

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :

of :

OSAMA T. AWAWDEH AND : **DETERMINATION**
TAGHREED ALAWAWDA : **DTA NO. 829679**

for Redetermination of Deficiencies or for Refund of New
York State and New York City Personal Income Tax under:
Article 22 of the Tax Law and the New York City
Administrative Code for the Years 2016 and 2017. :

Petitioners, Osama T. Awawdeh and Taghreed Alawawda, filed a petition for redetermination of deficiencies or for refund of New York State and New York City personal income tax under article 22 of the Tax Law and the New York City Administrative Code for the years 2016 and 2017.

A formal hearing was held in New York, New York, before Donna M. Gardiner, Administrative Law Judge, on September 15, 2021, with the final brief to be submitted by February 7, 2022, 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. (James Passineau, Esq. and Robert Tompkins, Esq., of counsel).

ISSUE

Whether petitioners have established that the Division of Taxation erred in disallowing their claimed New York State and City earned income credits and their Empire State child tax credit for the years 2016 and 2017.

FINDINGS OF FACT

The Division of Taxation (Division) proposed 10 findings of fact that have been accepted and are incorporated in the facts as set forth below.

1. Petitioners, Osama T. Awawdeh and Taghreed Alawawda, filed a New York State resident income tax return, form IT-201, for the year 2016, reporting four dependent exemptions, business income of \$19,100.00, and requesting a refund in the amount of \$2,866.00. The refund consisted of a New York State earned income credit in the amount of \$1,881.00, Empire State child credit in the amount of \$547.00, New York City earned income credit of \$313.00, and New York City school tax credit of \$125.00.

2. Attached to petitioners' return was schedule C, Profit or Loss from Business, reporting Mr. Awawdeh's business as "taxi and limousine service" and reporting gross receipts and net profit in the amount of \$19,100.00. The schedule C lists the business name Continental Car Service, located at 313 9th St, Brooklyn, New York 11215.

3. Also attached to petitioners' return was form IT-215, claim for earned income credit, listing three dependents and form IT-213, claim for Empire State child credit, listing the four claimed dependents as set forth on petitioners' income tax return for 2016, with dates of birth listed as June 24, 2015, October 31, 2008, and July 23, 2007 for two children. The dependent that was not listed on form IT-215 was one of the twins.

4. Based on petitioners' return, the Division issued a refund in the amount of \$2,866.00 for tax year 2016.

5. Petitioners filed a New York State resident income tax return, form IT-201, for the year 2017, reporting four dependent exemptions, business income of \$19,895.00, and requesting a refund in the amount of \$2,911.00. The refund consisted of a New York State earned income

credit in the amount of \$1,895.00, Empire State child credit in the amount of \$575.00, New York City earned income credit of \$316.00, and New York City school tax credit of \$125.00.

6. Attached to petitioners' return was schedule C, Profit or Loss from Business, reporting Mr. Awawdeh's business as "taxi and limousine service" and reporting gross receipts and net profit in the amount of \$19,895.00. The schedule C lists the business name as Uber Technologies Inc., with an address in San Francisco, CA.

7. Also attached to petitioners' return was form IT-215, claim for earned income credit, listing only three dependents and form IT-213, claim for Empire State child credit, listing the four claimed dependents as set forth on petitioners' income tax return for 2017, with dates of birth listed as June 24, 2015, October 31, 2008, and July 23, 2007 for two children. The dependent that was not listed on form IT-215 was one of the twins.

8. Based on petitioners' return, the Division issued a refund in the amount of \$2,911.00 for tax year 2017.

9. Petitioners' returns were selected for a desk audit by the Division after the issuance of the requested refunds. The Division sent audit inquiry letters to petitioners, dated July 24, 2018, requesting documentation to support the business income, credits, and claimed refund for 2016 and 2017.

10. Petitioners did not submit any documentation in response to the audit inquiry letters.

11. The Division issued a statement of proposed audit change for tax year 2016, dated September 18, 2018, stating, in part, as follows:

"Since you did not provide any documentation we requested in our audit inquiry letter dated July 24, 2018, in the specified timeframe, we disallowed the business income claimed on your return. We also disallowed the dependent exemption/s and refundable credits claimed by you.

You are allowed the New York City School Tax Credit of \$63.”¹

12. With respect to the tax year 2017, the Division issued a statement of proposed audit change, dated September 18, 2018, stating, in part, as follows:

“Since you did not provide any documentation we requested in our audit inquiry letter dated July 24, 2018, in the specified timeframe, we disallowed the business income claimed on your return. We also disallowed the dependent exemption/s and refundable credits claimed by you.

You are allowed the New York City School Tax Credit of \$125.”

13. The Division issued a notice of deficiency (notice), assessment number L-048763017, dated January 7, 2019, to petitioners, asserting tax due of \$2,741.00 plus interest for the tax year 2016.

14. Also, on January 7, 2019, the Division issued a notice, assessment number L-048763108, to petitioners, asserting tax due of \$2,786.00 plus interest for the tax year 2017.

15. Petitioners filed requests for conciliation conference with the Bureau of Conciliation and Mediation Services (BCMS) in protest of the notices. A conciliation conference was held on August 14, 2019 and, by conciliation order, CMS No. 305801, dated September 20, 2019, BCMS sustained the notices.

16. In protest of the conciliation order, petitioners filed a timely petition with the Division of Tax Appeals on November 5, 2019.

17. At the hearing in this matter, petitioner, Osama T. Awawdeh, testified regarding his children. The record was left open until October 27, 2021 for submission of documents to prove his relationship to the children. On September 22, 2021, the following documents were submitted: a copy of Mr. Awawdeh’s driver’s license, copies of four passports, copies of four

¹ Despite the statement that the Division only allowed the New York City School Tax Credit in the amount of \$63.00, the Division, in fact, allowed the full amount claimed of \$125.00 in its Computation section on page 4 of the statement of proposed audit change.

birth certificates, a letter from the children's pediatrician and copies of school records for the three oldest children indicating the names of the children, the name of their parent and home address. After reviewing this documentation, the Division concluded that it was sufficient verification of petitioners' relationships to their claimed dependents.

18. Petitioner also testified that he was a driver for Continental Car Service and then for Uber during the years at issue. He submitted monthly bank statements from Citibank, N.A., to prove his business income. However, there were no documents submitted to show what the disbursements and deposits represented. No cancelled checks were provided. Petitioner was asked on cross-examination to explain how he calculated his business income in order to file his tax returns. Petitioner testified that his accountant merely reviewed his bank statements and came up with figures on his own.

CONCLUSIONS OF LAW

A. It is initially noted that determinations made in a notice of deficiency are presumed correct, and the burden of proof is upon petitioners to establish, by clear and convincing evidence, that those determinations are erroneous (*see Matter of Leogrande v Tax Appeals Trib.*, 187 AD2d 768 [3d Dept 1992], *lv denied* 81 NY2d 704 [1993]; *see also* Tax Law § 689 [e]). The burden does not rest with the Division to demonstrate the propriety of the deficiency (*see Matter of Scarpulla v State Tax Commn.*, 120 AD2d 842 [3d Dept 1986]). There is a presumption of correctness of a notice of deficiency that has been properly issued under the Tax Law (*see Matter of Tavolacci v State Tax Commn.*, 77 AD2d 759 [3d Dept 1980]). A taxpayer who fails to present any evidence to show that the notice is incorrect surrenders to this presumption (*id.*).

B. Tax Law § 606 (d) provides for a New York State earned income credit based on a percentage of the earned income credit allowed under section 32 of the Internal Revenue Code (IRC). Since the state earned income credit is determined based solely on 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.

C. 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* 26 USC § 32 [c] [2]). Petitioners bear the burden of proof (*see* Tax Law § 689 [e]) to substantiate the amount of earned income reported on their return.

Here, the Division denied petitioners' claim for the earned income credit because they failed to substantiate the business income as reported. Upon review of the record, it is clear that petitioners have failed to prove their income for the years in issue. Petitioners did not produce sufficient records or testimony to clearly establish the income claimed on their return. Therefore, 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 credit was erroneous (*see Matter of Espada*, Tax Appeals Tribunal, January 28, 2016).

D. For purposes of the Empire State child tax credit, a taxpayer must establish a qualifying child. A qualifying child must be a child of the taxpayer, a descendent of the taxpayer's child, a sibling or step-sibling of the taxpayer or a descendent of such relative; must have the same principal place of abode as the taxpayer for more than one-half of the taxable year, and must be between four and seventeen years of age (Tax Law § 606 [c-1]; 26 USC §§ 24 [c]; 152 [c]).

As set forth in finding of fact 17, the Division has accepted petitioners' documents to establish their relationship to their claimed dependents. However, their daughter born in 2015 was younger than four years of age during the audit period. As such, she is not a qualifying child. However, the three other claimed dependents have met the age requirement to be deemed qualifying children under the statute. Therefore, petitioners are entitled to the Empire State child credit in the amount of \$300.00 for both the 2016 and 2017 tax years.

E. The petition of Osama T. Awawdeh and Taghreed Alawawda is granted to the extent indicated in conclusion of law D, but is otherwise denied and the notices of deficiency, dated January 7, 2019, as modified, are sustained.

DATED: Albany, New York
August 4, 2022

/s/ Donna M. Gardiner
ADMINISTRATIVE LAW JUDGE