

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition :  
of :  
**GUERDY SURPHIN** : DETERMINATION  
for Redetermination of a Deficiency or for Refund of New : DTA NO. 829448  
York State Personal Income Tax under Article 22 of the :  
Tax Law and the New York City Administrative Code for :  
the Year 2017. :  
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Petitioner, Guerdy Surphin, 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 and the New York City Administrative Code for the year 2017.

A videoconferencing hearing via CISCO Webex was held before Barbara J. Russo, Administrative Law Judge, on January 27, 2021, with all briefs to be submitted by May 26, 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. (Christopher O'Brien, Esq., of counsel).

***ISSUE***

Whether the Division of Taxation properly disallowed the child and dependent care credit claimed by petitioner for the 2017 tax year.

***FINDINGS OF FACT***

1. Petitioner filed with the Division of Taxation (Division) a New York State resident income tax return for the 2017 tax year claiming, among other credits not relevant here, a child and dependent care credit of \$905.00, and requested a refund due of \$2,382.00. Attached to

petitioner's return was form IT-216, claim for child and dependent care credit, on which petitioner listed the child care provider as Tatiana Louis at an address in Brooklyn, New York, and reported child care expenses paid of \$7,200.00.

2. The Division sent an inquiry letter to petitioner, dated May 2, 2018. In the letter, the Division requested that petitioner provide additional information regarding her claim for the child and dependent care credit, including proof of relationship and residence of the claimed children or dependents and proof of payment to a child care provider.

3. In response to the Division's inquiry letter, petitioner sent documents supporting the claimed dependent's relationship and residency, but did not provide adequate substantiation of the claimed child care expenses.

4. The Division issued to petitioner a notice of disallowance, dated September 11, 2018, denying a portion of the claimed refund in the amount of \$1,240.80. The notice of disallowance contained the following explanation for the disallowance:

“We have allowed the dependent claimed on your return. However, the child and dependent care credit remains disallowed. You still have not provided verifiable proof that you paid someone out of your own funds to care for your dependent.

To qualify for the child and dependent care credit, you must provide adequate documentation to support the expenses reported on the return. You must be able to prove that you yourself actually paid someone to care for your child or dependent.”

5. Attached to petitioner's petition filed in protest of the notice of disallowance was a copy of letter dated May 8, 2019 from Tatiana Louis stating that: “I am the one that baby sit Ms. Guerdy Surphin child, [redacted].<sup>1</sup> I baby sit him at Ms. Surphin house from 2:30 pm – 7:30 pm for the amount of \$150.00 per week.” The letter is not a sworn statement and is not notarized.

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<sup>1</sup> Petitioner's child's name is redacted herein for privacy.

6. During the hearing, petitioner testified that she pays the child care provider in cash every two weeks and that the child care provider does not accept checks. She stated that she did not have any receipts to show child care payments for 2017.

7. The record was held open after the hearing to allow petitioner additional time to submit documents to verify child care expenses paid. Within the time allowed following the hearing, petitioner provided additional documentation including, as relevant here, a letter dated February 2, 2021 from Tatiana Louis stating that “I am the baby sitter of Guerdy Surphin’s son [redacted] since 01/09/2017, for the amount of \$150 every week, I get paid bi weekly equaling \$300 due to her pay schedule from her job.” The letter is not a sworn statement and is not notarized. Petitioner also submitted bank records from January 1, 2017 through December 31, 2017.

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

A. Pursuant to Tax Law § 689 (e), petitioner bears the burden of establishing, by clear and convincing evidence, that the Division’s adjustment of her claimed refund is erroneous (*see Matter of Suburban Restoration Co. v Tax Appeals Trib*, 299 AD2d 751 [3d Dept 2002]). Here, the Division does not dispute that petitioner had a qualified dependent and that she was gainfully employed. The only issue in dispute is whether petitioner provided sufficient documentation to substantiate that she paid child care expenses in 2017 and the amount of expenses paid.

B. 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 and Treasury Regulations to determine petitioner's eligibility for this credit.

C. The amount of the child and dependent care credit allowed pursuant to Internal Revenue Code (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. As noted above, the Division does not dispute that petitioner had a qualified dependent and that she was gainfully employed. The only issue in dispute is whether petitioner met her burden of proving that she paid child care expenses in 2017 and the amount of expenses paid. Petitioner was unable to provide any receipts substantiating the claimed payments made to the child care provider in 2017. While petitioner provided letters from the purported child care provider, both with her petition and with her post-hearing submission, such letters are insufficient to substantiate petitioner's claimed child care expenses. Specifically, the letter attached to the petition does not state in which year the individual provided child care for petitioner's son, and it is not a sworn or notarized statement. While the letter included with petitioner's post-hearing submission specifies that the individual provided child care for petitioner's son since January 9, 2017, such letter is likewise not a sworn or notarized statement. As such, it cannot be accorded any weight. Petitioner also submitted bank records for 2017. Unfortunately, the bank records do not show a pattern of biweekly withdrawals of \$300.00 in order to support petitioner's claim that she paid that amount to the child care provider in 2017. As such, petitioner has failed to meet her burden of proof.

D. The petition of Guerdy Surphin is denied and the notice of disallowance dated September 11, 2018, is sustained.

DATED: Albany, New York  
November 24, 2021

/s/ Barbara J. Russo  
ADMINISTRATIVE LAW JUDGE