

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition
of
AMINA K. OTHMAN
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 2016.

DETERMINATION
DTA NO. 829677

Petitioner, Amina K. Othman, 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 2016.

A videoconferencing hearing via CISCO Webex was held on August 17, 2021, with all briefs to be submitted by December 30, 2021, which date began the six-month period for issuance of this determination. Petitioner 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.

ISSUE

Whether the Division of Taxation properly disallowed a portion of petitioner's New York State and New York City earned income credits she claimed on her 2016 income tax return.

FINDINGS OF FACT

1. Petitioner, Amina K. Othman, electronically filed with the Division of Taxation (Division) a New York State resident income tax return, form IT-201, for 2016 (return). On the return, petitioner claimed head of household as her filing status with four dependents, reported business income of \$7,200.00, and requested a refund of \$1,414.00. The refund consisted of an Empire State child credit of \$300.00, a New York State earned income credit of \$901.00, a New York City earned income credit of \$150.00, and a New York City school tax credit of \$63.00. Petitioner's 2016 return also included a federal form schedule C, profit or loss from business, which showed gross receipts and a net profit of \$7,200.00 for a principal business of "grocery stores," and a business name of "Now We Change Deli and Grocery," located in Brooklyn, New York. Cash was the accounting method used.

2. Petitioner received the refund she requested in the amount of \$1,414.00.

3. The Division performed a desk audit of petitioner's 2016 return. During the audit, the Division sent petitioner a letter dated July 25, 2018, requesting additional information to verify the income and credits petitioner claimed on her 2016 return. The Division stated it could not verify some of the information on petitioner's returns. The Division asked for documents substantiating the income petitioner earned by working for herself, including: (i) a copy of a schedule C, profit or loss from business from petitioner's 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 petitioner's business income. The Division also requested information about petitioner's children.

4. On September 21, 2018, the Division sent petitioner a statement of proposed audit change for 2016 stating that it allowed petitioner's Empire State child credit and the New York City school tax credit claimed but disallowed the earned income credit listed on the return because it was unable to verify petitioner's earned income based on the schedule C she provided. The Division explained that she did not provide copies of paystubs, cashed checks or bank statements to substantiate her earned income.

5. As a result of these changes, the Division recomputed petitioner's return and adjusted her New York State and New York City earned income credits. Petitioner's New York State earned income credit was reduced from \$901.00 to \$0.00, and her New York City earned income credit was reduced from \$150.00 to \$0.00. As a result of the reduction in these credits, the Division found a balance of tax due of \$1,051.00 plus interest.

6. On January 3, 2019, the Division issued to petitioner notice of deficiency L-048779353 for tax year 2016, assessing tax due of \$1,051.00 plus interest.

7. Petitioner requested a conciliation conference with the Bureau of Conciliation and Mediation Services (BCMS) appealing the notice. By BCMS conciliation order number 000306886, dated September 20, 2019, BCMS sustained notice L-048779353.

8. Petitioner timely filed a petition on November 2, 2019, asserting she submitted documents with the requests to BCMS, but that the Division never responded, and that she attached documents to the petition showing her income, children's birth certificates, and letters from her doctor and her children's school.

9. It is not clear from the record what, if any, documents petitioner submitted to the Division prior to submitting her petition and attached documents to the Division of Tax Appeals.

The documents attached to the petition included, in relevant part, her federal income tax return, form 1040, and her schedule C profit or loss from business for 2016.

10. At the hearing, petitioner called Ali Alsawd to testify on her behalf. Mr. Alsawd testified that petitioner worked at “the shop.” He stated that she was receiving her salary in cash. Mr. Alsawd testified he was petitioner’s friend but was not her employer or coworker. He explained that he had spoken to petitioner many times about her employment and that on one occasion he went with her to her employer where she was paid \$75.00 in cash.

11. Petitioner did not offer any documentary evidence at the hearing and the record closed that day.

12. On December 21, 2021, the Division of Tax Appeals received a letter from petitioner stating it was her response to the Division’s brief in opposition. Enclosed with the brief was a 2016 form 1099-MISC, Miscellaneous Income, and a letter from Now We Change Deli and Grocery Corp. The form 1099-MISC was from “No [sic] We Change Deli and Grocery Inc” in Brooklyn, New York, to petitioner, listing \$7,200.00 in nonemployee compensation. The letter stated that petitioner started her employment on August 25, 2015, and that she worked five days a week from 2:00 p.m. until 5:00 p.m. Monday through Friday. The letter provided that her weekly salary was \$10.50 per hour for 15 hours per week totaling \$157.50 that she was paid in cash.

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 petitioner's 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 petitioner to prove the amount of her earned income (*see Matter of Espada*).

B. Petitioner bears 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, petitioner had the burden to show the amount of her business income in 2016. Petitioner did not submit any evidence to substantiate her business income for 2016. Petitioner's witness testified that she told him she worked at Now We Change Deli and Grocery and that he witnessed her receiving cash on one occasion. However, petitioner did not present any paystubs, receipts, deposit slips, bank statements or other documents to show that she received business income or the amounts of such income. Petitioner also failed to testify regarding her work for the grocery. Petitioner has failed to substantiate her earned income.

C. Petitioner submitted a form 1099-Misc, Miscellaneous Income, and a letter from Now We Change Deli and Grocery Corp. for consideration with her reply brief on December 21, 2021. As the record in this matter was closed on August 17, 2021 (*see* finding of fact 10), these

documents will not be considered (*see Matter of March*, Tax Appeals Tribunal, November 26, 2018).

D. The petition of Amina K. Othman is denied, and the notice of deficiency dated January 3, 2019, is sustained.

DATED: Albany, New York
June 30, 2022

/s/ Jessica DiFiore
ADMINISTRATIVE LAW JUDGE