's birth certificate or any other documentation to substantiate her relationship to him. Given the absence of any documentation regarding Tyrese J. Gibbs's age and his relationship to her, petitioner has failed to carry her burden of proving that he was a qualifying dependent, as required by IRC § 21. Petitioner also failed to sustain her burden of proving that she spent \$3,000.00 on care for Taniah I. Singleton, and \$1,500.00 spent on care for Tyrese J. Gibbs, as claimed on her 2010 income tax return. She did not submit any receipts or cancelled checks to substantiate such child and dependent care. Since petitioner has failed to substantiate the child and dependent care expenses incurred in 2010 and her relationship to Tyrese J. Gibbs,

she is not entitled to claim the child and dependent care credit.

E. The petition of Tanderia M. Daniels is denied, and the Division of Taxation's Notice of Disallowance dated July 18, 2011 is sustained.

DATED: Albany, New York
January 9, 2014

/s/ Winifred M. Maloney
ADMINISTRATIVE LAW JUDGE