

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition :  
of :  
**ELVIS W. NEGRON** : DETERMINATION  
for Redetermination of a Deficiency or for Refund : DTA NO. 826380  
of New York State Personal Income Tax under :  
Article 22 of the Tax Law for the Year 2011. :

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Petitioner, Elvis W. Negron, filed a petition 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 2011.

A hearing was held before Joseph W. Pinto, Jr., Administrative Law Judge, in New York, New York, on August 19, 2015, at 12:30 P.M., with all briefs to be submitted by December 22, 2015, which date commenced 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 for the year 2011 due to petitioner's failure to substantiate his claimed child and dependent care credit and New York State and New York City earned income credits for the year 2011.

***FINDINGS OF FACT***

1. Petitioner filed a New York State Resident Income Tax Return, Form IT-201, for the year 2011, claiming head of household filing status. As relevant here, the return reported

business income of \$16,245.00, reduced by one-half of the self-employment tax paid (\$1,147.00), yielding federal and New York adjusted gross income of \$15,098.00. After the standard deduction was subtracted, and dependent exemptions applied, petitioner's taxable income was \$1,598.00. The New York State tax on this amount was \$63.00 and the New York City tax was \$46.00. The total tax was reduced to \$0.00 after application of the \$100.00 household credit.

2. Petitioner claimed an Empire State child credit of \$399.00, a child and dependent care credit of \$835.00, an earned income credit of \$1,662.00, a New York City school tax credit of \$63.00 and a New York City earned income credit of \$288.00, for a total of \$3,247.00.

Petitioner's return requested that this amount be refunded to him. On July 17, 2012, the Division issued a partial refund check in the sum of \$63.00 to petitioner, representing the claimed refundable tax credit for the New York City school tax credit.

3. Petitioner's return included Form IT-213, Claim for Empire State Child Credit, Form IT-215, Claim for Earned Income Credit, and Form IT-216, Claim for Child and Dependent Care Credit, which listed three qualifying children.

4. The Division of Taxation (Division) conducted an audit of petitioner's tax return for year 2011. In conducting the audit, the Division reviewed the return and requested additional information from petitioner regarding the claimed qualifying children, the earned income credit claimed and the child and dependent care credit claimed. The Division also requested detailed documentation of petitioner's reported business income. The Division's initial request for these records was made on August 31, 2012.

5. In response to the request for additional documentation, petitioner provided the following:

- a. birth certificates for each of his three children;
- b. a statement from a physician, Zaheer Ahmed, M.D., which attests to the fact that each of petitioner's children resided at 181 Harmon Street, Brooklyn, New York, during the years 2008 through 2012;
- c. the social security cards for each of the children;
- d. a letter from the New York City Department of Education, dated February 16, 2012, to Irma Odiot, the children's mother, concerning educational options for one of the children; and
- e. various handwritten expense purchases made by petitioner for his painting business during the year 2011.

6. On September 28, 2012, following a review of the documents in its possession that had been provided by petitioner, the Division issued a Notice of Disallowance to petitioner, informing him that the documentation he submitted in response to the inquiry was insufficient to allow the remainder of his refund and that such request was denied.

7. In response to this notice, petitioner sent the Division a note, in which he stated that he had sent everything requested and that his tax preparation service had destroyed some of the records requested and that any other records had been destroyed in hurricane Sandy, which devastated parts of New York City in 2012.

8. The Division responded to petitioner on November 19, 2012, again stating that he had not provided the proper documentation to substantiate business income, the dependent care credit or the children's residency. The Notice of Disallowance was not disturbed.

9. Petitioner challenged the partial refund disallowance for 2011 by filing a request for conciliation conference with the Division's Bureau of Conciliation and Mediation Services (BCMS).

10. By Conciliation Default Order (Order) dated March 28, 2014, the disallowed portions of petitioner's claimed refund was sustained.

### ***SUMMARY OF THE PARTIES' POSITIONS***

11. Petitioner explained at hearing that he changed addresses temporarily due to marital discord, but maintained that the children never moved and that he did his best to provide requested documentation to the Division, notwithstanding the destruction of records by his tax preparation professionals and hurricane Sandy. Petitioner admits he has no further records to submit to document the credits claimed or his business income.

12. The Division takes the position that petitioner has not provided evidence substantiating the child care expenses claimed for the year 2011. The Division argues that petitioner has not provided evidence substantiating the business income he reported in the year in issue that would entitle him to the earned income credit he has claimed. The Division maintains its denial of petitioner's remaining amount of claimed refund, based upon claimed child and dependent care credits and the earned income credit, was proper.

### ***CONCLUSIONS OF LAW***

A. Tax Law § 606(d)(1) 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][A][i]). Petitioner bears the burden of proof (*see* Tax Law § 689[e]) to substantiate the amount of earned income reported on his returns.

C. Upon review of the record, it is determined that petitioner has failed to meet his burden of substantiating the amounts of earned income reported on his returns. Petitioner produced no books, records, receipts or other documents to show that he received the business income reported, or the actual amounts of such income. Petitioner stated at the hearing that he was a self-employed painter, but all records were given to his tax preparer and that these records were destroyed or lost in hurricane Sandy. The only evidence submitted by petitioner consisted of handwritten lists of expenses incurred in his work. No evidence of the actual income received was produced and none of his business records were made available at any time. Without sufficient documentation to substantiate the claimed business income for the year in issue, petitioner has failed to meet his burden of proof and is not entitled to the earned income credit for 2011 (*Matter of Espada*, Tax Appeals Tribunal, January 28, 2016).

D. With respect to the New York State child and dependent care credit, Tax Law § 606(c) provides that the allowable New York State credit is determined as a percentage of the federal credit allowable under section 21 of the IRC. As was the case with the earned income credit, it is appropriate to refer to the provisions of the IRC to determine petitioner's eligibility for this credit. IRC § 21 sets forth the requirements for the federal child and dependent care credit. This credit is determined based upon a percentage of employment-related expenses, including expenses for the care of a qualified dependent under the age of 13, incurred by a taxpayer to be gainfully employed, while maintaining a household that includes the qualified dependent. To be eligible for the credit, petitioner bears the burden of proving that he paid child care expenses in 2011, and the burden of substantiating the amount of such expenses he paid.

Petitioner was unable to provide adequate documentation to substantiate the claimed payments made to a dependent care provider during 2011. He provided no canceled checks or receipts for the child care services. Thus, petitioner has failed to meet his burden of proof demonstrating entitlement to the claimed child and dependent care credit for 2011 (*Matter of Espada*).

E. Petitioner bears the burden of proof to show a clear entitlement to the tax credits at issue (*see Matter of Golub Serv. Sta. v. Tax Appeals Tribunal*, 181 AD2d 216 [3rd Dept 1992]). Here, that meant petitioner had the burden to prove the amount of his business income and the amount of his child care expenses. Petitioner has failed on both counts.

F. The petition of Elvis Negron is denied, and the Notice of Disallowance, dated September 28, 2012, is sustained.

DATED: Albany, New York  
May 26, 2016

/s/ Joseph W. Pinto, Jr.  
ADMINISTRATIVE LAW JUDGE