

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
FRANCISCO VARGAS HIDALGO	:	
	:	DETERMINATION
	:	DTA NO. 828418
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 2015.	:	

Petitioner, Francisco Vargas Hidalgo, 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 2015.

A hearing was held on August 28, 2019 in New York, New York, at 10:00 a.m., with all briefs to be submitted by December 3, 2019, which date began the six-month period for issuance of this determination. Petitioner appeared pro se. The Division of Taxation appeared by Amanda Hiller, Esq. (Stephanie Lane, Esq., of counsel). After due consideration of the documents and arguments submitted, James P. Connolly, Administrative Law Judge, renders the following determination.

ISSUE

Whether the Division of Taxation properly disallowed a portion of petitioner's empire state child credit and all of petitioner's claimed New York State and New York City earned income credit and household credit.

FINDINGS OF FACT

1. Petitioner, Francisco Vargas Hidalgo, electronically filed with the Division of Taxation (Division) a New York State resident income tax return, form IT-201, for the year 2015. On the return, petitioner claimed a single filing status with one dependent, reported business income of \$10,647.00, and requested a refund in the amount of \$1,515.00. The refund consisted of an empire state child credit of \$330.00; a New York State earned income credit of \$968.00; New York City earned income credit of \$168.00; and a New York City school tax credit of \$63.00, less total New York State and New York City personal income tax owed of \$14.00. Petitioner's return also included a federal form schedule C-EZ, net profit from business, which showed gross receipts of \$12,220.00 and total expenses of \$1,573.00, for a net profit of \$10,647.00.

2. Commencing an audit of petitioner's tax return for the year 2015, the Division sent an audit inquiry letter, dated February 29, 2016, to petitioner, asking for copies of all the W-2 forms he received, and documentation of his reported self-employment business income, including the summary documents used to calculate the income and expenses reported, and detailed documentation supporting the business income reported, such as sales slips, invoices, and bank statements. Finally, the letter also requested proof of the residency and dependent status of the qualifying child.

3. In response to the Division's February 29, 2016 letter, petitioner submitted the following documentation by letters dated March 17, 2016 and March 24, 2016:

(i) A completed questionnaire in which petitioner stated that "I work as an independent delivery [sic], mainly delivering goods for Aquino grocery store," and that he had not been given any form 1099-Misc for that work.

(ii) A two-page schedule signed by petitioner and entitled "Delivery Services Year 2015- Francisco Vargas Hidalgo" (two-page schedule), which broke down by week amounts received in cash for petitioner's delivery service, starting

January 2, 2015, and ending on December 25, 2015. The schedule shows that petitioner was paid each week of the year. The amounts paid varied between \$180.00 and \$450.00 and totaled \$12,220.00 for the year.

(iii) Copies of petitioner's monthly bank statements for the period September 18, 2015 through December 18, 2015.

(iv) Documentation relating to petitioner's dependent daughter, including her New York City public school records, a birth certificate, and correspondence from a pediatrician.

4. After reviewing the above information, the Division sent petitioner an account adjustment notice, dated June 22, 2016, reducing the refund claimed on his 2015 form IT-201 to \$163.00. More specifically, the Division accepted petitioner's proof of the dependent claimed by petitioner as a qualifying child, and granted the refund requested by the return in regard to the empire state child credit in the amount of \$100.00 and the New York City school tax credit in the amount of \$63.00, but denied the return's claim for earned income credit and the rest of the claimed empire state child credit, stating:

"We were unable to verify the business income claimed on your return in the amount of \$10,647.00.

You failed to submit your complete set of books and records for each business/schedule c filed, including canceled checks, bank statements, ledgers, receipts etc., used to compute business income/loss and expenses claimed on your return.

* * *

The bank statements submitted are incomplete and cannot be used to verify the income claimed.

The supporting statements of income submitted are not sufficient verification of your business income and expenses claimed and do not explain how you arrived at the business income figure reported on your return.

Because the information submitted is incomplete and we are unable to verify the source of income or the expenses claimed for your business, the income has been disallowed."

5. By letter dated June 30, 2016, petitioner disagreed with the Division's June 22, 2016 letter. In addition to re-submitting the documents described above, along with bank statements for months in 2016, petitioner submitted his federal form 1040, U.S. individual income tax return, for 2015, showing \$10,647.00 in business income. Attached to the form 1040 was a schedule C-EZ identical to what petitioner had attached to his form IT-201 return, along with a seven-page schedule, this one with handwritten entries (seven-page schedule). Each page's header listed petitioner's name, the year 2015, and "Delivery" for the "Business Activity." Each page listed the days of a different month in the period January 2015 through July 2015 in the left most column. The following table shows the entries for the period January 2 through January 9, 2015, on the first page of the schedule, and is representative of the formatting of the remaining pages:

<u>Day (Jan.)</u>	<u>Service Description</u>	<u>Income</u>	<u>Expenses</u>
2	Delivery Fee	\$25	
3	Delivery Fee	\$80	\$10
4	Delivery Fee	\$50	
5	Delivery Fee	\$90	
6	Delivery Fee	\$65	\$40
7	Delivery Fee	\$40	\$5
8	Delivery Fee	\$20	\$3
9	Delivery Fee	\$120	

6. The following table lists the sum of the income and expenses as shown on the seven pages of petitioner's seven-page schedule:

<u>Month</u>	<u>Income</u>	<u>Expenses</u>
January	\$1,750.00	\$66.00
February	\$1,920.00	\$26.00
March	\$1,869.00	\$66.00
April	\$1,323.00	\$43.00
May	\$1,895.00	\$59.00
June	\$1,965.00	\$33.00
July	\$1,502.00	\$74.00
Total	\$12,224.00	\$367.00

7. By notice of disallowance dated August 22, 2016, the Division informed petitioner that it was partially disallowing the refund sought by his 2015 return, consistent with the Division's June 22, 2016 account adjustment notice.

8. At the hearing, petitioner testified that he worked for a company named "4514 National Grocery" owned by a Mr. Aquino and located in Corona, New York, and that he worked there for the entire year of 2015, delivering orders to customers, earning \$300.00 per week in cash. He testified that his employer had not given him any form 1099-Misc for that work and when he asked his employer for a letter attesting to his employment, and his employer learned that he was filing an income tax return reporting his income from the job, he fired him.

9. Petitioner admitted that he did not keep notes regarding the amounts he earned. He explained that his tax preparer had helped him prepare both the two-page and seven-page schedules. According to petitioner, "if I remember correctly" the income column of the seven-page schedule reflected what he received from his customers to whom he made deliveries,

including any tip. He explained that, since his agreement with his employer was that he would receive \$300.00 a week for his work, his employer obligated him to return all customer tips to him. As for the expenses shown on the seven-page schedule, petitioner testified that “it could be” that the expenses were for an electric scooter, tires, work uniform, and food, but that he had lost any proof he had of those purchases.

10. In its hearing brief, the Division conceded that, because petitioner proved that his daughter was a qualified dependent for purposes of the empire state child credit, the Division erred in reducing that credit from the \$330.00 claimed by petitioner on his form IT-201 to \$100.00.

CONCLUSIONS OF LAW

A. Tax Law § 606 (d) (1) provides for a New York State earned income credit of 30% of the earned income credit allowed under Internal Revenue Code (IRC) (26 USCA) § 32. The New York City earned income credit is equal to five percent of the federal earned income credit under IRC (26 USCA) § 32 (*see* Tax Law § 1310 [f] [1]; Administrative Code of the City of New York § 11-1706 [d] [1]). Since the New York State and City earned income credits are determined based solely upon a percentage of the federal credit, it is appropriate to refer to the provisions of the IRC to determine petitioner’s eligibility for the earned income credit. The federal earned income credit, provided for pursuant to IRC (26 USCA) § 32, is a refundable tax credit for eligible low-income workers. The credit is computed based on a determination of a taxpayer’s “earned income,” which includes employee compensation and earnings from self-employment (*see* IRC [26 USCA] § 32 [c] [2] [A]).

B. Thus, the State and City earned income credits require petitioner to prove the amount of his earned income (*see Matter of Espada*, Tax Appeals Tribunal, January 28, 2016).

Petitioner has failed to meet this burden of proof here. Petitioner's testimony was that he was paid \$300.00 a week and that he worked a full year for 4514 National Grocery. This equates to a full year's income of \$15,600.00, which exceeds the \$12,204.00 income he reported on his 2015 return. This weekly income is also inconsistent with both the two-page schedule and the seven-page schedule, which both show petitioner earning varying amounts each week. These schedules, in turn, contradict each other, as the two-page schedule depicts petitioner earning the gross income of \$12,220.00 over 12 months in 2015 with no expenses shown, whereas the seven-page schedule shows petitioner earning \$12,224.00 in 7 months, while showing \$367.00 in expenses. Equally troubling is petitioner's testimony that he did not maintain any records of what he was earning at his job, which raises the question as to how he and his tax return preparer were able to prepare either schedule. Finally, petitioner's lack of documentation for, and indefinite testimony regarding, the business expenses reported on his form IT-201 resulted in petitioner's failure to establish the correctness of the \$1,573.00 in business expenses shown on the return, especially since his two-page schedule showed no business expenses and his seven-page schedule showed only \$367.00 of expenses. In sum, in view of his testimony and the documentary evidence he has supplied, petitioner has not proven, by clear and convincing evidence, the amount of his earned income in 2015.

C. Tax Law § 606 (b) provides a nonrefundable New York State household credit. For taxpayers with petitioner's filing status of single, the credit phases out at household incomes above \$28,000.00. Similarly, Tax Law § 1310 provides a New York City household credit, which, for taxpayers with a filing status of single, phases out for household incomes above \$12,500.00 (*see* Tax Law § 1310 [d] [2] [A]). "Household gross income" is defined as "the aggregate federal adjusted gross income of a household" (Tax Law § 606 [b] [3] [A]; Tax Law §

1310 [d] [3] [A]). Here, because petitioner has failed to prove the amount of the income he earned in performing his delivery service in 2015, he has not proven the amount of his federal adjusted gross income for that year and thus has not met his burden of proving his entitlement to the household credit (*see* Tax Law § 689 [e]).

D. In light of the Division's concession (*see* finding of fact 10) that petitioner is entitled to the full amount of the empire state child credit claimed on his form IT-201 in this matter, \$330.00, the Division is directed to recompute its August 22, 2016 notice of disallowance accordingly.

E. The petition of Francisco Vargas Hidalgo is granted to the extent of conclusion of law D, but is otherwise denied, and the notice of disallowance dated August 22, 2016, except as modified by conclusion of law D, is sustained.

DATED: Albany, New York
June 3, 2020

/s/ James P. Connolly
ADMINISTRATIVE LAW JUDGE