

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition
of
RYAN AND WRICHA PRADHAN
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 of the
City of New York for the Years 2014 and 2015.

: DETERMINATION
: DTA NO. 828595

Petitioners, Ryan and Wricha Pradhan, 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 of the City of New York for the years 2014 and 2015.

On January 6, 2020, petitioners, appearing by Jhonatan Mondragon, EA, and the Division of Taxation, appearing by Amanda Hiller, Esq. (Christopher O'Brien, Esq., of counsel), waived a hearing and submitted the matter for a determination based on documents to be submitted by April 15, 2020 and the final brief to be submitted by August 6, 2020, which date began the six-month period for issuance of this determination. After due consideration of the documents and arguments submitted, Barbara J. Russo, Administrative Law Judge, renders the following determination.

ISSUES

I. Whether the Division of Taxation properly determined additional tax due from petitioners for the year 2014.

II. Whether the Division of Taxation properly denied petitioners' refund request for the year 2015.

FINDINGS OF FACT

1. Petitioners filed form IT-201, New York State personal income tax return for the year 2014 (2014 return). On the 2014 return, petitioners claimed a refund in the amount of \$3,375.00, including a claim for New York State and City child and dependent care credit of \$1,790.00, New York State earned income credit of \$912.00, New York City earned income credit of \$165.00, college tuition credit of \$200.00, and other credits and withholdings. Attached to petitioners' 2014 return was schedule C, Profit or Loss from Business, listing Ryan Pradhan as the name of proprietor, reporting the principal business as "driver," reporting gross receipts of \$49,335.00 less claimed business expenses of \$36,560.00, and a net profit of \$12,775.00.

2. On March 16, 2015, the Division of Taxation (Division) sent to petitioners form DTF-973.52, requesting additional information for tax year 2014 (2014 request for information). In the 2014 request for information, the Division requested that petitioners provide, among other items, substantiation of claimed business expenses, documentation verifying that the claimed dependents resided with petitioners and proof of relationship to the claimed dependents, proof of childcare expenses, and proof of tuition expenses.

3. Petitioners did not provide the requested information verifying childcare expenses or business expenses for 2014.

4. The Division issued a statement of proposed audit changes (statement), dated September 29, 2016, to petitioners, disallowing the claimed child and dependent care credit, earned income credits, and college tuition credit, and adjusting the business income for 2014.

The statement explained that:

"Based on the CMT [Creative Mobile Technologies] report you provided, we have adjusted the business income on your 2014 return. The report shows cash income of \$17,443.69 and credit card income of \$33,737.42 for a total of \$51,181.11. We have adjusted your gross profit on your Schedule C to

\$51,181.11. However, that amount does not include the cash tips received. Since you failed to provide us with any documentation related to cash tips, we have assessed the industry standard (18%) to your cash income and added \$3,140.00 for cash tips. Therefore, we have adjusted the gross business income to \$54,321.00.

Your schedule C indicates that you paid vehicle and/or medallion lease expenses. You will need to provide us with proof of payment, along with complete copies of ALL contracts/lease agreements in affect [sic] during the tax year in question. These documents will show the type of lease entered into, which allows us to confirm which expenses are covered under the contract/lease.

Uou [sic] did not provide us with documentation related to all of the business expenses claimed. We did not receive invoices or receipts along with cancelled checks and/or bank and credit card statements showing payment of those expenses. You have been allowed the expenses as shown on the CMT report of \$1,459.28 for tolls, \$1,573.50 for surcharges, and \$830 for gas, based on your bank summary. This brings the net income amount to \$50,458. The ½ self-employment tax deduction has been adjusted accordingly.

You did not provide proof of payment for child care services as claimed on your return, therefore your claim for the child and dependent care expense credit has been disallowed.

To qualify for the Child and Dependent Care Credit, you must be able to provide adequate documentation to support the child care expenses claimed. You must be able to prove that you yourself actually paid someone to care for your child(ren) or dependent(s).

Examples of acceptable documents include copies of the front and back of canceled checks or cashed money orders along with bank statements showing cash withdrawals that were used to pay the child care provider. Handwritten receipts or letters, by themselves, even if they are notarized are not verifiable.

We disallowed the New York State and/or New York City earned income credit because your earned income or federal adjusted gross income exceed the maximum allowed.

You have provided a copy of the federal Form 1098-T (Tuition statement) but did not include copies of your tuition bills with cancelled checks or receipts. Accordingly, your college tuition credit has been disallowed.

You have been allowed the New York City School Tax Credit.”

Based on the adjustments indicated in the statement, the Division recalculated petitioners' 2014 return and determined tax due in the amount of \$2,732.04 plus interest.

5. The Division issued a notice of deficiency bearing assessment ID number L-045487048, dated November 16, 2016, to petitioners asserting tax due of \$2,732.04 plus interest for tax year 2014.

6. Petitioners filed form IT-201, New York State personal income tax return for the year 2015 (2015 return). On the 2015 return, petitioners claimed a refund in the amount of \$2,146.00, including a claim for New York State and City child and dependent care credit of \$932.00, New York State earned income credit of \$642.00, New York City earned income credit of \$113.00, college tuition credit of \$200.00, and other credits and withholdings. Attached to petitioners' 2015 return was schedule C, Profit or Loss from Business, listing Ryan Pradhan as the name of proprietor, reporting the principal business as "taxi," reporting gross receipts of \$73,827.00 less claimed business expenses of \$62,711.00, and a net profit of \$11,116.00.

7. On April 18, 2016, the Division sent to petitioners form DTF-973.3, requesting additional information for tax year 2015 (2015 request for information). In the 2015 request for information, the Division requested that petitioners provide, among other items, substantiation of claimed business expenses, documentation verifying that the claimed dependents resided with petitioners and proof of relationship to the claimed dependents, proof of childcare expenses, and proof of tuition expenses.

8. The Division issued an adjusted refund notice, dated August 31, 2016, to petitioners, denying the refund claimed for 2015. The adjusted refund notice stated, in part:

"We have reviewed the correspondence sent in as a reply to our recent inquiry letter and are unable to allow the requested refund on your return for the 2015 tax year at this time.

We received documentation to verify the dependent claimed, but we did not receive the requested documentation to verify the wages, business income and expenses, federal adjustments to income, dependent and child care credit, and college tuition credit claimed on your return. The following is the required documentation to verify the items claimed.

To verify wages you must provide the W-2 Wage and Tax Statement you received from your employer.

New York State Law requires small businesses, and the self-employed, to keep records to enable the preparation of accurate tax returns.

Taxi drivers are required to provide the VeriFone or CMT metered statement used to compute the income claimed on your Federal schedule C. This statement should have the exact amount of compensation received from each transaction. Taxi drivers should also include a statement with the total of cash and/or credit tips received if they are not included on the report. If you fail to provide this documentation, we will assess tips on the cash income received at a rate of 18% which is the industry standard.

In addition, you did not provide us with any documentation related to the business expense claimed. We did not receive cancelled checks, invoices and/or credit card statements showing payment of those expenses.

* * *

In addition to the documents to show the expenses paid, you will need to provide us with complete copies of the contracts/lease agreements in affect during the tax year in question. Since the standard lease agreements vary in the length of time that is covered, you will need to provide us with ALL the lease agreements for 2015. These documents will show the type of lease entered into which allows us to confirm the cap lease amount for the contract, and should also indicate the expenses covered under the contract/lease, and those the driver is responsible for.

* * *

We did not receive any documentation to support the child care payments claimed on your return; therefore the dependent and child care credit remains disallowed. The credit remains disallowed until documents such as bank statements, canceled money orders, or canceled checks showing your name, the name of the daycare provider, and the date and amount of each payment, along with corresponding receipts are provided.

To verify the college tuition credit and tuition and fees we need copies of the itemized bills received form the college during the 2015 tax year are provided

[sic]. The itemized bills must show student name, year of attendance, undergraduate tuition billed, and how it was paid.”

9. Petitioners requested a conciliation conference with the Bureau of Conciliation and Mediation Services (BCMS) protesting the notice of deficiency for tax year 2014. By order dated November 10, 2017, BCMS issued a conciliation order sustaining the statutory notices.

10. Petitioners filed a petition challenging the conciliation order and notice of deficiency for tax year 2014 and the refund denial for tax year 2015, received by Division of Tax Appeals on February 13, 2018.

11. On January 6, 2020, the parties signed a consent to have the controversy determined on submission and waived the right to a hearing.

12. By letter dated January 7, 2020, a submission schedule was established by the undersigned administrative law judge setting forth the following due dates: filing of the Division’s documents by February 18, 2020; filing of petitioners’ documents and brief by March 31, 2020; filing of Division’s brief by May 12, 2020; and filing of petitioners’ reply brief by June 10, 2020. The parties were further instructed in said letter that documents and briefs not filed in accordance with this schedule would be returned to the filing party and if a party needed an extension of time for filing, they must make a request to the administrative law judge in writing within the time limits prescribed for filing the brief or documents and provide a good cause basis for the request.

13. By letter dated February 12, 2020, the Division requested an extension of time to file its documents. In response to the Division’s request, by letter from the undersigned dated February 13, 2020, the submission and brief schedule was revised as follows: filing of Division’s documents due by March 4, 2020; filing of petitioners’ documents and brief due by

April 15, 2020; filing of Division's brief due by May 27, 2020; and filing of petitioners' reply brief due by June 25, 2020.

14. The Division timely filed its documents on March 2, 2020.

15. Petitioners did not file any documents or brief or request an extension of time to do so within the established deadlines. The record was closed for the submission of petitioners' documents on April 15, 2020.

16. By letter dated May 18, 2020, the Division requested an extension of time to file its brief. By letter dated May 20, 2020, the undersigned granted the Division's request and the Division was given until July 1, 2020 to file its brief. Petitioners' time to file a reply brief, was, in turn, extended to August 6, 2020.

17. The Division timely filed its brief on June 29, 2020.

18. Petitioners did not file a reply brief or request an extension of time to file within the established deadlines.

19. Petitioners brought a motion dated September 21, 2020 seeking an order extending the times for the submission of briefs, affidavits and other proofs in this matter pursuant to 20 NYCRR 3000.23.

20. By order dated January 14, 2021, the administrative law judge denied petitioners' motion.

CONCLUSIONS OF LAW

A. When the Division issues a notice of deficiency to a taxpayer, a presumption of correctness attaches to the notice, and the burden of proof is on the taxpayer to demonstrate, by clear and convincing evidence, that the deficiency assessment is erroneous (*see Matter of O'Reilly*, Tax Appeals Tribunal, May 17, 2004; *see also Matter of Leogrande v. Tax Appeals*

Tribunal, 187 AD2d 768 [3d Dept 1992], *lv denied* 81 NY2d 704 [1993]; *Matter of Tavalacci v. State Tax Commn.*, 77 AD2d 759 [3d Dept 1980]; Tax Law § 689[e]). Petitioners were required under the Tax Law to maintain adequate records of their items of expenses and deductions for the years in issue (*see* Tax Law § 658 [a]; 20 NYCRR 158.1 [a]). Petitioners carry the burden of proof in this proceeding, and accordingly, it was incumbent upon them to prove entitlement to the claimed credits and business expenses (*see* Tax Law § 689 [e]).

B. Addressing first petitioners' claimed business expenses as reported on their schedule C for the years 2014 and 2015, it is noted that the adjusted gross income of a New York resident is federal adjusted gross income, with certain modifications not applicable in this case (*see* Tax Law § 612 [a]). Section 62 (a) (1) of the Internal Revenue Code (IRC) defines the adjusted gross income as an individual's gross income minus certain deductions. Among the deductions permitted are expenses that are "ordinary and necessary" for the production of income in carrying on a trade or business (IRC § 162 [a]). An ordinary expense is one that is common and acceptable (*see Welch v Helvering*, 290 US 111, 114 [1933]). A necessary expense is considered to be one that is appropriate and helpful in conducting a trade or business (*see Heineman v Commr.*, 82 TC 538, 543 [1984]). Deductions are also allowed pursuant to IRC § 212 for expenses incurred "for the management, conservation, or maintenance of property held for the production of income." The test as to whether property is held for the "production of income" within the meaning of IRC § 212 is whether the taxpayer's primary, good faith purpose and intention in engaging in the activity was to make a profit (*see Zell v Commr.*, 763 F.2d 1139, 1142 n.2 [10th Cir 1985]; *Snyder v United States*, 674 F2d 1359, 1364 [10th Cir 1982]; *Lowry v United States*, 384 FSupp 257, 261 [1974]).

In order to maintain the deductions for the claimed business expenses, petitioners have the double burden of (1) demonstrating entitlement to the deductions and (2) substantiating the amounts of the deductions (*see* Tax Law § 658 [a]; § 689 [e]; 20 NYCRR 158.1; *Matter of Macaluso*, Tax Appeals Tribunal, September 22, 1997, *confirmed* 259 AD2d 795 [3d Dept 1999]).

Petitioners have presented no evidence to show entitlement to the claimed business expenses or to substantiate the amount of the claimed expenses. Additionally, petitioners have presented no evidence to dispute the Division's recalculation of the business income. As such, petitioners have failed to meet their burden of proof for the claimed business income and expenses for 2014 and 2015.

C. Turning next to petitioners' claimed child and dependent care credit, Tax Law § 606 (c) (1) provides that the New York State and City child and dependent care credit is based on the federal child and dependent care credit "allowable under section twenty-one of the internal revenue code. . . ." Since the allowable New York child and dependent care credit is determined based solely on the corresponding federal credit, it is appropriate to refer to the provisions of the IRC to determine petitioner's eligibility for this credit.

The amount of the child and dependent care credit allowed pursuant to IRC (26 USC) § 21 is based on a percentage of the employment related expenses, including expenses for the care of a qualified dependent under age 13, incurred by a taxpayer who is gainfully employed.

Petitioners presented no evidence to prove entitlement to this credit for the years at issue, and as such, the Division properly denied the claimed credit.

D. With regard to the claimed earned income credit, Tax Law § 606 (d) provides for a state and city earned income credit based on a percentage of the earned income credit allowed

under section 32 of the IRC. Since the 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 and federal case law to determine petitioners' eligibility for the earned income credit.

The federal earned income credit, provided for pursuant to IRC § 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 earnings from self-employment (*see* IRC § 32 [c] [2]). In order to be eligible for the earned income credit, the individual must have a qualifying child for the taxable year. A qualifying child is one which meets the statutory requirements of age, relationship and residency (IRC § 32 [c] [3]).

Again, petitioners presented no evidence to show eligibility for the earned income credit for 2014 and 2015. As such, the Division properly denied the claimed credit.

E. Finally, petitioners claimed a college tuition credit for the years at issue. Since petitioners provided no evidence substantiating the claimed expense, they have failed to meet their burden of proving that the Division's disallowance was erroneous.

F. The petition of Ryan and Wricha Pradhan is denied, and the notice of deficiency, dated November 16, 2016, and adjusted refund notice, dated August 31, 2016, are sustained.

DATED: Albany, New York
February 4, 2021

/s/ Barbara J. Russo
ADMINISTRATIVE LAW JUDGE