

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
SANTA CASTILLO	:	DETERMINATION
		DTA NO. 826373
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 2007.	:	

Petitioner, Santa Castillo, filed a petition for redetermination of a deficiency or for refund of New York State personal income taxes under article 22 of the Tax Law for the year 2007.

On September 12, 2014, the Division of Tax Appeals issued a notice of intent to dismiss petition, on the ground that petitioner’s petition appeared to be filed more than 90 days after a conciliation order was issued by the Bureau of Conciliation and Mediation Services (BCMS). On February 19, 2015, the Division of Tax Appeals issued a determination dismissing the petition on the basis that the petition was untimely filed and that the Division of Tax Appeals, therefore, lacked jurisdiction. Petitioner filed an exception with the Tax Appeals Tribunal to the February 19, 2015 determination. The Tax Appeals Tribunal, by decision dated November 12, 2015, found that due to the absence of a mail cover sheet for the conciliation order, a question of fact existed as to whether the Division followed its standard mailing procedures in the issuance of the conciliation order, reversed the February 19, 2015 determination of the administrative law judge, and remanded the matter for further proceedings. The Division of Taxation subsequently conceded that the Division of Tax Appeals had jurisdiction for the matter and agreed that the matter should be heard on the merits. A hearing was held before Barbara J. Russo, Administrative Law Judge, in New York, New York, on February 7, 2017 at 10:30 A.M., with all

briefs to be submitted by June 19, 2017, which date began the six-month period for the issuance of this determination. Petitioner appeared pro se. The Division of Taxation appeared by Amanda Hiller, Esq. (Christopher O'Brien, Esq., of counsel).

ISSUE

Whether the Division of Taxation properly disallowed petitioner's refund request for the year 2007.

FINDINGS OF FACT

1. Petitioner, Santa Castillo, filed a New York resident personal income tax return for the year 2007, reporting an address in Bronx, New York, and requesting a refund of \$2,005.00, including, in part, the following claimed credits: Empire State Child Credit of \$100.00, New York State earned income credit of \$1,415.00, New York City earned income credit of \$236.00, Child and Dependent Credit of \$109.00, and school tax credit (STAR credit) of either \$125.00 or \$145.00.¹

2. Petitioner's 2007 federal income tax return reported taxable wages of \$2,595.00 and business income of \$9,949.00. Attached to petitioner's 2007 federal return is Schedule C-EZ, Net Profit From Business, reporting petitioner's principal business as "food," reporting the business name as "Form 1099 From the City of New York," and reporting net profit in the amount of \$9,949.00.

¹ The 2007 New York State income tax return was not submitted into the record. Petitioner's federal income tax return for 2007 was included in the record. The factual finding of the credits claimed is based on the affidavit of an auditor from the Division of Taxation. It is noted, however, that although the affidavit states that the amount claimed for the STAR credit was \$125.00, the total credits according to the affidavit do not equal the total refund claimed. In contrast, included in the record is a copy of Form DTF-940, Advocates Comments on Conciliation Conference. According to the Form DTF-940, the amount of STAR credit claimed is \$145.00. The amount of the other claimed credits are consistent in both the auditor's affidavit and the Form DTF-940. The total amount of credits claimed in the Form DTF-940 equal the total refund claimed. There was no explanation for the discrepancies.

3. The Division of Taxation (Division) sent correspondence to petitioner, dated May 4, 2009, requesting documentation to support her refund request for the year 2007.

4. Petitioner did not provide documentation substantiating her claimed income and expenses as reported on her Schedule C-EZ.

5. More than six months have expired since petitioner's refund request for 2007 was made and petitioner's refund request is deemed denied by the Division (Tax Law § 689 [c] [3]).

6. During the hearing and in the Division's post-hearing brief, the Division stipulated that petitioner provided sufficient records to substantiate the dependents reported for the Empire State Child credit and Child and Dependent Care credit, and conceded that petitioner would be issued a refund for these two credits. The Division also agreed to the amount of wages reported by petitioner for 2007, in the amount of \$2,595.00, and agreed to allow a refund for earned income credit based on that amount. Overall, the Division agreed to issue a refund totaling \$390.00 for tax year 2007.

7. During the hearing, petitioner introduced three letters from Maria Mena into the record. The first letter, notarized on February 6, 2017, states that petitioner worked for Ms. Mena in her restaurant, Quisqueya, from 2005 to 2007, and received compensation of \$150.00 per week. The letter further states the address of the restaurant in Bronx, New York. The second letter is dated December 16, 2006, which is prior to the year at issue, and states that petitioner works for Ms. Mena. The third letter signed by Ms. Mena is dated January 8, 2008, states "Quisqueya Restaurant" at the top, and that Ms. Mena recommends petitioner as an employee and as a person she has known since 2003 and worked with. The letter further states that petitioner was working with Ms. Mena since February 2006 until December 17, 2006, when petitioner was pregnant, and that she is responsible and hard working.

8. Petitioner testified that she started working at Quisqueya Restaurant in 2006 and left work in December 2006, due to the birth of her child. Petitioner testified that she went back to work at the restaurant approximately two or three months after her child was born in 2007 and worked for another four months. Petitioner testified that she usually worked five days a week, seven hours a day, and was paid a weekly salary of \$150.00. Petitioner was paid in cash and does not have a Form W-2 wage and tax statement or a Form 1099 from the restaurant. The restaurant did not issue any receipts or invoices with the payments and petitioner did not have any records of deposits or other documentation to substantiate any payments received from the restaurant.

CONCLUSIONS OF LAW

A. Tax Law § 606 (d) provides for a New York State earned income credit based on a percentage of the earned income credit allowed under section 32 of the Internal Revenue Code (IRC). Since the state earned income credit is determined based solely on a percentage of the federal credit, it is appropriate to refer to the provisions of the IRC to determine petitioner's eligibility for the earned income credit.

B. The federal earned income credit, provided for pursuant to IRC § 32, is a refundable tax credit for eligible low-income workers. The credit is computed based on a determination of a taxpayer's "earned income," which includes earnings from self-employment (*see* IRC § 32 [c] [2]). Here, the Division denied petitioner's claim for the earned income credit because she failed to substantiate her business income as reported. Upon review of the record, it is clear that petitioner has failed to prove her income for the year in issue. Petitioner did not produce sufficient books, records, receipts, documents or credible testimony to clearly show that she generated the amount of gross receipts claimed on her return for the year in issue. The

documents and testimony petitioner submitted contradicted the amount of income reported on her return.

Specifically, for 2007, petitioner reported a net profit from business on her Schedule C-EZ in the amount of \$9,949.00. However, during the hearing, petitioner testified that she worked at the restaurant for approximately four months in 2007 and was paid a weekly salary of \$150.00. Calculating the claimed weekly rate for four months comes to approximately \$2,598.00 (4.33 weeks per month x \$150.00 a week = \$649.50 x 4 months = \$2,598.00). This figure is far less than the amount of business income petitioner reported on her return for 2007.

Similarly, the three letters petitioner provided from Ms. Mena do not support the amount of income she reported on her 2007 Schedule C-EZ. The first letter states that petitioner worked in Ms. Mena's restaurant from 2005 to 2007 and was paid \$150.00 per week. The letter does not state a specific period of time or duration in 2007 that petitioner worked at the restaurant. As noted above, assuming petitioner worked for a four month period in 2007, as petitioner testified, a weekly salary of \$150.00 comes to far less than the amount petitioner reported. The second letter from Ms. Mena is dated December 16, 2006. Since the letter is dated prior to the year at issue, it has no relevance. The third letter from Ms. Mena states that petitioner worked for the restaurant from February 2006 until December 16, 2006. As such, the third letter does not support petitioner's contention that she worked for the restaurant in 2007, and contradicts the first letter from Ms. Mena. Due to the conflicting documents and testimony, petitioner has failed to substantiate her claimed income for 2007.

C. The petition of Santa Castillo is granted to the extent indicated in Finding of Fact 6 and, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York
December 14, 2017

/s/ Barbara J. Russo
ADMINISTRATIVE LAW JUDGE