

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition
of
BRETT ALLWOOD

DETERMINATION
DTA NO. 829408

for the Redetermination of Deficiency or for Refund
of Personal Income Tax under Article 22 of the Tax Law
for the Years 2016 and 2017.

Petitioner, Brett Allwood, filed a petition for the redetermination of deficiency or for the refund of personal income tax under article 22 of the Tax Law for the years 2016 and 2017.

A hearing was held over Webex before Nicholas A. Behuniak, Administrative Law Judge on November 18, 2020, with all briefs to be submitted by March 31, 2021, 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. (Michael Trajbar, Esq., of counsel). After reviewing the entire record in this matter, Nicholas A. Behuniak, renders the following determination.

ISSUE

Whether the Division of Taxation properly denied petitioner's child and dependent care credits for the tax years 2016 and 2017.

FINDINGS OF FACT

1. Petitioner filed New York State resident income tax returns (forms IT-201) for 2016 and 2017. Petitioner claimed child and dependent care credits on both returns.
2. The Division's initial inquiry into petitioner's 2016 New York State personal income tax return took place in 2017 when it was selected for review. A review of the Division's records

indicated that petitioner claimed \$3,176.00 as a child and dependent care credit on his 2016 New York State personal income tax return. By a letter dated May 19, 2017, the Division requested additional information to assist with the processing of petitioner's claim for child and dependent credit for 2016.

3. In response to the Division's May 19, 2017 letter, petitioner submitted documentation including: a signed letter from his daycare provider on the daycare provider's letterhead, indicating the total amount paid by petitioner for childcare services provided in 2016; several separate individual receipts for childcare services provided in 2016; and bank statements. Each individual receipt was dated, indicated the amount paid, the period services were provided for and was signed by the childcare provider. Most of the receipts indicated that the method of payment was cash and included the provider's tax identification number.¹

4. The Division reviewed the documentation provided by petitioner for tax year 2016 and concluded that the daycare expenses reported on petitioner's return were unverified.

5. Petitioner submitted an amended resident income tax return (form IT-201-X) for tax year 2016.

6. A partial refund was issued to petitioner for 2016; however, the Division did not allow petitioner's claimed child and dependent care credit for 2016.

7. The Division issued a notice of disallowance dated January 4, 2019 (2016 notice), for tax year 2016, denying petitioner's child and dependent care credit for 2016. The 2016 notice indicated that petitioner had failed to provide sufficient support for the 2016 child and dependent care credits sought.

¹ The two earliest receipts used a different form from all the later receipts; the two earliest receipts did not include an indication how the payments were made (e.g., cash) or provide a line item for the childcare service provider's tax identification number.

8. The Division's initial inquiry into petitioner's 2017 New York State personal income tax return took place in 2018 when it was selected for review.

9. Petitioner claimed \$2,178.00 as child and dependent care credits on his 2017 New York State personal income tax return.

10. By way of a letter dated May 16, 2018, the Division requested additional information in support of the 2017 child and dependent care credit claimed on petitioner's return.

11. In response to the Division's May 16, 2018 letter, petitioner submitted documentation including: a signed letter from his daycare provider, on the daycare provider's letterhead, indicating total amount paid by petitioner for childcare services provided in 2017; several separate individual receipts for childcare services provided in 2017; and bank statements. Each individual receipt was dated, indicated the amount paid, the period services were provided for, was signed by the childcare provider, indicated that the method of payment was cash, and included the provider's tax identification number.

12. The Division reviewed the documentation provided by petitioner for tax year 2017 and concluded that the daycare expenses reported on petitioner's return were unverifiable.

13. A partial refund was issued to petitioner for 2017; however, the Division did not allow petitioner's child and dependent care credits for 2017.

14. The Division issued a notice of disallowance dated December 19, 2018 (2017 notice), for tax year 2017, denying petitioner's child and dependent care credit for 2017. The 2017 notice indicated that petitioner had failed to provide sufficient support for the 2017 child and dependent care credits sought.

15. In an investigation after the issuance of the 2016 and 2017 notices, Mr. Trajbar of the Division's Office of Counsel contacted petitioner's childcare provider to verify petitioner's

claimed childcare expenses for 2016 and 2017. In response to the Division's inquiry, initially the childcare provider indicated in an email to the Division that petitioner had made childcare payments for 2016 but ceased using the provider after 2016. In response, the Division sent the childcare provider an affidavit to sign confirming the information. However, before signing the affidavit, the childcare provider indicated in another email to the Division that it had made a mistake in its first communication to the Division and, in fact, petitioner had paid for childcare services for both 2016 and 2017 and petitioner's children had attended the childcare provider until August of 2017.

16. The Division submitted the affidavit of Kathleen Loos into the record. Ms. Loos has worked with the Division for 12 years. She started in the civil enforcement division, went to the audit division in 2009 as a tax technician 1 and was subsequently promoted to tax technician 2 and tax technician 3. Ms. Loos worked in the itemized deduction unit and was on the fraud team for eight years. At the time of the affidavit, Ms. Loos was the assistant manager in the personal income tax credit unit. After reviewing all of the previously noted evidence, including the statements for each year from the childcare provider, the individual receipts from the childcare provider and the correspondence between Mr. Trajbar and the childcare provider, Ms. Loos concluded in her affidavit that:

“Based upon my review of the information obtained and my personal knowledge of departmental policies and procedures, I have concluded that [petitioner] failed to present clear and convincing evidence that he is entitled to the Child and Dependent Care Credit claimed on his 2017² New York State Resident Income Tax Return.”

² It is noted that Ms. Loos did not opine on the sufficiency of evidence relating to 2016.

17. At the hearing in this matter, petitioner testified under oath that all of the individual receipts for 2016 and 2017 were for cash payments he made to the childcare provider for services his children received.

SUMMARY OF THE PARTIES' POSITIONS

18. Petitioner asserts that he has been able to utilize the child and dependent credit on his State tax returns in the past and therefore he should be able to take such again consistent with his prior year's State tax filings. Petitioner also asserts that he has provided sufficient documentation which should enable him to take the child and dependent credits in the tax years at issue.

19. The Division asserts that the petitioner has failed to provide sufficient proof to allow him to take the child and dependent credits for both of the years at issue. In its brief, the Division asserts:

“Petitioner presented no actual checks or money orders paid to child care providers. The copies of handwritten receipts petitioner provided are not sufficient, as there is no correlative proof that they were evidence of payments received. There was no correlating log or other contemporaneous documentation to substantiate them.”

20. The Division further asserts that a taxpayer “must be able to provide cash receipts received at the time of payment that can be verified by the Division” to be eligible to take the child and dependent care credits.

CONCLUSIONS OF LAW

A. Tax Law § 606 (c) (1) provides that the New York State 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 Internal Revenue Code (IRC) to determine petitioner's eligibility for this credit.

B. 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. The Division does not dispute that petitioner had a qualified dependent and that he was gainfully employed. The only issue in dispute is whether petitioner provided sufficient documentation to substantiate that he paid child and dependent care expenses in 2016 and 2017.

C. When the Division issues a notice of disallowance 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 asserted disallowance is erroneous (*see Matter of O'Reilly*, Tax Appeals Tribunal, May 17, 2014; *see also Matter of Leogrande v Tax Appeals Tribunal*, 187 AD2d 768 [3d Dept 1992], *lv denied* 81 NY2d 704 [1993]; *Matter of Tivolacci v State Tax Commn.*, 77 AD2d 759 [3d Dept 1980]; Tax Law § 689 [e]).

D. In the case at hand, petitioner supplied extensive documentation from the childcare provider substantiating the child and dependent credits taken on his tax returns. Such documentation included two letters, one for each of the years at issue, from the childcare provider articulating the amounts paid by petitioner during the years at issue. In addition, petitioner provided the receipts for the payments at issue. The receipts are signed and provide detailed information regarding the payments at issue (*see* findings of fact 3 and 11). In addition to the evidence petitioner submitted, the Division independently contacted the childcare provider to confirm the dates the services were provided to petitioner. The Division relies on the affidavit

of Ms. Loos³ to challenge the sufficiency of the documentation. Ms. Loos concluded that the evidence is insufficient to support petitioner's position for 2017. Since Ms. Loos did not challenge the sufficiency of the evidence presented for 2016, it appears she found the fact that the service provider initially made a mistake in its original correspondence with the Division was so problematic that she concluded that the support for 2017 was insufficient.

The fact that the service provider corrected the information provided to the Division does not disqualify petitioner from receiving the credits at issue. The record fully supports that the evidence for the credits at issue had been adequately established. Moreover, petitioner's compelling testimony at the hearing further supports this conclusion.

E. With regard to petitioner's assertion that the Division allowed the subject credits in earlier periods and therefore must allow them in the years at issue, it is well settled that each tax period stands on its own, and results from prior periods are not binding on later audits of the Division (*see People ex rel. Watchtower Bible & Tract Socy. v Haring*, 286 AD 676 [3d Dept 1955], *lv granted* 11 AD2d 605 [3d Dept 1960]; *Matter of Winners Garage, Inc.*, Tax Appeals Tribunal, April 16, 2014).

F. The petition of Brett Allwood is granted, and the notices of disallowance dated January 4, 2019 and December 19, 2018 are hereby cancelled.

DATED: Albany, New York
September 30, 2021

/s/ Nicholas A. Behuniak
ADMINISTRATIVE LAW JUDGE

³ Ms. Loos did not testify at the hearing.