

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petitions :
of :
YANIRA D. CRUZ : DETERMINATION
for Redetermination of Deficiencies or for Refund of New : DTA NOS. 827566
York State Personal Income Tax under Article 22 of the : AND 828250
Tax Law and New York City Personal Income Tax :
pursuant to the Administrative Code of the City of New :
York for the Years 2014 and 2016. :

Petitioner, Yanira D. Cruz, filed petitions for redetermination of deficiencies or for refund of New York State personal income taxes under article 22 of the Tax Law and New York City personal income tax pursuant to the Administrative Code of the City of New York for the years 2014 and 2016.

A consolidated hearing was held before Barbara J. Russo, Administrative Law Judge, in New York, New York, on February 8, 2018 at 10:30 a.m., with all briefs to be submitted by June 21, 2018, which date began the six-month period for the issuance of this determination.

Petitioner appeared by Harlem Tax (Waverly Lane, Jr., EA). The Division of Taxation appeared by Amanda Hiller, Esq. (Christopher O'Brien, Esq., of counsel).

ISSUES

I. Whether the Division of Taxation properly disallowed petitioner's claimed earned income credit for the years 2014 and 2016.

II. Whether the Division of Taxation properly disallowed the empire state child credit claimed by petitioner for the 2016 tax year.

FINDINGS OF FACT

1. Petitioner, Yanira D. Cruz, filed New York resident personal income tax returns for the years 2014 and 2016, reporting an address in Bronx, New York.

2. Petitioner's 2014 tax return reported business income in the amount of \$14,722.00. Attached to petitioner's 2014 return is schedule C-EZ, Net Profit From Business, reporting petitioner's business as "baby sitter," gross receipts in the amount of \$15,600.00, and net profit in the amount of \$14,722.00.

3. Petitioner claimed New York State and City earned income credits totaling \$1,882.00, empire state child credit in the amount of \$264.00, and a New York City school tax credit (STAR credit) in the amount of \$63.00 on her 2014 return. Petitioner reported no tax due and claimed a refund in the amount of \$2,209.00 for tax year 2014. Attached to the 2014 return is form IT-215, Claim for Earned Income Credit, on which petitioner reported Nayhelli Alicea and Arturo Alicea as qualifying children.

4. Petitioner's 2016 tax return reported business income in the amount of \$16,703.00 and listed petitioner's occupation as "dependent care provide." Attached to petitioner's 2016 return is schedule C-EZ, reporting petitioner's business as "baby sitter," gross receipts in the amount of \$18,000.00, and net profit in the amount of \$16,703.00.

5. On the 2016 return, petitioner reported no tax due and claimed New York State and City earned income credits totaling \$2,139.00, an empire state child tax credit of \$620.00, and a STAR credit in the amount of \$63.00, for a total claimed refund of \$2,822.00. Attached to the 2016 return is form IT-215, on which petitioner reported Nayhelli Alicea, Xhaiden Alicea and Arturo Alicea as qualifying children.

6. The Division of Taxation (Division) sent audit inquiry letters to petitioner, dated March 2, 2015 for tax year 2014, and March 20, 2017 for tax year 2016, requesting documentation to support her refund requests for those years. The letters request that petitioner provide any license, registration or certification needed for her business, the documents used to calculate the income and expenses reported, such as ledgers, spreadsheets, or income expense journals, and detailed documentation such as sales slips, invoices, bank statements or receipts supporting her business income for the tax years at issue. Included with the letters were questionnaires to be completed by the petitioner. The letters also requested that petitioner provide documentation for the claimed qualifying children.

7. In response to the Division's inquiry for 2014, petitioner submitted a completed questionnaire, wherein she described her business as "the furnishing of dependent care services to the general public for minor children during the hours of 7AM to 9PM, Monday through Friday." Petitioner further stated in the questionnaire for 2014 that she did not receive a 1099-Misc form for income earned. In response to a question asking to indicate what type of records she kept to verify her business income and expenses, petitioner checked a box indicating "other" and wrote "flat fee verbal contracts with parents supported by parents [sic] letters." Petitioner provided a letter dated July 8, 2015, from Jennifer Perez, stating "This letter is to verify that my child has been provided child care by Yanira Cruz. Ms. Cruz was paid \$5,199 for her child care work for 2014." Petitioner provided a letter dated July 10, 2015, from Ricardo Perez, stating "I have been using the child care services of Yanira Cruz. Over the past year I have paid Ms. Cruz \$10,401.00 for her work." Neither of the letters are notarized or sworn affidavits. Petitioner also provided a copy of her 2014 Schedule C-EZ, copies of social security cards and birth certificates

for Nayhelli Alicea and Arturo Alicea, and a lease addendum dated April 6, 2015 listing the names of authorized members for the household of Jesus and Iraida Guzman.

8. In response to the Division's inquiry for 2016, petitioner submitted a completed questionnaire, wherein she described her business as "the furnishing of dependent care services to the general public for minor children during the hours of 7AM to 9PM, Monday through Friday." Petitioner further stated in the questionnaire for 2016 that she received a 1099-Misc form for income earned and included a copy of a 2016 1099-Misc showing nonemployee compensation of \$18,000.00, and listing the payer as Elsa Benedita with the same address as petitioner's home address. Petitioner also provided copies of social security cards and birth certificates for Nayhelli Alicea and Arturo Alicea, a copy of a social security card for Xhaiden Alicea, and a lease addendum dated April 6, 2015, listing the names of authorized members for the household of Jesus and Iraida Guzman.

9. After reviewing the information submitted by petitioner, the Division concluded that she had not provided sufficient evidence to show that she was entitled to the earned income credit. The Division issued to petitioner an account adjustment notice for tax year 2014, dated September 23, 2015, adjusting petitioner's 2014 tax return by disallowing the claimed earned income credit, allowing the New York City STAR credit in the amount of \$63.00, and allowing an empire state child tax credit in the amount of \$100.00.

10. The Division issued to petitioner an account adjustment notice for tax year 2016, dated May 23, 2017, adjusting petitioner's 2016 return by disallowing the claimed earned income credit and empire state child tax credit, and allowing the New York City STAR credit in the amount of \$63.00.

11. Petitioner did not testify at the hearing and presented no documentary evidence.

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]). Petitioner bears the burden of proof (*see* Tax Law § 689 [e]) to substantiate the amount of earned income reported on her returns.

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 years in issue. Petitioner did not produce sufficient books, records, receipts, documents or testimony to clearly show that she generated the amount of gross receipts claimed on her returns for the years in issue. Indeed, petitioner did not personally testify at the hearing or provide any documentary evidence beyond the limited information provided to the Division during the audit.

For 2014, petitioner reported gross receipts from babysitting in the amount of \$15,600.00. Petitioner did not submit any books, records or receipts to support the claimed income from babysitting. The letters that petitioner provided from Ms. Perez and Mr. Perez are unsworn, provide no detail or supporting documentation, and the letter from Mr. Perez does not specify that the claimed payments were made in 2014. Petitioner bears the burden of proof (*see* Tax Law

§ 689 [e]), and such letters are simply insufficient to meet petitioner's burden of proving her claimed income for 2014.

Similarly for 2016, upon review of the record, it is clear that petitioner has failed to meet her burden of proof with respect to the gross receipts reported on her schedule C-EZ attached to her return. Other than the form 1099-Misc, petitioner offered no evidence to show that she earned \$18,000.00 in gross receipts for baby sitting services during the year at issue. Petitioner offered no canceled checks, receipts, or bills to substantiate such services and such gross receipts. She did not appear at the hearing and thus did not testify regarding the provision of such services and the manner, frequency and amount of payment for such services. As to the evidentiary weight to be accorded the submitted form 1099-Misc, given that the payer's address is the same as petitioner's and no testimony was presented, the credibility of such form is questionable. As such, the form 1099-Misc, by itself, is insufficient to prove petitioner's gross receipts. Petitioner has therefore failed to substantiate her claimed income for 2016.

Without sufficient documentation to substantiate the claimed business income for the years in issue, petitioner has failed to meet her burden of proof and is not entitled to the earned income credit for 2014 and 2016 (*see Matter of Espada*, Tax Appeals Tribunal, January 28, 2016).

C. Turning next to petitioner's claimed empire state child tax credit for 2016, petitioner has failed to sustain her burden of proof to establish that she is entitled to this credit. To qualify for the credit, a taxpayer must establish a qualifying child. For purposes of the empire state child tax credit, a qualifying child must be a child of the taxpayer, a descendent of the taxpayer's child, a sibling or step-sibling of the taxpayer or a descendent of such relative; must have the same

principal place of abode as the taxpayer for more than one-half of the taxable year, and must be between four and seventeen years of age (Tax Law § 606 [c-1]; IRC §§ 24 [c]; 152 [c]).

For 2016, petitioner failed to provide documentation showing that the claimed qualifying children had the same principal place of abode as her for more than one-half of the year. The birth certificates and lease addendum petitioner provided do not show the address where the claimed children resided in 2016. As such, petitioner has failed to sustain her burden of proof to establish that she is entitled to the empire state child tax credit for 2016.

D. Similarly, petitioner has failed to show that the Division's reduction of the empire state child tax credit for 2014 was erroneous, given that petitioner presented no evidence of the children's principal place of abode for that year.

E. The petition of Yanira D. Cruz is denied and the account adjustment notices, dated September 23, 2015 and May 23, 2017, are sustained.

DATED: Albany, New York
December 13, 2018

/s/ Barbara J. Russo
ADMINISTRATIVE LAW JUDGE