

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
AHMAD AND IMAN UDAYNI : DETERMINATION
for Redetermination of a Deficiency/Revision of a : DTA NO. 827726
Determination or for Refund of Personal Income :
under Article 22 of the Tax Law for the Year 2014. :

Petitioners, Ahmad and Iman Udayni, 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 June 27, 2018, at 10:00 a.m., in New York, New York, with all briefs to be submitted by September 17, 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 2014 tax year.

FINDINGS OF FACT

1. Petitioners, Ahmad and Iman Udayni, 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 no wage income, business income of \$20,544.00, and requested a refund in the amount of \$1,490.00. The

refund requested consisted of an Empire State child credit of \$330.00; a New York State earned income credit in the amount of \$902.00; 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 \$165.00, less \$32.00 in total New York State, New York City, and Yonkers taxes. Petitioners' return included form IT-215, claim for earned income credit, which listed petitioners' son, Abdulrahman, as a qualifying child, and a schedule from petitioners' federal income tax return, schedule C-EZ, net profit from business, showing \$20,544.00 in net profit.

2. The Division began an audit of petitioners' return for 2014 by sending to petitioners an audit inquiry letter, dated March 2, 2015, asking for copies of all the W-2 forms they received, and documentation of their 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 child claimed.

3. In response to the Division's March 2, 2015 letter, petitioners submitted the following documentation to the Division:

- a. monthly bank statements for petitioner Ahmad Udayni for January 14, 2014, through December 10, 2014;
- b. a birth certificate for Abdulrahman Udayni, showing him to be born in June 1998 with petitioners as his parents;
- c. a New York City Department of Education student transcript for Abdulrahman Udayni at Fort Hamilton High School for "2014 Term 1," along with a New York

City Department of Education “Parent Affidavit of Residency” for Abdulrahman, sworn to by petitioner Ahmad Udayni on September 2, 2014, and listing as Abdulrahman’s current address the same Brooklyn address shown as petitioners’ address on their 2014 form IT-201; and

d. a “Certificate of Doing Business Under Assumed Name (‘D/B/A’)” signed by petitioner Ahmad Udayni on November 16, 2012, showing him as having a Cobleskill, New York, address and doing business under the name “Entire Group Consulting” and bearing the stamp of the Albany County Clerk’s office.

4. After reviewing the above information, the Division sent petitioners an account adjustment notice, dated May 11, 2015, reducing the refund claimed on their form IT-201 for 2014 to \$125.00. More specifically, the Division granted the refund sought on petitioners’ return for the New York City school tax credit, but disallowed the earned income credit and Empire State child credit, stating:

“[y]our response to our inquiry letter included bank statements for the tax year. The bank statements you provided include both deposits and charges. However, those deposits and charges do not substantiate the amount claimed on your return and cannot be verified as being made due to a [sic] business transactions. Therefore, the bank statements, alone, do not support the income claimed on your return. The business income claimed has been disallowed.

* * *

The residency documentation you submitted shows conflicting information. The address verification from the school that is dated 1/05/15 shows the [dependent] was admitted on 11/24/14 and the address reported is not the same as the address you are filing from.

* * *

Please provide an address history report from the school and/or doctor for all dependents claimed, and we will review this matter again.”

The audit file record did not contain any “address verification” form dated January 5, 2015.

5. At the 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 reviewed the audit file prior to testifying. He testified that the bank statements submitted by petitioners in response to the Division's audit inquiry letter were not sufficient proof of petitioners' self-employment income because there was no way to know what generated each deposit, such as a "backup ledgers or invoices." He also pointed out that the total of the deposits shown on those statements (\$15,300.00) was less than the \$20,544.00 in business income claimed by petitioners on their return and that two of the deposits shown on those bank statements, which totaled \$1,950.00, were transfers from another bank account.

6. At the hearing, petitioners provided a student transcript for Abdulrahman Udayni that showed an "admit date" of July 2, 2014, and gave an address for Abdulrahman that matches petitioners' Brooklyn address, along with a "New York City Public Schools Verification of Pupil Registration Form" showing the same admission date and address. Mr. Roberts testified that such proof was sufficient to establish Abdulrahman as a qualifying child for purposes of the Empire State child credit. In its hearing brief, the Division conceded that, based on the additional evidence produced at the hearing, petitioners are entitled to the Empire State child credit they claimed on their 2014 IT-201 return.

7. Petitioner Ahmad Udayni testified at the hearing that he was licensed as a civil engineer in his native land of Yemen, but that he was not able to transfer that license when he came to the United States. He testified that the self-employment income reported on his joint return in 2014 resulted from consulting work he did using his background as a civil engineer, such as consulting with prospective buyers of real property as to the quality of the property's construction. He had pursued that line of work in Cobleskill, New York, when he first came to the United States, hence the Cobleskill address shown on the "Certificate of Doing Business

Under Assumed Name (“D/B/A”) he provided to the Division (*see* finding of fact 3). Later he moved the business to New York City where he worked in 2014. He did not keep a ledger of the money he received in 2014, and has no records for the business from 2014. While he testified that the income shown on his return from his consulting business was accurate, he did not explain, how in the absence of any such records, he knew exactly the amount of his earnings. He testified that he deposited all the money he earned from his business in his bank account, but later testified that he “probably” spent some of the money he earned without putting it in the bank account. As for the deposits that were transfers from other accounts noted by Mr. Roberts, Mr. Udayni testified that the accounts from which the transfers came were not his and that “it could be” that the transfers represented “fees” paid by a client.

8. Mr. Udayni submitted into the record six pages of handwritten contracts with customers for engineering-related work in 2015.

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 at the hearing, that petitioners qualify for the Empire State child credit (*see* finding of fact 6). Hence that credit is granted.

B. The only issue remaining is whether the Division erred in denying the earned income credit claimed by petitioners on their return. 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 taxpayer's "earned income," which includes earnings from self-employment, and the number of the taxpayer's "qualifying child[ren]" (*see* IRC § 32). Petitioner bears the burden of proof to substantiate, by clear and convincing evidence, that the account adjustment notice was erroneous (Tax Law § 689 [e]; *Matter of Suburban Restoration Co., Inc. v Tax Appeals Trib.*, 299 AD2d 751, 752 [3d Dept 2002]). Upon review of the record, it is clear that petitioners have not met their burden of proof here.

D. The Division's concession that Abdulrahman Udayni is a "qualifying child" for purposes of the Empire State child credit means that he is also a qualifying child for purposes of the earned income credit, since both credits look ultimately to IRC § 152 (c) for the definition of "qualifying child" (*see* Tax Law § 606 [c-1], [d]). Thus, the question is whether petitioners have established, as they are required to do, the amount of their earned income in 2014 (*see Matter of Espada*, Tax Appeals Tribunal, January 28, 2016). Mr. Udayni was quite credible in his testimony that he had a consulting business in 2014; however, his testimony was not convincing as to the amount of income he earned through that business. While he testified that the amount shown on the return was exactly what he earned through his business, he also testified that he had no written records as to his business's finances, and he did not explain, how in the absence of any such records, he knew exactly the amount of his earnings. The only documentary evidence in the record as to the amount of the income earned by Mr. Udayni is his bank statements for 2014, but the amount of earned income petitioners reported did not match the total of deposits shown on

those bank statements (*see* finding of fact 5). Mr. Udayni testified that he put all the money he earned from his business into his bank account, but he later testified that he “probably” spent some of the money he earned without putting it in the bank account. Moreover, as to the \$1,900.00 in deposits in that account that came from transfers from another bank account, he was only able to testify that “it could be” that those deposits resulted from fees paid by his clients. In sum, at hearing, petitioners did not clearly and convincingly establish the amount of their earned income in 2014.

E. The petition of Ahmad and Iman Udayni is granted to the extent indicated in conclusion of law A, the Division of Taxation is directed to modify the account adjustment notice dated May 11, 2015, consistent with that conclusion of law, and, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York
March 14, 2019

/s/ James P. Connolly
ADMINISTRATIVE LAW JUDGE