

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition :  
of :  
**GHASSAN BARAKAT AND MARTA AMADEO** : DETERMINATION  
For Redetermination of a Deficiency or for Refund of New : DTA NO. 827725  
York State Personal Income Tax under Article 22 of the :  
Tax Law and the New York City Administrative Code for :  
the Year 2014.  
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Petitioners, Ghassan Barakat and Marta Amadeo, 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 and the New York City Administrative Code for the year 2014.

A hearing was held before Kevin R. Law, Administrative Law Judge, on April 27, 2018, in New York, New York, with all briefs to be submitted by October 5, 2018, which date began the six-month period for issuance of this determination. Petitioners appeared pro se. The Division of Taxation appeared by Amanda Hiller, Esq. (Linda A. Farrington, Esq., of counsel).

***ISSUES***

- I. Whether the Division of Taxation properly denied petitioners' claimed earned income credit.
- II. Whether the Division of Taxation properly denied petitioners' claimed college tuition credit.

***FINDINGS OF FACT***

1. On March 8, 2015, petitioners, Ghassan Barakat and Marta Amadeo, filed a 2014 New

York resident income tax return (form IT-201) on which \$17,255.00 of Schedule C business income was reported as well as \$351.00 of interest income. Petitioners claimed Mr. Barakat's daughter, Maram Barakat, as a dependent on their return. Petitioners claimed a total refund of \$1,522.00 consisting of the New York State earned income credit, the New York City earned income credit, New York City school tax credit, and the college tuition credit.

2. Petitioners' schedule C indicates that the business name was "Gus Edward Barakat" and that the its principal business activity was "other personal care services." No business expenses were claimed on the Schedule C.

3. On March 30, 2015, the Division of Taxation (Division) sent a letter to petitioners requesting substantiation of their claimed dependent, their reported income and the college tuition credit.

4. According to the Division, petitioners responded with some documentation. The record, however, does not indicate specifically what was provided.

5. On June 8, 2015, the Division issued an account adjustment notice to petitioners which allowed a \$125.00 refund for the New York City school tax credit.

6. On December 30, 2015, the Division issued a formal notice of disallowance that disallowed the college tuition credit and the New York State and New York City earned income credits.

7. Attached to the petition is a form 1099-MISC reporting \$17,255.00 in nonemployee compensation paid to both Ghassan Barakat and Marta Amadeo from Gus Edward Barakat Studio Inc. The amount reported on the 1099-MISC and provided to the Division was not reported to the IRS. Petitioners also provided a federal corporation income tax return, form

1120, for the tax year 2014 of Gus Edward Barakat Studio Inc. The form 1120 claims a deduction of \$17,625.00 for compensation to officers.

8. Also attached to the petition were checking account statements for Gus Edward Barakat Studio Inc. The Division analyzed these statements and its analysis did not show any payments made directly to either petitioner in the form of compensation nor did the checking account statements reflect the amount reported on the 1099-MISC. The Division's analysis indicated that over the course of 2014, deposits into said account amounted to \$70,737.00, while withdrawals from the account amounted to \$70,285.93. Specifically, the Division broke down the expenses into three categories; to wit: (i) business; (ii) personal; and (iii) likely personal. The business expenses amounted to \$204.13, personal expenses amounted to \$10,189.97, and likely personal expenses amounted to \$35,363.42. In addition, the Division pointed out that the statements were incomplete as there were missing pages on which transactions totaling \$24,732.54 were unaccounted for. The Division deemed the \$24,732.54 of missing transactions as personal expenses. Review of the statements indicates numerous automatic teller machine withdrawals, mortgage payments, food and clothing purchases, etc., were made. At the hearing in this matter, Mr. Barakat admitted that this account was used to pay personal expenses as petitioners did not maintain a personal checking account. The record does not detail how the income reported on petitioners' income tax return was determined nor how the income amounts and the expenses reported on the federal corporate return of Gus Barakat Studio Inc., were determined.

9. Petitioners also submitted documentation with respect to their claimed dependent, Maram. Review of the documentation establishes that during 2014, Maram lived with petitioners and was 22 years of age at the end of 2014. During 2014, Maram was pursuing a master's

degree at Teacher's College of Columbia University (Columbia), having previously obtained a bachelor's degree from the American University of Beirut. The enrollment verification form showed that Maram was a three-quarter time student from September 2014 to December 2014 and that Columbia defined full-time enrollment as 12 credit hours or its equivalent. Petitioners submitted a transcript of Maram's course work at Columbia. The transcript indicates that Ms. Barakat completed three courses totaling nine credit hours in the year 2014. A form 1098-T indicates that \$34,438.00 was received by Columbia University for Maram's education in 2014.

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

A. Tax Law § 606 (d) provides that the New York State earned income credit for the 2014 tax year is equal to 30% “of the earned income credit allowed under section thirty-two of the internal revenue code for the same taxable year. . . .” In addition, Tax Law § 1310 (f) provides for a credit equal to 5% “of the earned income credit allowed under section thirty-two of the internal revenue code for the same taxable year. . . .” for New York City residents. Since petitioners' eligibility for the New York State and New York City earned income credits hinge upon their eligibility for the federal credit, their eligibility under federal law is determinative.

B. The federal earned income credit, provided for pursuant to 26 USC § 32, is a refundable tax credit for eligible low-income workers. To be eligible to claim the credit, a taxpayer must have earned income with an adjusted gross income (AGI) below a certain level, must have a valid Social Security number, must use a filing status other than married filing separately, must be a U.S. citizen or resident alien, must have no foreign income, and have investment income less than a certain amount. “A small credit is provided to all eligible taxpayers, but the principal feature of the EIC is the more substantial credit available to eligible taxpayers who have one or more ‘qualifying’ children” (*Sherbo v Commr.*, 255 F3d 650, 651

[8th Cir 2001], citing 2 Bittker & Lokken, *Federal Taxation of Income, Estate & Gifts* ¶ 37.1 [3d ed. 2000]). The amount of credit varies depending on the number of the taxpayers' "qualifying children" as defined by 26 USC § 152 (c) and the taxpayers' adjusted gross income level. In this case there are two issues present concerning petitioners' eligibility for the earned income credit; to wit: whether Maram was a qualifying child and the amount of petitioners' earned income.

C. For purposes of the earned income tax credit, the term "qualifying child" generally means a qualifying child as defined in 26 USC § 152 (c) (26 USC § 32 [c] [3]). Pursuant to 26 USC § 152 (c) (2) (A), a qualifying child includes a daughter of the taxpayer or a descendant of a daughter (relationship test). The qualifying child must have the same principal place of abode as the taxpayer for more than one-half of the tax year (26 USC § 152 [c] [1] [B]) (residency test), and the child must not have attained the age of 19 or a full-time college student under the age of 24 (IRC § 152 [c] [3] [A] [i]) (age test). The Division has conceded that Maram meets the relationship test and the residency test, but has challenged whether Maram meets the age test because she was not a full-time college student during 2014.

D. 26 USC § 152 (c) (4) defines "student" as an individual who, during each of five calendar months during the calendar year is a "full-time" student at a qualifying educational institution. A full-time student is defined as one who is enrolled for the number of hours or courses that the educational institution considers full-time attendance (Treas. Reg. § 1.151-3 [b]). In this case, Maram was 22 at the end of 2014, but was only taking nine credit hours of classes. Because Columbia University considered 12 credit hours as full-time, Maram was not a full-time student and thus does not meet the age test to be considered a qualifying dependent.

E. As noted, the amount of the earned income credit is dependent on whether the taxpayer had earned income and the amount thereof. In 2014, the earned income credit was completely

phased out for married taxpayers filing jointly with no qualifying dependents whose earned income equaled or exceeded \$20,020.00 (*see* Rev. Proc. 2013–35). In the case of married taxpayers filing jointly with one qualifying dependent, the credit was completely phased out if their income equaled or exceeded \$43,941.00 (*id.*). In this case, petitioners have failed to document the amount of income they earned in 2014. As noted by the Division, the corporate checking account of Gus Edward Barakat Studio Inc., reveals numerous personal expenditures incurred by petitioners during 2014 which are deemed to be constructive dividends to petitioners (*United States v Mews*, 923 F2d 67, 68 [7th Cir. 1991]; *Grossman v Commr.*, 182 F3d 275 [4th Cir. 1999]). The record is bereft of evidence that establishes petitioners’ entitlement to the earned income credit. Accordingly, petitioners have not met their burden of proving that the disallowance of their claimed earned income credit was improper and or erroneous.

F. Finally, petitioners also challenged the disallowance of the tuition expenses paid on Maram’s behalf while pursuing her master’s degree at Columbia. Tax Law § 606 (t) allows taxpayers an itemized deduction or a refundable credit for “allowable college tuition expenses.” Tax Law § 606 (t) (2) (A) defines “allowable college tuition expenses” as “the amount of qualified college tuition expenses of eligible students paid by the taxpayer during the taxable year, limited to \$10,000 for each student.” Tax Law § 606 (t) (2) (C) specifically excludes tuition paid for “study leading to the granting of a post baccalaureate or other graduate degree” from the definition of “qualified college tuition expenses.” Because Maram’s tuition was incurred while pursuing a graduate degree, this credit was properly disallowed.

G. The petition of Ghassan Barakat and Marta Amadeo is denied and the December 30, 2015 notice of disallowance is sustained.

DATED: Albany, New York  
April 4, 2019

/s/ Kevin R. Law  
ADMINISTRATIVE LAW JUDGE