

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
MOHAMMED ALDABBAGH : DETERMINATION
for Redetermination of a Deficiency or for Refund of : DTA NO. 827727
New York State and New York City Personal Income Tax :
under Article 22 of the Tax Law and the Administrative :
Code for the City of New York for the Year 2014. :
:

Petitioner, Mohammed Aldabbagh, filed a petition for redetermination of a deficiency or for refund of New York State and New York City personal income tax under article 22 of the Tax Law and the Administrative Code for the City of New York for the year 2014.

A hearing was held before James P. Connolly, Administrative Law Judge, on April 25, 2018, at 10:00 a.m., in New York, New York, with all briefs to be submitted by October 9, 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. (Christopher O'Brien, Esq., of counsel).

ISSUE

Whether the Division of Taxation properly disallowed petitioner's claimed earned income credit and empire state child credit for 2014.

FINDINGS OF FACT

1. Petitioner, Mohammed Aldabbagh, 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, petitioner claimed filing status as head of household, reported wage income of \$1,308.00, business income of \$14,280.00, and requested a refund in the amount of \$2,329.00. 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 \$63.00; a New York City earned income credit in the amount of \$273.00; New York State withheld tax of \$14.00; and New York City withheld tax of \$11.00. Petitioner's return included form IT-215, claim for earned income credit, which listed petitioner's two sisters, Zainab, born September 19, 2003, and Nahawnd, born May 31, 1991, as qualifying children, indicating that each was a person with a disability.

2. Commencing an audit of petitioner's tax return for the year 2014, the Division sent an audit inquiry letter, dated May 11, 2015, to petitioner, asking for copies of all the W-2 forms he received, and documentation of petitioner's reported self-employment business income, including copies of any license, registration, or certification needed for the business; summary documents used to calculate the income and expenses reported, such as ledgers and spreadsheets, and detailed documentation supporting the business income reported, such as sales slips, invoices, or bank statements. 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 May 11, 2015 letter, petitioner submitted the following documentation to the Division:

- a. copies of two W-2 forms issued to him for the year 2014, reporting that petitioner was paid a total of \$1,308.00 in wage;

b. a 1099-MISC form for the year 2014 issued by Jackson Gourmet Deli Corp., reporting that the corporation paid petitioner \$14,200.00;

c. a letter from Jackson Gourmet Deli Corp., dated May 29, 2015, and signed by Jamal Fadel, president, stating that petitioner worked for that company in 2014, was paid \$297.00 weekly, and that the company had issued him a 1099-MISC form for 2014;

d. a letter from the International Rescue Committee verifying the identities of petitioner and certain members of his family, including his father, mother, and sisters Zainab and Nahawnd, and stating that all had arrived in the United States as refugees from Iraq in March 2014;

e. a New York City Public Schools Verification of Pupil Registration for petitioner's sister Zainab, as well as a MRI report from Lerman Diagnostic Imaging for his sister Nahawnd.

4. After reviewing the above information, the Division sent petitioner an account adjustment notice, dated September 2, 2015, reducing the refund claimed on his form IT-201 for 2014 to \$88.00. More specifically, the Division granted the refund sought on petitioner's return in regard to the tax withheld and the New York City school tax credit, but denied the earned income credit and empire state child credit, stating:

“[s]ince your response to our inquiry did not include the required documentation to verify the business income reported and the qualifying child(ren) claimed on your return, the earned income credit and the Empire State child credit have been disallowed.”

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 petitioner's 2014 return, but he had reviewed the audit file prior to testifying. He testified that, in reviewing the file, he obtained a wage and income transcript from the Internal Revenue Service (IRS) for petitioner for 2014, which the Division submitted into evidence at the hearing. The transcript

shows the W-2 income reported on petitioner's IT-203, but does not list any self-employment income that would be reported through a form 1099-MISC.

6. Attached to the petition in this matter is a letter dated June 15, 2015 to petitioner from the IRS. The letter states that the IRS is auditing petitioner's 2014 Federal income tax return, proposes certain adjustments to petitioner's return, and asks petitioner to indicate his agreement or disagreement with the changes. One of the proposed changes is the denial of the schedule C income petitioner reported in the amount of \$14,280.00. Also attached to the petition is a notice of deficiency, dated August 17, 2015, issued by the IRS to petitioner. The "explanation of items" page of the notice of deficiency states, in part, that "[s]ince you did not establish that you were entitled to the earned income credit, we disallowed it." The parties did not address either the IRS letter or its notice of deficiency at the hearing and there is nothing else in record concerning those documents.

7. Mr. Roberts also testified that the Division did not accept petitioner's sister Nahawnd as a qualifying dependent for the purposes of the earned income credit. In 2014, Nahawnd was 23 years old. To be a qualifying dependent at that age, she needed to be a full-time student, or permanently disabled. According to Mr. Roberts, the proof that petitioner submitted on audit did not establish either status.

8. At the hearing, petitioner testified that he came to the United States sometime in March 2014. He testified that he had one job, at which he worked for six months, assisting in the delivery of goods by car. He testified further that he was paid a weekly wage of \$290.00 and the person who paid him was named Jamal.

9. The record was held open after the hearing to allow petitioner to submit additional proof that his sister Nahawnd was permanently disabled in 2014, along with additional evidence regarding his employment in 2014. Within the time allowed, petitioner submitted documents bearing on both issues.

10. On the issue of his sister Nahawnd's medical status, petitioner submitted into the record, post-hearing, a document entitled "Notice of Decision," dated September 26, 2016, by an administrative law judge of the Federal Social Security Agency's Office of Disability Adjudication and Review pertaining to Nahawnd. Citing medical reports, that decision concluded that Nahawnd was disabled under section 1614 (a) (3) (A) of the Social Security Act (42 USC § 423 [d]) as of July 19, 2014. In its hearing brief, the Division concedes, based on that proof, that Nahawnd was a qualified dependent of petitioner's in 2014 for the purposes of the earned income credit and agrees that petitioner is entitled to an empire state child credit of \$330.00 as claimed by petitioner.

11. On the issue of petitioner's employment in 2014, petitioner provided a letter from Jackson Gourmet Deli, dated May 22, 2018, and signed by Mansour Fadel. The letter stated Mr. Fadel was the owner of Jackson Gourmet Deli and that the company had employed petitioner as a part-time employee. The letter further states that the company paid petitioner weekly wages of \$275.00 and had issued him a form 1099-MISC showing total wages paid in 2014 of \$14,180.00.

CONCLUSIONS OF LAW

A. The Division now concedes that petitioner is entitled to the empire state child credit claimed of \$330.00. The Division is directed to grant that portion of the refund sought by petitioner.

B. That leaves as the sole issue herein petitioner's entitlement to a New York State and New York City earned income credit. 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 petitioner's eligibility for the New York State earned income credit.

C. The federal earned income credit, provided for pursuant to IRC [26 USC] § 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 [26 USC] § 32 [c] [2]). With exceptions not applicable here, an individual who has been a qualified nonresident alien for any part of the year in question is not eligible for an earned income credit for that year (*see* IRC [26 USC] § 32 (c) (1) (D); IRS Publication 596).

D. 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 petitioner has not met his burden of proof here.

E. The record makes clear that petitioner first entered the United States in March 2014 (*see* findings of fact 3 and 8). Accordingly, before March 2014, petitioner was a nonresident alien and thus did not qualify for an earned income credit in 2014 (*see* Tax Law § 606 [d]; IRC [26 USC] § 32 [c] [1] [D]).

F. Moreover, even assuming petitioner was entitled to an earned income credit, he failed to prove the amount to which he was entitled because he failed to establish the amount of his

income for 2014. The two letters from Jackson Gourmet Deli in the record give two different weekly pay amounts for petitioner, \$297.00 and \$275.00 (*see* findings of fact 3 and 11).

Petitioner testified that his weekly payment rate was \$290.00. Assuming that he came to the United States on March 1, 2014, and thus was available to work for the entire month of March, the most he could have earned in 2014, on the highest of these three weekly pay rates, \$297.00, would be \$13,068.00 (\$297.00 X 44 weeks), whereas the form 1099-MISC that Jackson Gourmet Deli issued him reported income in the amount of \$14,280.00. Compounding matters, petitioner testified that he only worked for a total of six months, which would mean that the most he could have earned at Jackson Gourmet Deli is \$7,722.00 (\$297.00 X 26 weeks). In sum, given the varying accounts of petitioner's weekly earnings in the record and the inconsistency between any of those weekly earnings figures and the income reported on his form 1099-MISC, petitioner has failed to establish his income in 2014, thus supporting the Division's denial of the earned income credit and empire state child credit claimed on his 2014 return.

G. The petition of Mohammed Aldabbagh is granted to the extent indicated in conclusion of law A, but is otherwise denied, and the Division's account adjustment notice, dated September 2, 2015, as modified by conclusion of law A, is sustained.

DATED: Albany, New York
April 4, 2019

/s/ James P. Connolly
ADMINISTRATIVE LAW JUDGE