

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition	:	
of	:	
<b>CAROLINA BURDIER</b>	:	<b>DETERMINATION</b>
for Redetermination of a Deficiency or for Refund of	:	<b>DTA NO. 828600</b>
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 2016.	:	

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Petitioner, Carolina Burdier, 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 2016.

A hearing was held on January 17, 2020 in New York, New York, at 10:00 a.m., with all briefs to be submitted by June 8, 2020, 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. (Christopher O'Brien, 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 the empire state child credit, the New York State and New York City earned income credits, and the New York City school tax credit claimed by petitioner on her 2016 income tax return.

***FINDINGS OF FACT***

1. Petitioner, Carolina Burdier, electronically filed with the Division of Taxation (Division) a New York State resident income tax return, form IT-201, dated April 25, 2017, for the year 2016. On the return, petitioner claimed a head of household filing status with two dependents, reported business income of \$14,758.00, and New York adjusted income of \$13,715.00. After subtracting out her standard deduction (\$2,565.00), and two dependent exemptions (\$2,000.00 in total), she reported taxable income of \$565.00, New York State tax due of \$23.00, and New York City tax due of \$16.00. Against this tax due, she claimed the following credits: New York State and New York City household credit totaling together \$180.00; empire state child credit of \$265.00; New York State earned income credit of \$1,624.00; New York City earned income credit of \$275.00; and New York City school tax credit of \$63.00, for a total refund requested of \$2,227.00. Petitioner's return did not include a federal form schedule C, profit or loss from business, or schedule C-EZ, as required by the return for taxpayers showing business income. On her return, petitioner listed a Westside Avenue address in Corona, New York (Westside Avenue address), and she listed two dependents, Sister 1, born in 2005, and Sister 2, born in 2014.<sup>1</sup> At the hearing, the Division stipulated that the two listed dependents were her sisters and that the relationship requirement of the claimed credits was satisfied.

2. Commencing an audit of petitioner's tax return for the year 2016, the Division sent petitioner an audit inquiry letter, dated June 5, 2017, asking for copies of schedule C from petitioner's federal income tax return for 2016, and documentation of her reported self-employment business income, including the summary documents used to calculate the income

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<sup>1</sup> The names of petitioner's sisters are omitted in order to protect their privacy.

and expenses reported, and detailed documentation supporting the business income reported, such as sales slips, invoices, and bank statements. The letter did not request proof of the residency and dependent status of the qualifying children petitioner claimed on her return. The letter was sent to the Westside Avenue address, except that it did not leave a space between the third and fourth number in the house number portion of the address as petitioner did on her 2016 return.

3. Not receiving a response from petitioner, the Division did not take further action on petitioner's refund claim. As a result of the Division neither granting nor denying the refund, the refund was deemed denied by operation of law at the time of the filing of the petition in this matter, February 12, 2018 (*see* Tax Law § 689 [c]).

4. At the hearing, the Division introduced an affidavit, dated January 16, 2020, from Angela Pettes, a Tax Technician 4 with the Division. Ms. Pettes reviewed the Division's files regarding the refund requested by petitioner's 2016 return. According to her affidavit, because petitioner did not submit "verifiable documentation of income" in response to the Division's inquiry letter, the Division did not grant the refund requested by the return for 2016.<sup>2</sup> The affidavit noted that, after the filing of the petition in this matter, and prior to the hearing, petitioner submitted additional documentation to the Division in order to establish her entitlement to the refundable credits claimed on her return, but that the Division considered the documentation to be inadequate. The income information included (i) petitioner's bank statement showing bi-weekly deposits from the United States Postal Service; and (ii) a form 1099-MISC indicating that petitioner was employed by Pedro Burdier. The affidavit observed

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<sup>2</sup> The Division was given permission to submit, post-hearing, a further affidavit attaching and authenticating the Division's inquiry letter discussed in finding of fact 2. The Division did submit the additional affidavit by Ms. Pettes, dated February 10, 2020, which was accepted into evidence.

that no W-2 information was submitted, “nor could the income be verified by the [Division’s] Wage and Reporting Records.” Finally, the affidavit asserted that the information petitioner supplied after the filing of her petition to establish that her claimed dependents lived with her for more than half of 2016, a letter from SLB Medical Associates, was not sufficient to prove that point.

5. At the hearing, petitioner testified that she had not received the Division’s inquiry letter. She testified further that during 2016, she worked for her father, Pedro Burdier, who was the sole proprietor of a handyman business. According to petitioner, her father paid her \$600.00 biweekly to work as his assistant. She worked 20 hours a week for him and had no other employment. When asked to describe the work, she stated:

“He would have me do different things. We – I did construction for about seven months of it. I was going to Home Depot for about, I believe a whole month of getting things. He was fixing a basement and we did the floors. We did the walls. We did painting. We did the electricity.”

6. In support of her claim that she was paid employment compensation by Mr. Burdier, petitioner submitted, among other documents, the following:

- (i) a form 1099-MISC Worksheet for 2016, which showed Mr. Burdier as the payer, petitioner as the recipient, and \$14,400.00 as the compensation paid;
- (ii) three copies of the 1099-MISC issued by Mr. Burdier, showing the latter as payer, petitioner as recipient, and \$14,400.00 as the compensation;
- (iii) a form Payer’s 1099-MISC Report showing Mr. Burdier as payer, petitioner as recipient, \$14,400.00 as the amount paid, and listing no other employees; and
- (iv) an unsigned or dated form 1096, annual summary and transmittal of U.S. information returns for 2016, listing Mr. Burdier as the filer, and indicating a 1099-MISC as the type of form being filed.

Petitioner testified that Mr. Burdier gave her the above documents and that he told her that he had filed those documents through an online tax service, but, because they apparently had not been received, he was going to file them by mail.

7. Petitioner also introduced a two-page “Transactional History” document from her online savings account. The statement showed biweekly ACH deposits in the amount of \$600.00 being made for every bi-weekly period in 2016, starting January 13, 2016, and ending December 31, 2016, for total payments in 2016 of \$15,600. For each deposit, the description column stated “MPLS USPS PDL Federal Salary.” Petitioner testified that the deposits represented compensation for her work and that Mr. Burdier worked for the United States Postal Service (USPS), so he chose to pay her with deposits from the USPS.

8. Petitioner also introduced a letter dated June 11, 2017 from SLB Medical Associates (*see* finding of fact 4), in which a doctor with that practice stated that petitioner, along with her two sisters, have been patients at her practice since 2010 and that “they reside with their mother Mildred Carvajal, at [the Westside Avenue address].”

9. Petitioner’s mother, Ms. Carvajal, also testified at the hearing. She stated that, after donating a kidney to her daughter, her health declined, and she now suffers from several maladies, including high blood pressure and diabetes. As a result, she has not been able to work for several years, including 2016, and has been trying to apply for disability. During that time, petitioner has been her sole means of support, and the sole means of support for petitioner’s two sisters. Ms. Carvajal also testified that petitioner and petitioner’s sisters had lived at the Westside Avenue address all their lives.

10. Pursuant to permission granted by the administrative law judge, petitioner submitted, post-hearing, additional proof regarding the residency requirement in the form of a two-page

“Student Historical Profile Report” from the New York City Public School system, dated January 22, 2020, which was accepted into evidence. The first page of the report shows that petitioner’s Sister 1 attended New York City public schools from September 2010 through Spring 2019. The address listed for Sister 1 on that page was the Westside Avenue address. The second page is an “Address History Profile,” which shows that the “Address Added Date” for the Westside Avenue address was September 8, 2010.<sup>3</sup>

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

A. Tax Law § 606 (d) (1) provides for a New York State earned income credit of 30 percent 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 in 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. Petitioner, presenting her case pro se, appeared to be testifying truthfully in asserting that she worked for her father, Mr. Burdier, in 2016, assisting him in his handyman business. However, the State and City earned income credits require petitioner to not only prove that she

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<sup>3</sup> At the hearing, petitioner asked, over the Division’s objection, to have the Division’s denial of a personal income tax refund she sought for 2015 also considered. Because the petition had only sought a refund for 2016, petitioner’s request was denied.

had earned income in 2016, but the amount of that income (*see Matter of Espada*, Tax Appeals Tribunal, January 28, 2016). There is conflicting support in the record, however, for three different amounts of her earned income that year. Her testimony and bank statement proof support using \$15,600.00 (*see* finding of fact 5 and 7), but the 1099-MISC form that she testified originated with her father showed her earnings as \$14,400.00, while she used still a third number of \$14,758.00 in reporting her earned income on her return. At the hearing, she did not reconcile these differing numbers. Under these circumstances, it cannot be said that she has proven by clear and convincing evidence the amount of her earned income in 2016 and thus the Division properly denied the New York State and New York City earned income credits she claimed.

C. Turning to the claimed empire state child credit, Tax Law § 606 (c-1) provides for a credit equal to the greater of \$100.00 times the number of qualifying children of the taxpayer or the applicable percentage of the child tax credit allowed the taxpayer under IRC § 24 for the same taxable year for each qualifying child. To qualify for the credit, a taxpayer must establish that there is a qualifying child. For purposes of the empire state child tax credit, a qualifying child must be a child of the taxpayer, a descendent of the taxpayer's child, a sibling or step-sibling of the taxpayer or a descendent of such relative; must have the same principal place of abode as the taxpayer for more than one-half of the taxable year, and must be between four and seventeen years of age (*see* Tax Law § 606 [c-1]; IRC §§ 24 [c]; 152 [c]).

Here, one of the two dependents petitioner listed on her 2016 form IT-201, Sister 2, was born in 2014 and thus is not a qualifying child for purposes of the empire state child credit because she was not at least four years old on the last day of 2016. The other person listed as a dependent, Sister 1, did meet the age requirement (*see* finding of fact 1). The Division claims that Sister 1 nevertheless is not a qualifying child because petitioner has not shown that Sister 1

had the same principal place of abode as petitioner for more than one-half of 2016. This argument is rejected. While it is true that the letter from SLB Medical Associates does not prove that the residency requirement is met, Ms. Carvajal testified credibly that petitioner and her sisters lived at the Westside Avenue address all their lives, and that testimony is supported by the Student Historical Profile Report from the New York City Public Schools, submitted by petitioner post-hearing. Accordingly, it is determined that petitioner has established that the requirements for the empire state child credit have been met based on petitioner having one qualifying child, Sister 1.

D. Tax Law § 606 (b) provides a nonrefundable New York State household credit. The amount of the credit depends on the filer's household gross income and phases out at household gross incomes above \$28,000.00 persons claiming head of household status, as petitioner has. Similarly, Tax Law § 1310 provides a similar New York City household credit, which, for taxpayers with a filing status of head of household, phases out for household incomes above \$22,500.00 (*see* Tax Law § 1310 [d] [2] [B]). "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 she earned in 2016, she has not proven the amount of her federal adjusted gross income for that year and thus has not met her burden of proving her entitlement to the household credit (*see* Tax Law § 689 [e]).

E. Tax Law § 1310 (e) authorizes a state school tax credit applicable to full or part time residents of the City of New York with income less than \$250,000.00. For persons filing as a head of household, the credit is \$63.00. Petitioner has established that she is a resident of the State. As for the income limitation, on her 2016 income tax return, petitioner claimed gross



income in an amount much lower than \$250,000.00, and the Division has presented no evidence suggesting she had gross income in excess of that amount. Accordingly, the Division's denial of the state school tax credit petitioner claimed on her 2016 income tax return is disallowed.

F. The petition of Carolina Burdier is granted to the extent indicated in conclusions of law C and E, and the Division is directed to recompute her empire state child credit and state school tax credit in accordance with those conclusions of law, but the petition is otherwise denied.

DATED: Albany, New York  
December 3, 2020

/s/ James P. Connolly  
ADMINISTRATIVE LAW JUDGE