

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition :  
of :  
**ELIEZER CRUZ** : DETERMINATION  
for Redetermination of a Deficiency or for Refund of : DTA NO. 827775  
New York State Personal Income Tax under Article 22 :  
of the Tax Law for the Year 2014. :

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Petitioner, Eliezer Cruz, 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 for the year 2014.

On January 2, 2018, petitioner, Eliezer Cruz, and on February 1, 2018, the Division of Taxation, appearing by Amanda Hiller, Esq. (Charles Fishbaum, Esq., of counsel), waived a hearing and submitted the matter for determination pursuant to 20 NYCRR 3000.12 based on documents and briefs to be submitted by June 1, 2018, which date began the six-month period for the issuance of this determination. After due consideration of the documents and arguments submitted, Donna M. Gardiner, Administrative Law Judge, renders the following determination.

***ISSUE***

Whether the Division of Taxation properly disallowed the earned income credit and empire state child credit claimed by petitioner for the tax year 2014.

***FINDINGS OF FACT***

1. Petitioner electronically filed with the Division of Taxation (Division) a New York State resident personal income tax return for 2014 claiming head of household filing status. Petitioner reported New York adjusted gross income of \$21,130.00. After subtracting the standard

deduction and three dependent exemptions from the reported income, petitioner reported taxable income in the amount of \$7,180.00 and New York State personal income tax due in the amount of \$197.00. Petitioner claimed an empire state child credit in the amount of \$660.00, a New York State earned income credit (EIC) in the amount of \$1,545.00 in addition to New York State tax withheld in the amount of \$472.00, resulting in a claim for refund in the amount of \$2,480.00.

2. Attached to petitioner's 2014 return was form IT-215, Claim for Earned Income Credit, wherein petitioner reported the names of three qualifying children. Petitioner also attached form IT-213, Claim for Empire State Child Credit, wherein he claimed two qualifying children.

3. On February 17, 2015, the Division sent correspondence to petitioner requesting additional information to support petitioner's claim for the EIC, including proof of each claimed child's relationship and residence. This correspondence included what information was needed, as follows:

**“Required information about your children and dependents**

For **every** child or dependent that you're claiming a credit for on your return, we need **all** of the following items:

A copy of the child's birth certificate.

If you're not listed on the child's birth certificate, include documentation showing your relationship to the child or dependent. For example, if you're claiming a credit for your grandchild, send us:

- the child or dependent's birth certificate, **and**
- the birth certificate for the child or dependent's parent, which lists you as the parent.

If you're claiming a foster child, include a copy of the decree or other court order naming you as the foster parent.

Proof of where the child or dependent lived. If you're claiming the credit for a child, send us a letter from the child's doctor or school showing the child's name, date of birth, address, and name of the child's custodial parent for the tax year above.

If you changed your address during the tax year listed above, give us the addresses of **all** the places you lived during that year" (emphasis supplied).<sup>1</sup>

Petitioner failed to respond to the request for additional information.

4. On June 10, 2015, the Division sent a follow-up letter to petitioner stating that the refund request could not be allowed since petitioner provided no documentation to support his claim. Specifically, the letter stated, in pertinent part, that:

"In order to qualify for the Earned Income Credit and the Empire State Child Credit claimed on your return, the relationship, age, and residency of qualifying children must be met.

For you to be able to claim them as qualifying children, you must provide proof that you are related and an address history form from the school. If the child is not a relative, you must provide a legal document showing you as the legal guardian."

Petitioner failed to provide adequate documentation to establish the necessary relationship to the claimed dependents. Thus, a second account adjustment notice was issued to petitioner, on June 22, 2015, that provided no additional refund.

5. On December 28, 2015, the Division sent a final follow-up letter to petitioner. This correspondence stated that since no additional documentation was submitted, the claim for any additional refund could not be issued.

6. The Division issued a notice of disallowance, dated February 12, 2016, that denied petitioner's claim for refund.

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<sup>1</sup>Also included with the correspondence from the Division was an account adjustment notice which granted petitioner a refund of \$125.00. This amount is not at issue and the refund claim herein is reduced to \$2,355.00.

7. In response to the notice of disallowance, petitioner filed a request for conciliation conference with the Bureau of Conciliation and Mediation Services that was received on February 26, 2016. Attached to his request for conciliation conference were birth certificates for two of the claimed dependents. However, petitioner was not named as the father and no additional documentation was provided to show petitioner's relationship to the claimed dependents. Petitioner also attached a letter from the Gates Chili Central School District that indicated two of the claimed dependents were enrolled in the district and it stated the address on file with the school was the same as petitioner's address. The letter also indicated petitioner's relationship to the children as step father, on August 29, 2007, at the time the children were registered with the school.

8. On July 1, 2016, a conciliation order, CMS No. 269604, was issued to petitioner that sustained the notice of disallowance. Thereafter, petitioner filed a timely petition with the Division of Tax Appeals.

9. Petitioner did not provide any additional documentation or argument in support of his petition.

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

A. Tax Law § 606 (d) provides that the New York State EIC for the 2014 tax year is equal to 30 percent "of the earned income credit allowed under section thirty-two of the internal revenue code for the same taxable year. . . ." Since the state EIC is determined based solely on a percentage of the federal EIC, it is appropriate to refer to the provisions of the Internal Revenue Code (IRC) to determine petitioner's eligibility for the credit determined with a qualifying child.

B. The federal EIC, provided for pursuant to IRC § 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 United States citizen or resident alien, must have no foreign income and have investment income less than a certain amount. In this case, the matter turns on whether petitioner may claim the EIC computed with three qualifying children.

C. Pursuant to IRC § 152 (c), a qualifying child includes a child of petitioner or descendant of such child, or a sibling, step-sibling, or descendent of such sibling or step-sibling. The burden of proof is on the taxpayer to show by clear and convincing evidence that the determination made by the Division was erroneous (*see Leogrande v Tax Appeals Trib.*, 187 AD2d 768 [3d Dept 1992], *lv denied* 81 NY2d 704 [1993]; *see also Scarpulla v State Tax Commn.*, 120 AD2d 842 [3d Dept 1986]). Here, the only dispute is whether the petitioner has established the necessary relationship to the three claimed dependents for entitlement to the EIC. Petitioner did not sustain his burden of proof.

Petitioner herein claims that he is the stepfather of the three claimed dependents. However, the record before me does not contain any evidence showing that petitioner was ever married to the mother of the three claimed dependents or that he was ever appointed as a legal guardian for the claimed dependents. Without establishing the necessary relationship to the three claimed dependents, petitioner is not entitled to the EIC.

D. Likewise, Tax Law § 606 (c-1) (1) provides for a refundable credit, known as the empire state child credit, which is generally equal to the greater of \$100.00 times the number of qualifying children or applicable percentage of the child tax credit allowed under IRC § 24 for

the same taxable year for each qualifying child. IRC § 24 utilizes the same eligibility criteria with respect to a qualifying child as set for above under IRC § 32. Therefore, since it has been determined that petitioner did not establish that the three children claimed were qualifying children for EIC purposes, the two claimed dependents are not qualifying children for purposes of the empire state child credit.

E. The petition of Eliezer Cruz is denied and the notice of disallowance, dated February 12, 2016, is sustained.

DATED: Albany, New York  
November 29, 2018

/s/ Donna M. Gardiner  
ADMINISTRATIVE LAW JUDGE