

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition :  
of :  
**SAMER H. DARHAMAD AND LEYALEE K. RAHMAN** : **DETERMINATION**  
 : **DTA NO. 829659**  
for Redetermination of Deficiencies 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 Years 2015 and 2016. :  
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Petitioners, Samer H. Darhamad and Leyalee K. Rahman, filed a petition for redetermination of deficiencies 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 years 2015 and 2016.

A videoconferencing hearing via CISCO Webex was held on June 24, 2021, with all briefs to be submitted by October 29, 2021, which date began the six-month period for issuance of this determination. Petitioners appeared pro se. 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.

***ISSUE***

Whether the Division of Taxation properly disallowed a portion of petitioners' New York State and New York City earned income credits claimed by petitioners on their 2015 and 2016 income tax returns.

***FINDINGS OF FACT***

1. Petitioners, Samer H. Darhamad and Leyalee K. Rahman, electronically filed with the Division of Taxation (Division) New York State resident income tax returns, form IT-201, for 2015 (2015 return) and 2016 (2016 return). On the 2015 return, petitioners claimed married filing jointly as their filing status with two dependents, reported wages of \$7,800.00, business income of \$7,240.00, and requested a refund of \$2,681.00. The refund consisted of an Empire State child credit of \$571.00, a New York State earned income credit of \$1,664.00, a New York City earned income credit of \$277.00, a New York City school tax credit of \$125.00, and New York City tax withheld of \$44.00. The Division issued a refund in this amount.

Petitioners' 2015 return also included a federal form schedule C, profit or loss from business, which showed gross receipts and a net profit of \$7,240.00 for a principal business of "yard work," and a W-2 for Mr. Darhamad from Archer 158 Management Corporation, for wages of \$7,800.00. The schedule C does not provide a business name or address and provides that cash was the accounting method used.

2. On their 2016 return, petitioners claimed married filing jointly as their filing status with two dependents, reported wages of \$7,800.00, business income of \$6,500.00, and requested a refund of \$2,642.00. The refund consisted of an Empire State child credit of \$537.00, a New York State earned income credit of \$1,659.00, a New York City earned income credit of \$277.00, a New York City school tax credit of \$125.00, and New York City tax withheld of \$44.00. The Division issued a refund in this amount.

Petitioners' 2016 return also included a federal form schedule C, profit or loss from business, which showed gross receipts and a net profit of \$6,500.00 for a principal business of "yard work," and a W-2 for Mr. Darhamad from Archer 158 Management Corporation, for

wages of \$7,800.00. The schedule C does not provide a business name or address and provides that cash was the accounting method used.

3. The Division performed a desk audit of petitioners' 2015 and 2016 returns. During the audit, the Division sent petitioners two letters dated July 26, 2018. One letter requested additional information to verify the income and credits petitioners claimed on their 2015 return. The second letter requested the same information for the 2016 return. The substance of the letters was the same. The Division stated it could not verify some of the information on petitioners' returns. For wages earned by working for someone else, the Division requested documents, including W-2 forms for each employer, or, if petitioners did not have W-2 forms, a paycheck stub either of the petitioners received from employers or, if no paycheck stubs, a letter from an employer on company letterhead stating, among other things, how much the petitioner earned and how much tax the employer withheld from their pay. The Division also 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) a 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 or dependents and documents in support of their claimed federal adjustments to income.

4. On September 5, 2018, the Division sent petitioners two statements of proposed audit change, one for 2015 and one for 2016, each stating that it allowed the wage and withholding amounts claimed on petitioners' returns, and the New York City school tax credits claimed, but

disallowed the business incomes reported on the returns because petitioners did not provide sufficient business records to substantiate the amounts reported. The Division explained that petitioners are required to keep adequate records to prepare accurate returns and must provide the records used to compute income claimed on their federal schedule Cs. The records must show when the income was earned, to whom the services were provided or the goods sold, and the exact amount of compensation received from each transaction. The Division also found that petitioners did not submit the required documentation for one of petitioners' children and disallowed the claim for that child on their return.

5. As a result of these changes, the Division recomputed petitioners' 2015 return and adjusted their New York State and New York City earned income credits and their Empire State child credit claimed. Petitioners' Empire State child credit was reduced from \$571.00 to \$238.00, their New York State earned income credit was reduced from \$1,664.00 to \$798.30, and their New York City earned income credit was reduced from \$277.00 to \$133.05. As a result of the reduction in these credits, the Division found a balance of tax due of \$1,342.65 plus interest.

6. The Division also recomputed petitioners' 2016 return and adjusted their New York State and New York City earned income credits and their Empire State child credit claimed. Petitioners' Empire State child credit was reduced from \$537.00 to \$238.00, their New York State earned income credit was reduced from \$1,659.00 to \$798.30, and their New York City earned income credit was reduced from \$277.00 to \$133.05. As a result of the reduction in these credits, the Division found a balance of tax due of \$1,303.65 plus interest.

7. On October 22, 2018, the Division issued notices of deficiency L-048728186 for tax year 2015, assessing tax due of \$1,342.64 plus interest, and L-048728187 for tax year 2016, assessing tax due of \$1,303.65 plus interest (the notices).

8. Petitioners requested a conciliation conference with the Bureau of Conciliation and Mediation Services (BCMS) regarding the notices. By BCMS conciliation order number 000305045, dated August 2, 2019, BCMS recomputed notice L-048728187 to be tax due of \$1,178.50 plus interest and notice L-048728186 to be tax due of \$1,139.50 plus interest.

9. Petitioners timely filed a petition on October 29, 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, children's birth certificates, and letters from their doctor and their children's school.

10. It is not clear from the record what, if any, documents petitioners submitted prior to submitting their petition and attached documents to the Division of Tax Appeals. The documents attached to the petition included, in relevant part, bank statements from JP Morgan Chase Bank, N.A. for a checking account for December 4, 2015 through January 6, 2016, February 4, 2016 through March 3, 2016, April 6, 2016 through July 6, 2016, and August 4, 2016 through December 5, 2016. Deposits made into the checking account were for different amounts and different days each month.

11. At the hearing, the Division advised that petitioners have substantiated their Empire State child credit in full for both 2015 and 2016.

12. Petitioners did not offer any evidence or testimony at the hearing.

### **CONCLUSIONS OF LAW**

A. Tax Law § 606 (d) (1) provides for a New York State earned income credit of 30% of the earned income credit allowed under the 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 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 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]). 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]). Here, petitioners had the burden to show the amount of their business income in 2015 and 2016. Petitioners did not submit any evidence to substantiate their business income for 2015 and only submitted bank statements for a portion of 2016. The bank statements did not show any clear indication of regular income payments. Petitioners have not presented any books, records, receipts, or other documents to show that either of them received business income or the amounts of such income. Petitioners have failed to substantiate their earned income.

C. In light of the Division's concession that petitioners are entitled to the full amount of the Empire State child credits claimed on their 2015 and 2016 returns, the Division is directed to recompute its October 22, 2018 notices of deficiency accordingly.

D. The petition of Samer H. Darhamad and Leyalee K. Rahman is granted to the extent provided in conclusion of law C, but is otherwise denied, and the notices of deficiency dated October 22, 2018, as modified, are sustained.

DATED: Albany, New York  
March 17, 2022

/s/ Jessica DiFiore  
ADMINISTRATIVE LAW JUDGE