

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
CHANEL BARNETT : DETERMINATION
for Redetermination of a Deficiency or for Refund of : DTA NO. 827476
New York State Personal Income Tax under Article 22 :
of the Tax Law for the Year 2013. :

Petitioner, Chanel Barnett, 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.

A hearing was held before Donna M. Gardiner, Administrative Law Judge, on October 4, 2017 at 10:30 a.m., in New York, New York, with all briefs to be submitted by March 2, 2018, 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. (Ellen K. Roach, Esq., of counsel).

ISSUE

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

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 \$40,658.00. After subtracting the standard deduction and three dependent exemptions from the reported income, petitioner reported taxable

income in the amount of \$26,858.00 and New York State and City personal income tax due in the amount of \$2,127.00. Petitioner claimed a child and dependent care credit in the amount of \$1,320.00, in addition to other credits, and taxes withheld in the amount of \$2,317.00, resulting in a claim for refund in the amount of \$2,704.00.

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 Rena Day Care Centers in the amount of \$6,400.00 and to Barbara Sellers in the amount of \$3,000.00.

3. On May 2, 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 each claimed dependent's relationship and residence, and proof of the expenses claimed.

4. Petitioner provided adequate documentation regarding her claimed dependents. However, petitioner did not provide sufficient documentation to verify that she paid \$9,400.00 for child care expenses as claimed on her return. She did submit receipts for child care in the amount of approximately \$780.00.

5. By correspondence dated November 25, 2014, the Division sent petitioner a notice of disallowance of her claim for refund in the amount of \$1,320.00. The notice set forth the basis for denial as follows:

"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.

You did not provide the documentation required for any public assistance that you may have received from the Administration for Children [sic] s Services or the Department of Social Services. In addition, the receipts provided from the day care provider indicated you paid by check.

Without additional records to substantiate your claimed expenses such as canceled checks and/or verifiable receipts for payment of child or dependent care services, we disallowed the Child and Dependent Care Credit.”

6. Petitioner filed a request for conciliation conference protesting the notice of disallowance. A conciliation default order was issued on January 8, 2016. Thereafter, petitioner filed a timely petition with the Division of Tax Appeals.

7. Petitioner appeared and testified at the formal hearing. Petitioner testified that she did not have child care expenses in the amount of \$9,400.00 and that she was unaware that her tax preparer had claimed that amount. Additionally, petitioner acknowledged that she received public assistance for child care expenses for the year 2013.

8. Petitioner failed to provide any additional documentation to support her claimed expenses. At the conclusion of the hearing, the record remained open for petitioner to submit documentation from the city of New York that indicated the amount of any subsidy that she received in 2013. No documentation was provided.

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 qualified dependents 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 burden of proof is on the taxpayer to show by clear and convincing evidence that the determination made by the Division was erroneous (*see Leogrande v Tax Appeals Trib.*, 187 AD2d 768 [3d Dept 1992], *lv denied* 81 NY2d 704 [1993]; *see also Scarpulla v State Tax Commn.*, 120 AD2d 842 [3d Dept 1986]). Here, the only dispute is whether the evidence petitioner provided clearly and convincingly demonstrated that she paid the amount of child care expenses that she claimed on her 2013 New York State personal income tax return. Petitioner did not sustain her burden of proof.

The only documentation submitted were receipts that totaled an amount of \$780.00, which amount falls markedly short of the \$9,400.00 claimed. Moreover, petitioner testified that she did not pay child care expenses in the amount of \$9,400.00 as was claimed on her return. Lastly, petitioner admitted that she received public assistance for her child care expenses for 2013, but could not provide any documentation to show how much money she received. Therefore, the Division properly denied the child and dependent care credit claimed by petitioner.

C. The petition of Chanel Barnett is denied and the Notice of Disallowance, dated November 25, 2014, is sustained.

DATED: Albany, New York
August 30, 2018

/s/ Donna M. Gardiner
ADMINISTRATIVE LAW JUDGE