

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition :  
of :  
**TAMMY CARROLL** : DETERMINATION  
for Redetermination of a Deficiency or for Refund of New : DTA NO. 826997  
York State Personal Income Tax under Article 22 of the :  
Tax Law for the Year 2013. :

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Petitioner, Tammy Carroll, 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 2013.

On June 25, 2016 and July 5, 2016, respectively, the Division of Taxation, appearing by Amanda Hiller, Esq. (Christopher O'Brien, Esq., of counsel), and petitioner, appearing pro se, waived a hearing and submitted this matter for determination based on documents and briefs to be submitted by November 11, 2016, which date commenced the six-month period for issuance of this determination. After due consideration of the documents and arguments submitted, Barbara J. Russo, Administrative Law Judge, renders the following determination.

***ISSUE***

Whether the Division of Taxation properly disallowed the child and dependent care credit claimed by petitioner for the 2013 tax year.

***FINDINGS OF FACT***

1. Petitioner electronically filed with the Division of Taxation (Division) a New York State resident personal income tax return for 2013 claiming head of household filing status. Petitioner reported New York adjusted gross income of \$11,588.00. After subtracting the

standard deduction and three dependent exemptions from the reported income, petitioner reported no taxable income and no personal income tax due. Petitioner claimed a child and dependent care credit in the amount of \$1,155.00, in addition to other credits, resulting in a claim for refund in the amount of \$3,607.00.

2. Attached to petitioner's 2013 return was form IT-216, Claim for Child and Dependent Care Credit, wherein petitioner reported child care expenses paid to Natia Carroll in the amount of \$3,000.00.

3. On February 18, 2014, the Division sent correspondence to petitioner requesting additional information to support petitioner's claim for the child and dependent care credit, including proof of the claimed dependent's relationship and residence, and proof of the expenses claimed.

4. In response to the Division's request for additional information, petitioner submitted to the Division a letter from her son's school, dated February 24, 2014, verifying his attendance and listing the same address for him as that of petitioner, a birth certificate for the claimed dependent indicating a birth date of January 7, 2003, and a notarized letter from Natia Carroll dated February 25, 2014, stating that she babysits petitioner's son and that petitioner pays her \$250.00 a month.

5. By correspondence dated May 12, 2014, the Division denied the child and dependent care credit. The correspondence stated the following basis for the denial:

"The hand written letter that you provided from your care provider, Natia Carrol [sic], to substantiate the child care expenses cannot be verified, and alone does not substantiate the expenses claimed.

To qualify for the child and dependent care credit, you must provide adequate documentation to support the expenses reported on the return. You must be able to prove that you yourself actually paid someone to care for your child or dependent.

Acceptable documentation for the expenses claimed are copies of the front and back of canceled checks, money orders and/or verifiable receipts for payment of child or dependent care services issued by the day care service provider that include the provider's name, address where the services were provided, telephone number, and the amount of payment.

Based on the above, the Dependent Care Credit has been disallowed.”

6. The Division issued a Notice of Disallowance, dated July 8, 2014, disallowing petitioner's claimed dependent care credit in the amount of \$1,155.00.

7. On or about September 25, 2015, petitioner submitted to the Division 17 handwritten receipts from January 11, 2013 through August 23, 2013, indicating that Natia Carroll received from petitioner \$150.00 biweekly, totaling \$2,550.00. The receipts state that they are for “child care for Norman Carroll.”

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

A. Tax Law § 606(c)(1) provides that the New York State child and dependent care credit is based on the federal child and dependent care credit “allowable under section twenty-one of the internal revenue code. . . .” Since the allowable New York child and dependent care credit is determined based solely on the corresponding federal credit, 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 on 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. The Division does not dispute that petitioner had a qualified dependent and that she was gainfully employed. The only issue in dispute is whether petitioner provided sufficient documentation to substantiate that she paid child care expenses in 2013 and the amount of expenses paid.

The only documentation petitioner provided were handwritten biweekly receipts from January through August 2013, for \$150.00 each, totaling \$2,500.00 and a notarized letter from Natia Carroll dated February 25, 2014, stating that she babysits petitioner's son and that petitioner pays her \$250.00 a month. The letter fails to state the dates that the care provider cared for petitioner's son or the total amount received in 2013. The documentation provided is inconsistent, in that while the letter states that Natia Carroll received \$250.00 a month, the receipts indicate that she received \$300.00 a month (i.e., \$150.00 biweekly = \$300.00). Additionally, the receipts provided are inconsistent with the amount of child care expenses reported on petitioner's Form IT-216, Claim for Child and Dependent Care Credit, attached to her 2013 income tax return. While petitioner reported \$3,000.00 as qualified child care expenses on Form IT-216, the handwritten receipts submitted total \$2,500.00. Petitioner provided no explanation for the discrepancy. As such, petitioner has failed to sustain her burden of proof to establish that she is entitled to the child and dependent care credit.

C. The petition of Tammy Carroll is denied and the Notice of Disallowance dated July 8, 2014 is sustained.

DATED: Albany, New York  
April 13, 2017

/s/ Barbara J. Russo  
ADMINISTRATIVE LAW JUDGE