

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition :  
of :  
**ELHAKAM AND JIDA AHMAD** : DETERMINATION  
for Redetermination of a Deficiency/Revision of : DTA NO. 827722  
a Determination or for Refund of Personal Income Tax :  
under Article 22 of the Tax Law for the Year 2014. :

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Petitioners, Elhakam and Jida Ahmad, filed a petition for redetermination of a deficiency or for refund of personal income tax under article 22 of the Tax Law for the year 2014.

A hearing was held before James P. Connolly, Administrative Law Judge, on April 12, 2018, at 10:40 a.m., in New York, New York, with all briefs to be submitted by September 24, 2018, which date began the six-month period for the issuance of this determination. Petitioners 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 petitioners' claimed earned income credit and Empire State child credit for the year 2014.

***FINDINGS OF FACT***

1. Petitioners, Elhakam and Jida Ahmad, electronically filed with the Division of Taxation (Division) a New York State resident income tax return, form IT-201, for the year 2014. On the return, petitioners claimed filing status as married filing joint return, reported wage income of \$3,600.00 and business income of \$14,980.00, and requested a refund in the amount of

\$2,366.00. The refund consisted of an Empire State child credit of \$330.00; a New York State earned income credit in the amount of \$1,638.00; a New York City school tax credit in the amount of \$125.00; and a New York City earned income credit in the amount of \$273.00.

Petitioners' return included form IT-215, claim for earned income credit, which listed two sons as qualifying children and a schedule C-EZ, net profit from business, showing business income of \$14,980.00.

2. The Division performed an audit of petitioners' return for 2014 by sending an audit inquiry letter, dated February 23, 2015, to petitioners, asking for copies of all the W-2 forms received, and documentation of petitioners' reported self-employment business income, including copies of:

- a. any license, registration, or certification needed for the business;
- b. summary documents used to calculate the income and expenses reported, "such as ledgers, spreadsheets, or income and expense journals"; and
- c. detailed documentation supporting the business income reported, "such as sales slips, invoices, bank statements, or receipts."

The audit inquiry letter also asked for proof verifying the relationship, age, residency, and full-time student status or disabled status of the qualifying children claimed.

3. In response to the Division's February 23, 2015 letter, petitioners submitted the following documentation to the Division:

- a. a W-2 issued by New Saba Deli & Grocery, Inc., showing that petitioner Ehlakam Ahmad earned in \$3,600.00 in wages in 2014, and a 1099-MISC issued by Lucky Seven Deli 7 Corp. (Lucky Seven), bearing the company's federal identification number and showing nonemployee compensation of \$14,980.00 paid to petitioner Elhakam Ahmad;
- b. an unsigned letter dated March 2, 2015 on the letterhead of Lucky Seven, with a signature line for "Mohamed K" but with no designation of his role for the

corporation, stating, in pertinent part, that “Elhakam A. Ahmad was employed at my business during the year 2014. He was paid \$312.00 weekly and worked from Monday through Friday from 12-8 P.M.”

c. birth certificates for petitioners’ children, Muataz and Mahdy, showing that they were born in 1996 and 2000, respectively, and that petitioners were their parents;

d. an account statement for Muataz Ahmad, dated January 8, 2015, from St. Frances College in Brooklyn New York, with account entries for dates in July 2014 and giving petitioners’ Brooklyn address as his address; and

e. documents from Al-Noor School in Brooklyn, New York, bearing dates after 2014, and showing that Mahdy Ahmad was a student there in 2014 and giving petitioners’ Brooklyn address as his address.

4. After reviewing the above information, the Division sent petitioners an account adjustment notice, dated May 11, 2015, stating that the information petitioners had provided was “incomplete and/or unverifiable,” and reducing the refund claimed on their form IT-201 for 2014 to \$221.95, which consisted of the \$125.00 New York City school tax credit and \$96.95 in New York State and New York City earned income credit. More specifically, the account adjustment notice showed that petitioners’ Empire State child credit was disallowed, their State earned income credit was reduced to \$83.10, and their City earned income credit was reduced to \$13.85.

The letter stated, in pertinent part:

“The business income claimed on your return is being disallowed. After a review of available Tax Department records, we were unable to verify the non-employee compensation reported on the 1099-MISC you provided. The letter you sent from your employer was unverifiable. Please provide a letter from your claimed employer. The letter must have the company’s verifiable FEDERAL EMPLOYERS IDENTIFICATION NUMBER. It must be written on company letterhead, with an active telephone number, and signed by an officer of the company. It must state your address of record for the tax year shown above, the service you provided, where the services were performed, the dates of your employment, the total wages you earned, how much tax was withheld, if you were paid in cash or by check, and the name and phone number of the person responsible for paying you.”

5. At hearing, the Division introduced the testimony of Matthew Roberts, a Tax Technician 2 with the Division. Mr. Roberts was not the auditor assigned to audit petitioners' 2014 return, but he had reviewed the audit file prior to testifying. He testified that, in preparing to testify, he reviewed the Division's records and was able to find tax returns for Lucky Seven, but that there was an inconsistency between those returns and the form 1099-MISC issued by it to petitioner Elhakam Ahmad. He declined to elaborate on the nature of that inconsistency on the ground that it would violate the Tax Law's secrecy rules. When it was pointed out that his information about Lucky Seven's tax returns would appear to be disclosable pursuant to the exception to the secrecy provision in Tax Law § 697(e) (2), Mr. Roberts continued to decline to testify as to the nature of the inconsistency between the 1099-MISC form and Lucky Seven's returns. Mr. Roberts also testified that the letter from Lucky Seven was not adequate proof of petitioners' schedule C-EZ income because the letter was not signed and it gave no indication that "Mohamed K" was an officer of the corporation.

6. Mr. Roberts further testified that for petitioners' children to be deemed "qualifying dependents" for purposes of the Empire State child credit and earned income credit, petitioners had to show that the children met a relationship requirement (that they were sufficiently related to petitioners) and a residency requirement (that the children lived with petitioners for at least six months in 2014). According to Mr. Roberts, the proof submitted by petitioners regarding their dependents was sufficient to satisfy the proof of relationship requirement, but was not sufficient to prove that the residency requirement was met, i.e., that the children had lived with petitioners for at least six months in 2014. Based on petitioners' failure to prove that they earned the income reported on the schedule C-EZ of their return and that the children were qualifying dependents,

the account adjustment notice recomputed petitioners' State and City earned income credit based on the wages shown on the W-2 provided by petitioners and no dependents.

7. Petitioner Elhakam Ahmad testified at hearing that he worked at Lucky Seven for the whole year, but that, for the first three months of the year, he also worked at another job, and when he was done working at the other job, he would go to work at Lucky Seven. He explained that he worked as a cashier and in the deli, but "mostly" in the deli. He testified that he was paid in cash, that he did not deposit the monies he was paid into a bank because he needed the cash to pay his bills, and that the business is now closed. He testified that the information on the form 1099-MISC issued to him was accurate.

8. The hearing record was left open for petitioners to submit additional proof establishing that their children satisfied the residency requirement. Within the time allowed, petitioners submitted additional proof on that issue. Based on that proof, the Division in its hearing brief conceded that petitioners provided sufficient records to substantiate that the dependents they reported on their return were qualifying dependents for purposes of the Empire State child credit and earned income credit. The Division conceded further that, therefore, petitioners are entitled to the Empire State child care credit sought on their return, and that the earned income credit should be recomputed based on petitioners' having two qualifying dependents.

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

A. The account adjustment notice at issue herein denied two credits sought by petitioners' 2014 joint return, the earned income credit (State and City) and the Empire State child credit. The Division has conceded, based on the proof submitted by petitioners after the hearing, that petitioners qualify for the Empire State child credit (*see* finding of fact 9), so the only issue remaining is whether the Division erred in reducing the earned income credit claimed by petitioners on their return.

B. 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 New York 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 petitioners' eligibility for the earned income credit.

C. The federal earned income credit, provided for pursuant to IRC § 32, is a refundable tax credit for eligible low-income workers. The amount of the credit depends on the number of the taxpayer's qualifying dependents and the taxpayer's "earned income," which includes earnings from self-employment (*see* IRC § 32 [c] [2]). Petitioner bears the burden of proof to substantiate, by clear and convincing evidence, that the account adjustment notice was erroneous (*see* Tax Law § 689 [e]; *Matter of Suburban Restoration Co, Inc. v Tax Appeals Tribunal*, 299 AD2d 751, 752 [3d Dept 2002]). Upon review of the record, it is found that petitioners have met their burden of proof here.<sup>1</sup>

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<sup>1</sup> Mr. Ahmad's weekly wage of \$312.00 equates to annual earnings of \$16,224.00, which is more than the \$14,980.00 petitioners reported on their schedule C-EZ. The Division did not cite this discrepancy as a basis for discrediting Mr. Ahmad's testimony in its hearing brief or at hearing. The discrepancy is consistent with Mr. Ahmad working the whole year for Lucky Seven, but missing four weeks due to vacation or sickness (48 weeks multiplied by \$312.00 per week equals \$14,976.00, which is very close to the \$14,980.00 reported on petitioners' schedule C-EZ). Accordingly, this discrepancy is found not to undermine petitioners' overall proof of the accuracy of the income

D. To be entitled to earned income credit, petitioners must provide proof of their earned income in 2014 (*see Matter of Espada*, Tax Appeals Tribunal, January 28, 2016). In support of their claim that petitioner Elhakam Ahmad was paid \$14,980.00, as reported on petitioners' schedule C-EZ, Mr. Ahmad produced the 1099-MISC issued to him by Lucky Seven that included the company's federal identification number and showed him having been paid \$14,980.00. Petitioners also produced a letter from "Mohamed K" on Lucky Seven's letterhead, which asserted that Mr. Ahmad worked for the company in 2014, was paid \$312.00 weekly, and worked from Monday through Friday from 12 p.m. to 8 p.m. Furthermore, while Mr. Ahmad's language skills limited the descriptiveness of his testimony, he testified credibly that he worked in Lucky Seven as a deli assistant and a cashier in 2014. His testimony that for the first three months of the year he worked each day at another store before going to work at Lucky Seven is consistent with the 12 p.m. to 8 p.m. work hours given for Mr. Ahmad in the Lucky Seven letter (*see* finding of fact 3). It is determined that this evidence, if unrefuted, is sufficient to meet petitioners' burden of proving, by clear and convincing evidence, the accuracy of the income reported on their schedule C-EZ (*see Matter of Avildsen*, Tax Appeals Tribunal, May 19, 1994 [where the Tribunal finds credible testimony sufficient to overcome an income tax deficiency]; 20 NYCRR 158.2 [personal income tax regulation providing that an individual "whose gross income includes salaries, wages or similar compensation for personal services rendered" is not required to keep the "books of accounts and records" required of other taxpayers by section 158.1 of the regulations]).

The only evidence that the Division offered against this proof was Mr. Roberts' testimony that there was an inconsistency between the amount of the income reported on that schedule and

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reported on that schedule.

unspecified returns filed by Lucky Seven. Mr. Roberts refused to spell out the nature of that inconsistency, citing the Tax Law secrecy rules. It appears that the Division could have sought an order from the Administrative Law Judge to allow it to disclose that return.<sup>2</sup> In any case, having not produced the returns, or otherwise provided evidence about the nature and extent of the discrepancy, the Division has made it impossible to determine the materiality of that inconsistency. Accordingly, it is determined that the Division has not refuted the evidence presented by petitioners in support of the accuracy of the income reported on their schedule C-EZ.

E. The petition of Elhakam and Jida Ahmad is granted, the notice of adjusted refund, dated May 11, 2015, is cancelled, and the Division is directed to refund to petitioners the sum of \$2,366.00, plus applicable interest.

DATED: Albany, New York  
March 21, 2019

/s/ James P. Connolly  
ADMINISTRATIVE LAW JUDGE

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<sup>2</sup> Tax Law § 697 (e) (1) provides a general rule forbidding disclosure of returns filed under article 22 of the Tax Law, “[e]xcept in accordance with proper judicial order or as otherwise provided by law.” Tax Law § 697 (e) (2) provides an exception from that prohibition, permitting disclosure “on behalf of the commissioner in an action or proceeding under the provisions of this chapter . . . to which the state or the commissioner is a party or a claimant . . . when the reports, returns or facts shown thereby are directly involved in such action or proceeding, in any of which events the court may require the production of, and may admit in evidence, so much of said reports, returns or of the facts shown thereby, as are pertinent to the action or proceeding and no more.” This exception appears applicable here because the Division was grounding its denial of the earned income credit sought by petitioners’ based on something on Lucky Seven’s return. Thus, that return was directly involved in this litigation and the Division could have disclosed the return or testified as to its contents.