

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
PARVEEN KHAN	:	DETERMINATION
	:	DTA NO. 829724
for Redetermination of a Deficiency or for Refund of New York State Personal Income Tax under Article 22 of the Tax Law for the Year 2018.	:	

Petitioner, Parveen Khan, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under article 22 of the Tax Law for the year 2018.

A videoconferencing hearing via Cisco Webex was held before Kevin R. Law, Administrative Law Judge, on October 26, 2021, with all briefs to be submitted by February 18, 2022, which date commenced the six-month period for issuance of this determination. Petitioner appeared pro se. The Division of Taxation appeared by Amanda Hiller, Esq. (Maria Matos, Esq., of counsel).

ISSUE

Whether petitioner has sustained her burden of proving entitlement to her claims for the New York State earned income credit and the Empire State child credit.

FINDINGS OF FACT

1. On March 2, 2019, petitioner, Parveen Khan, filed a New York State personal income tax return for tax year 2018 (the return) on which she claimed one child as a dependent who was four years old as of December 31, 2018. Petitioner reported \$14,510.00 of self-employment income on the return. Attached to the return was a schedule C for petitioner that reported gross

receipts of \$14,510.00, with no corresponding expenses. The principal activity listed on the schedule C is “Construction Clerk.”

2. On the return, petitioner claimed the New York State earned income credit of \$987.00 and the Empire State child credit of \$330.00, resulting in a \$1,317.00 refund claim.

3. On March 12, 2019, the Division of Taxation (Division) sent petitioner an audit inquiry letter requesting verification of the dependent claimed and income reported on the return.

4. Petitioner did not respond to the March 12, 2019 audit inquiry letter.

5. On June 24, 2019, the Division issued a notice of disallowance to petitioner denying the \$1,317.00 refund claimed on the return.

6. On October 2, 2019, petitioner submitted documentation to the Division concerning her minor son and his residence during the tax year 2019; no documentation was submitted that established her son’s residence in 2018 nor was any documentation submitted verifying her business income reported on her return.

7. On November 1, 2019, the Division sent petitioner a letter acknowledging receipt of her October 2, 2019 submission. The letter stated that any further review of the notice of disallowance required her to file either a request for a conciliation conference with the Division’s Bureau of Conciliation and Mediation Services or a petition with the Division of Tax Appeals. The letter further stated that the Division would retain the documents she submitted and that she would not have to resubmit them.

8. At the hearing in this matter, petitioner testified that during 2018, because she was separated from her husband, she and her son lived with her parents. She also testified that she was employed as a construction clerk for GSK Contractors and that this business paid her weekly. Petitioner stated that she deposited her earnings into a bank account at Chase Bank but

that she did not have any bank statements to document those payments as she closed that bank account.

9. The hearing record was left open for petitioner to submit documentation establishing that her son lived with her during 2018. No documentation was ever submitted.

CONCLUSIONS OF LAW

A. As noted, the notice at issue is a notice of disallowance that denied petitioner's claims for the New York State earned income credit 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 petitioner's eligibility for the earned income credit, Tax Law § 606 (d) (1) provides that the New York State earned income credit for the 2017 tax year is equal to 30% "of the earned income credit allowed under section thirty-two of the internal revenue code for the same taxable year. . . ." Since petitioner's eligibility for the New York State earned income credit hinges upon her eligibility for the federal credit, her 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 to 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. Petitioner’s eligibility for the earned income credit hinges on whether she has established her earned income, and the amount thereof, as well as her claimed dependent.

D. Petitioner’s claimed earned income credit is based upon \$14,510.00 of self-employment income. Petitioner has failed to meet her burden of establishing that she earned such amount during 2018 as she presented no evidence on this score. Petitioner failed to respond to the audit inquiry letter, presented no evidence at the hearing in this matter and acknowledged during said hearing she had no such documentation. Based upon the foregoing, petitioner’s claim for the New York State earned income credit is denied.

E. Turning next to petitioner’s claimed Empire State child tax credit for 2018, 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]). In this case, petitioner likewise presented no evidence to document her entitlement to said credit. Based upon the foregoing, the Empire State child credit is also denied.

