

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition
of
**FAISAL T. MUTHANA AND
NADHRAH M. ALHALEMI**

DETERMINATION
DTA NO. 829655

for Redetermination of a Deficiency or for Refund of
Personal Income Tax under Article 22 of the Tax Law
and the Administrative Code of the City of New York
for the year 2017.

Petitioners, Faisal T. Muthana and Nadhrah M. Alhalemi, filed a petition for redetermination of a deficiency or for refund of personal income tax under article 22 of the Tax Law and the Administrative Code of the City of New York for the year 2017.

A hearing was held in New York City on November 9, 2021, with all briefs to be submitted by March 15, 2022, which date began the six-month period for issuance of this determination. Petitioners appeared pro se and the Division of Taxation appeared by Amanda Hiller, Esq. (Christopher O'Brien, Esq., of counsel). After reviewing the entire record in this matter, Jessica DiFiore, Administrative Law Judge, renders the following determination.

ISSUES

- I. Whether the Division of Taxation properly disallowed petitioners' New York State and New York City earned income credit for 2017.
- II. Whether the Division of Taxation properly disallowed a portion of petitioners' Empire State child credit for 2017.

FINDINGS OF FACT

1. Petitioners, Faisal T. Muthana and Nadhrah M. Alhalemi, electronically filed with the Division of Taxation (Division) a New York State resident income tax return, form IT-201, for 2017. On the return, petitioners claimed married filing jointly as their filing status with two dependents, reported business income of \$20,373.00, and requested a refund of \$2,718.00. The refund consisted of an Empire State child credit of \$660.00, New York State earned income credit of \$1,650.00, a New York City earned income credit of \$281.00, a fixed amount New York City school tax credit of \$125.00 and a rate reduction school tax credit of \$2.00. A refund of \$2,718.00 was issued to petitioners.

Attached to petitioners' return was a schedule C-EZ net profit from business, form 1040, which showed petitioner Faisal T. Muthana had gross receipts and a net profit of \$20,373.00 for a principal business of "grocery." The business name on the schedule C-EZ was "Lic Organic Gourmet Deli Inc.," and the address for the business was listed as Long Island City, New York.

2. The Division performed a desk audit of petitioners' 2017 return. During the audit, the Division sent petitioners a letter dated July 26, 2018, requesting additional information to verify the income and credits petitioners claimed on their 2017 return. The Division stated it could not verify some of the information on petitioners' return. The Division asked for documents substantiating the money petitioners earned by working for themselves, including: (i) a copy of a schedule C, profit or loss from business from petitioners' federal income tax return of the same year; (ii) any license, registration, or certification required for the business; (iii) summary documents used to calculate the income and expenses reported on the return, such as ledgers, spreadsheets, or income and expense journals; and (iv) any detailed documentation such as sales

slips, invoices, bank statements, or receipts supporting petitioners' business income. The Division also requested information about petitioners' children.

3. On September 26, 2018, the Division sent petitioners a statement of proposed audit change for 2017 stating that because petitioners did not provide any documentation in response to the Division's letter of July 26, 2018, it disallowed their business income claimed on their return and the dependent exemptions and refundable credits claimed on their return. The statement provided that the Division did allow petitioners' New York City school tax credit of 125.00.¹ The Division reduced petitioners' Empire State child credit, New York State earned income credit, and New York City earned income credit to \$0.00, resulting in tax due of \$2,591.00 plus interest.

4. On January 3, 2019, the Division issued petitioners notice of deficiency L-048796689 for tax year 2017, assessing tax due of \$2,591.00 plus interest.

5. Petitioners requested a conciliation conference with the Bureau of Conciliation and Mediation Services (BCMS) appealing the notice. BCMS issued a conciliation order dismissing request, number 000313676, dated August 30, 2019, stating that "[s]ince the notice(s) was issued on January 3, 2019, but the request was not received until August 5, 2019, or in excess of 90 days, the request is late filed." The Division did not offer any proof of mailing of the notice at issue to petitioners' last known address and, therefore, the Division did not establish that petitioners' request was untimely.

6. Petitioners timely filed a petition on October 11, 2019, asserting they submitted documents with the requests to BCMS, but that the Division never responded, and that they attached documents to the petition showing their income, their children's birth certificates, and

¹ In the computation section of the statement of proposed audit change, it shows that the \$2.00 rate reduction New York City school tax credit was also allowed.

letters from their doctor and their children's school. The documents attached to the petition included, in relevant part, petitioners' 2017 federal income tax return, form 1040, listing \$20,373.00 of business income and deductible self-employment tax of \$1,440.00, their 2017 schedule C-EZ net profit from business, listing Mr. Muthana as the proprietor, and a 2017 miscellaneous income, form 1099-MISC, listing "Lic Organic Gourmet Deli Inc." as the payer, located in Long Island City, New York. The 1099-MISC was for Mr. Muthana, listing nonemployee compensation of \$20,373.00.

7. During the hearing, petitioners offered, in relevant part, the following: (i) medical and school information for their dependents; (ii) bank statements for 2017, except for the statement from March 4, 2017, through April 5, 2017; and (iii) bank statements for 2018.

The bank statements for 2017 do not reflect any evidence of a consistent deposit either at the same time each month or in the same amount. In fact, the only deposits made to the account provided during 2017 were one deposit from New York State for a tax refund and one deposit from the Internal Revenue Service for a tax refund.

In the bank statement for February 6, 2018, through March 5, 2018, a deposit of the New York State tax refund in the amount of \$2,718.00 is listed.

8. At the hearing, the Division submitted the affidavit of Kathleen A. Loos, a Tax Technician III in the Division's Income/Franchise Desk Audit Bureau. At the time of the audit, Ms. Loos was a Tax Technician II and she supervised the tax technicians that performed the desk audit of petitioners' 2017 return.

Ms. Loos averred that during the audit, the Division sent petitioners a Request for Additional Information on July 26, 2019, requesting substantiation for the wages petitioners claimed to have earned, money earned by working for themselves and for verification of their

claimed dependents' relationship and residency. Ms. Loos stated that petitioners did not provide sufficient substantiation for the credits claimed with regard to the schedule C income or proof of the claimed dependents' residency and relationship, and, as a result, a notice of deficiency was issued.

9. In its brief, the Division conceded that petitioners substantiated the dependent portion of their Empire State child credit claimed for 2017, reducing the tax due in the deficiency by \$200.00.

CONCLUSIONS OF LAW

A. Tax Law § 606 (d) (1) provides for a New York State earned income credit based on a percentage of the earned income credit allowed under the Internal Revenue Code (IRC) (26 USC) § 32. The New York City earned income credit is equal to five percent of the federal earned income credit under IRC (26 USC) § 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 petitioners' eligibility for the earned income credit (*see Matter of Espada*, Tax Appeals Tribunal, January 28, 2016).

The federal earned income credit, provided for pursuant to IRC (26 USC) § 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 [26 USC] § 32 [c] [2] [A]). Thus, the State and City earned income credits require petitioners to prove the amount of their earned income (*see Matter of Espada*).

B. Petitioners bear the burden of proof to show a clear entitlement to the tax credits at issue (*see Matter of Golub Serv. Sta. v Tax Appeals Trib. of State of N.Y.*, 181 AD2d 216, 219

[3d Dept 1992]; *see also* Tax Law § 689 [e]). Without sufficient documentation to substantiate the claimed business income for the year at issue, petitioners fail to meet their burden of proof and are not entitled to the earned income credit for 2017 (*see Matter of Espada*).

C. Here, the Division denied petitioners' claim for the earned income credit for 2017 because they failed to substantiate their business income as reported. Upon review of the record, it is clear that petitioners have failed to prove their income for the year in issue. Petitioners did not produce sufficient books, records, receipts, or testimony to clearly show that they generated the gross receipts claimed on their returns for 2017. The form 1099-MISC that the petitioners submitted is not sufficient to establish petitioners' gross receipts. The bank statements petitioners offered did not reflect the money earned and petitioners did not offer any testimony or documentary evidence corroborating employment or the income listed on the form 1099-MISC. The form 1099-MISC alone is insufficient to prove petitioners' gross receipts. Petitioners therefore failed to substantiate their claimed income for 2017.

Without sufficient documentation to substantiate the claimed business income for the year in issue, petitioners have failed to meet their burden of proof to show that the Division's denial of the New York State and City earned income credits was erroneous (*see Matter of Espada*).

D. Turning next to petitioners' claimed Empire State child tax credit for 2017, the Division concedes that petitioners substantiated their two claimed dependents. Tax Law § 606 (c-1) provides for a credit equal to the greater of one hundred dollars 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. Where the

taxpayer does not have any earned income, the taxpayer will not qualify for the child tax credit under IRC § former 24 (d) (1) (B) (i).

On their 2017 return, petitioners claimed an Empire State child credit in the amount of \$660.00. Upon receiving substantiation of petitioners' claimed dependents, the Division allowed a credit of \$200.00, based upon no verifiable income and two qualifying children. As petitioners have failed to prove they had any earned income for 2017, they are not entitled to an Empire State child credit in an amount greater than the \$100.00 per child.

E. In light of the Division's concession that petitioners are entitled to \$200.00 of the \$660.00 in Empire State child credits claimed on their 2017 return, the Division is directed to recompute its January 3, 2019 notice of deficiency accordingly.

F. The petition of Faisal T. Muthana and Nadhrah M. Alhalemi is granted to the extent indicated in conclusion of law E but is otherwise denied and the notice of deficiency dated January 3, 2019, as recomputed in accordance with the conclusion of law E, is sustained.

DATED: Albany, New York
September 15, 2022

/s/ Jessica DiFiore
ADMINISTRATIVE LAW JUDGE