

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition	:	
of	:	
<b>NIHAD H. AND KARIMEH I. IKHMAYES</b>	:	DETERMINATION
for Redetermination of Deficiencies or for Refund of New York State and New York City Personal Income Taxes under Article 22 of the Tax Law and the Administrative Code of the City of New York for the Years 2016 and 2017.	:	DTA NO. 829624

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Petitioners, Nihad H. and Karimeh I. Ikhmayes, filed a petition for redetermination of deficiencies or for refund of New York State and New York City personal income taxes under article 22 of the Tax Law and the Administrative Code of the City of New York for the years 2016 and 2017.

A videoconferencing hearing via Cisco Webex was held before Kevin R. Law, Administrative Law Judge, on August 10, 2021, with all briefs to be submitted by December 3, 2021, which date commenced the six-month period for issuance of this determination. Petitioners appeared pro se. The Division of Taxation appeared by Amanda Hiller, Esq. (Amy Seidenstock, Esq., of counsel).

***ISSUE***

Whether petitioners have sustained their burden of proving entitlement to their claims for the New York State and New York City earned income credits and the Empire State child credit.

***FINDINGS OF FACT***

1. On February 2, 2017, petitioners, Nihad H. and Karimeh I. Ikhmayes, filed a joint New York State and New York City personal income tax return for tax year 2016 (2016 return) on which they claimed four children as dependents ranging from four to sixteen years of age as of December 31, 2016. Petitioners reported \$30,290.00 of self-employment income and total New York State and New York City tax of \$523.00. Attached to the return is a federal schedule C, net profit from business, reporting gross receipts of \$38,920.00 and a net profit of \$30,290.00; the principal business is listed as “ALL OTHER SPECIALTY TRADE CONTRACTORS.” Petitioners claimed the following credits on the 2016 return: the New York State earned income credit (\$1,555.00); the New York City earned income credit (\$267.00); the Empire State child credit (\$1,245.00); and the New York City school tax credit (\$125.00). A refund of \$2,669.00 was claimed. On February 10, 2017, the refund claimed on the 2016 return was paid.

2. On January 19, 2018, petitioners filed a joint New York State and New York City personal income tax return for tax year 2017 (2017 return) on which they claimed four children as dependents ranging from five to seventeen years of age as of December 31, 2017. Petitioners reported \$31,175.00 of self-employment income and total New York State and New York City tax of \$587.00. Attached to the return is a federal schedule C, net profit from business, reporting gross receipts of \$39,020.00 and a net profit of \$31,175.00; the principal business is listed as “ALL OTHER SPECIALTY TRADE CONTRACTORS.” Petitioners claimed the following credits on the 2017 return: the New York State earned income credit (\$1,532.00); the New York City earned income credit (\$263.00); the Empire State child credit (\$990.00); and the New York City school tax credit (\$125.00). A refund of \$2,338.00 was claimed. On February 7, 2018, the refund claimed on the 2017 return was paid.

3. On July 27, 2018, the Division of Taxation (Division) sent petitioners separate audit inquiry letters for both the 2016 and 2017 returns requesting verification of the dependents claimed and income reported on each return. Petitioners did not respond to either audit inquiry letter.

4. Because petitioners did not respond to the audit inquiry letters, the Division issued statements of proposed audit change, both dated September 21, 2018, to petitioners that asserted tax due of \$2,544.00, plus interest, for the 2016 tax year; and \$2,213.00, plus interest, for the 2017 tax year. The amount asserted due in each statement of proposed audit change is based upon a disallowance of the reported self-employment income and dependent exemptions. The net effect was a disallowance of the claimed earned income credits and the Empire State child credits. The school tax credit claimed on each return was allowed in full.

5. On November 7, 2018, the Division issued to petitioners a notice of deficiency, notice number L-048774541, asserting tax due of \$2,544.00 plus interest for the 2016 tax year (2016 notice); and notice of deficiency, notice number L-048774542, asserting tax due of \$2,213.00 plus interest for the 2017 tax year (2017 notice).

6. On August 23, 2019, the Division's Bureau of Conciliation and Mediation Services issued to petitioners a conciliation order dismissing request that dismissed their request for a conciliation conference filed in protest of the 2016 notice and the 2017 notice.

7. Petitioners commenced the instant proceeding by filing a petition with the Division of Tax Appeals.

8. In its answer, the Division alleges that the Division of Tax Appeals does not have jurisdiction to hear the subject challenge alleging that petitioners failed to timely file a request

for a conciliation conference or file a petition with the Division of Tax Appeals within 90 days of the issuance of the 2016 and 2017 notices.

9. At the hearing in this matter, the Division withdrew its challenge to the Division of Tax Appeals' jurisdiction to render a determination on the merits of the petition.

10. Petitioner Nihad H. Ikhmayes testified at the hearing and explained that the self-employment income reported on said returns was earned by him doing construction. He testified that his wife, petitioner Karimeh I. Ikhmayes, stays at home with their four children. Mr. Ikhmayes was invited to give further testimony but declined.

11. The hearing record was left open for Mr. Ikhmayes to submit documentation verifying his income and his children. To that end, petitioners submitted school records for three of the four children claimed as dependents on their returns; a doctor's letter confirming that the four claimed dependents lived with their mother, petitioner Karimeh Ikhmayes. The address given for the children is the same address appearing on a copy of Mr. Ikhmayes' New York State driver's license that was also submitted post-hearing. With respect to proof of income, petitioner submitted a spreadsheet that is reproduced below as follows:

A	B	C	D	E	F
KARIMEH IKHMAYES	DECORATION	10/5/2016	\$2,000.00	CH	
NIHAD IKHMAYES	CONTRACTOR	11/6/2016	\$1,000.00	CH	2016 TOTAL
NIHAD IKHMAYES	ELECTRICAL WORK	12/8/2016	\$420.00	CH	\$38,920.00
NIHAD IKHMAYES	DOORS & BRACKETS	1/11/2017	\$6,000.00	CH	
NIHAD IKHMAYES	CONTRACTOR	1/11/2017	\$4,000.00	CH	
KARIMEH IKHMAYES	DECORATION	3/13/2017	\$900.00	CH	
NIHAD IKHMAYES	TILE FOR HAZEM	3/4/2017	\$3,000.00	CH	
NIHAD IKHMAYES	CONTRACTOR	4/14/2017	\$2,000.00	CH	
NIHAD IKHMAYES	CONTRACTOR	4/24/2017	\$2,550.00	CH	
NIHAD IKHMAYES	CONTRACTOR	6/15/2017	\$5,000.00	CH	
KARIMEH IKHMAYES	DECORATION	7/17/2017	\$2,970.00	CH	

KARIMEH IKHMAYES	DECORATION	7/28/2017	\$5,000.00	CH	
NIHAD IKHMAYES	CONTRACTOR	11/1/2017	\$6,000.00	CH	2017 TOTAL
NIHAD IKHMAYES	CONTRACTOR	12/22/2017	\$1,000.00	CH	\$38,420.00
KARIMEH IKHMAYES	DECORATION	1/3/2018	\$3,000.00	CH	2018 TOTAL
					\$3,000.00
			TOTAL ALL YEARS		
			\$105,340.00		

12. Petitioners provided no explanation concerning how this spreadsheet was prepared nor any other records substantiating the income amounts contained on the spreadsheet and/or the federal schedule C's, such as bank statements or receipts evidencing business expenses.

**CONCLUSIONS OF LAW**

A. As noted, the notices at issue are notices of deficiency that assert tax based upon the denial of petitioners' claims for the New York State and New York City earned income credits and the Empire State child credit. "A tax credit is 'a particularized species of exemption from taxation'" (*Matter of Golub Serv. Sta. v Tax Appeals Trib.*, 181 AD2d 216, 219 [3d Dept 1992], citing *Matter of Grace v State Tax Commn.*, 37 NY2d 193, 197 [1975]) and a taxpayer carries "the burden of showing 'a clear-cut entitlement' to the statutory benefit" (*Matter of Golub Serv. Sta. v Tax Appeals Trib.*, at 219 [citation omitted]).

B. First, addressing petitioners' eligibility for the earned income credits, Tax Law § 606 (d) provides that the New York State earned income credit for the tax years in issue is equal to 30% "of the earned income credit allowed under section thirty-two of the internal revenue code for the same taxable year. . . ." In addition, Tax Law § 1310 (f) provides for a credit equal to 5% "of the earned income credit allowed under section thirty-two of the internal revenue code for the same taxable year. . ." for New York City residents. Since petitioners' eligibility for the New

York State and New York City earned income credits hinges upon their eligibility for the federal credit, their eligibility under federal law is determinative.

C. The federal earned income credit, provided for pursuant to 26 USC § 32, is a refundable tax credit for eligible low-income workers. To be eligible to claim the credit, a taxpayer must have earned income with an adjusted gross income (AGI) below a certain level, must have a valid Social Security number, must use a filing status other than married filing separately, must be a U.S. citizen or resident alien, must have no foreign income, and have investment income less than a certain amount. “A small credit is provided to all eligible taxpayers, but the principal feature of the EIC is the more substantial credit available to eligible taxpayers who have one or more ‘qualifying’ children” (*Sherbo v Commr.*, 255 F3d 650, 651 [8th Cir 2001], citing 2 Bittker & Lokken, *Federal Taxation of Income, Estate & Gifts* ¶ 37.1 [3d ed. 2000]). The amount of credit varies depending on the number of the taxpayer’s “qualifying children” as defined by 26 USC § 152 (c) and the taxpayer’s AGI. Since the Division has verified petitioners’ qualifying children, their eligibility hinges on whether they have established earned income in 2016 and 2017, and the amount thereof.

D. Careful review of the record establishes that petitioners have not proven entitlement to the New York State and New York City earned income credits as petitioners have not established that they earned income during the years in question. Petitioners submitted no records documenting the income reported on said returns as self-employment income other than the summary sheet that was submitted post-hearing. They provided no other books and records for the alleged business or bank statements showing deposits of business receipts and payment of business expenses. The summary sheet is as reliable as the amounts entered on their federal form schedule C during the years at issue. Without documentation to establish that Mr.

Ikhmayes actually was a self-employed contractor and earned the amount reported, petitioners have not met their burden of establishing entitlement to the earned income credits. Based upon the foregoing, petitioners' claim for the New York State and New York City earned income credits is denied.

E. Turning next to petitioners' claimed Empire State child tax credits for 2016 and 2017, 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 26 USC § 24 for the same taxable year for each qualifying child. Pursuant to 26 USC § 24, a taxpayer may claim a child tax credit for an individual who is their "qualifying child" as defined in 26 USC § 152 (c) and has not attained the age of 17 during the taxable year (26 USC § 24 [a], [c]). As conceded by the Division in its post-hearing brief, the exhibits submitted by petitioners confirm that they were entitled to claim all four of their children as qualifying children for the purposes of the Empire State child credit during 2016 and three of the four children in 2017. However, because petitioners have not documented their income for the years in issue, they are only entitled to the minimum credit of \$400.00 for 2016 and \$300.00 for 2017 pursuant to Tax Law § 606 (c-1). The Division is directed to modify the 2016 and 2017 notices in accordance therewith.

F. The petition of Nihad H. and Karimeh I. Ikhmayes granted to the extent of conclusion of law E, but is otherwise denied, and the November 7, 2018 notices of deficiency, as modified, are sustained.

DATED: Albany, New York  
June 02, 2022

/s/ Kevin R. Law  
ADMINISTRATIVE LAW JUDGE