

STATE OF NEW YORK
DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
FAEZ M. ZAID AND : **DETERMINATION**
SABA A. KASSIM : **DTA NO. 829947**
for Redetermination of a Deficiency or for Refund of :
New York State and City Personal Income Taxes under :
Article 22 of the Tax Law and the Administrative Code :
of the City of New York for the Year 2016. :
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Petitioners, Faez M. Zaid and Saba A. Kassim, filed a petition for redetermination of a deficiency or for refund of New York State and City personal income taxes under article 22 of the Tax Law and the Administrative Code of the City of New York for the year 2016.

A hearing was held in New York, New York, on April 4, 2023, with all briefs to be submitted by July 10, 2023, which date began the six-month period for the 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 City earned income credits for 2016.

II. Whether the Division of Taxation properly disallowed a portion of petitioners' Empire State child credit for 2016.

FINDINGS OF FACT

1. Petitioners, Faez Zaid and Saba A. Kassim, electronically filed with the Division of Taxation (Division), a New York State resident income tax return, form IT-201, for 2016 (2016 return). On the 2016 return, petitioners claimed married filing jointly as their filing status with three dependents, reported business income of \$22,500.00, and requested a refund of \$2,824.00. The refund consisted of an Empire State child credit of \$591.00, a New York State earned income credit of \$1,802.00, a New York City earned income credit of \$313.00, and a New York City school tax credit of \$125.00, less a New York City resident tax of \$7.00. A refund of \$2,824.00 was issued to petitioners.

2. Attached to petitioners' 2016 return was a schedule C-EZ, net profit from business, for Mr. Zaid, reporting a business or profession of "Luggage and Leather Goods Stores," and a business name of "Ridgewood Smoke Shop and Vaporizers." The schedule C-EZ also reported gross receipts and net profit in the amount of \$22,500.00.

3. Also attached to petitioners' 2016 return were forms IT-215, claim for earned income credit, and IT-213, claim for Empire State child credit, listing the three claimed dependents, with dates of birth shown as September 21, 2006, February 18, 2010, and March 30, 2015.

4. The Division performed an audit of petitioners' 2016 return. During the audit, the Division sent petitioners a letter dated July 31, 2018, requesting additional information to verify the income and credits petitioners claimed on their 2016 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.

5. On September 20, 2018, the Division issued to petitioners a statement of proposed audit changes (statement). The statement provided that because petitioners did not submit any of the documentation that the Division requested, petitioners' business income claimed on their return was disallowed. The statement also stated that the dependent exemptions and refundable credits petitioners claimed were disallowed. Petitioners were allowed the New York City school tax credit of \$125.00. The statement listed tax due of \$2,699.00, plus interest and penalty.

6. On February 15, 2019, the Division issued to petitioners notice of deficiency, number L-048770071, for tax year 2016, assessing tax due of \$2,699.00, plus interest and penalty.

7. On February 12, 2020, the Division issued petitioners a notice of adjusted assessment, referencing notice of deficiency L-048770071. This notice provided as follows: "We received additional information that caused us to adjust the original notice we sent to you on September 20, 2018." Petitioners were granted an Empire State child credit of \$300.00, reducing the tax amount due to \$2,399.00, plus interest and penalties.

8. Petitioners timely filed a petition on May 4, 2020, asserting that they submitted documents with the request to the Bureau of Conciliation and Mediation Services (BCMS) for a conciliation conference, but that the Division never responded, and that they attached documents to the petition showing their income, their children's birth certificates, and letters from their doctor and their children's school. The documents attached to the petition included birth

certificates, medical, and school information for petitioners' dependents and petitioners' bank statements for 2016.

Despite asserting that they submitted documents to BCMS, petitioners did not submit documentation of their request to BCMS into evidence, and the Division did not provide a conciliation order.

9. During the hearing, Mr. Zaid testified that for tax year 2016, his employer paid him in cash. Petitioners offered the same medical and school information for their dependents and the bank statements that were attached to their petition, and a form 1099-MISC, listing "Ridgewood Smoke Shop and Vaporizer" as the payer, located in Ridgewood, New York. The 1099-MISC was for Mr. Zaid, and reported nonemployee compensation of \$22,500.00, the same amount listed as profits on petitioners' 2016 return.

10. At the hearing, the Division submitted the affidavit of Angela Pettes, a Tax Technician 4 in the Division's Income/Franchise Desk Audit Bureau. As a Tax Technician 4, Ms. Pettes' duties include managing Tax Technicians that perform reviews of New York State personal income tax returns, conduct desk audits, and process refund claims. She also supervises personal income tax audits. Her affidavit is based on a review of the Division's records.

Ms. Pettes averred that during the audit, the Division sent petitioners a letter dated July 31, 2018, requesting substantiation for the income and credits petitioners claimed on their 2016 return. She explained that the bank deposits petitioners provided did not prove how much income petitioners received, or where it came from. She stated that the cash deposits were inconsistent and that they did not equal the gross receipts reported. Ms. Pettes concluded that petitioners did not provide sufficient proof of income for tax year 2016 to entitle them to the earned income credit.

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 2016 (*see Matter of Espada*).

C. Here, the Division denied petitioners' claim for the earned income credit for 2016 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 2016. Petitioners did not produce sufficient books, records, receipts, or testimony to clearly show that they generated the gross

receipts claimed on their returns for 2016. The form 1099-MISC 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 credible testimony or documentary evidence corroborating employment or the income listed on the form 1099-MISC. Petitioners therefore failed to substantiate their claimed income for 2016. Without sufficient documentation to substantiate the claimed business income for the years 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 were erroneous.

D. Turning next to petitioners' claimed Empire State child tax credit for 2016, 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 (26 USC) § 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 (26 USC) former § 24 (d) (1) (B) (i).

On their 2016 return, petitioners claimed an Empire State child credit in the amount of \$591.00. As petitioners have failed to prove they had any earned income for 2016, they are not entitled to an Empire State child credit in an amount greater than the \$100.00 per child.

E. The petition of Faez Zaid and Saba Kassim is denied and the notice of deficiency, dated February 15, 2019, as modified by the notice of adjusted assessment, dated February 12, 2020, is sustained.

DATED: Albany, New York
September 7, 2023

/s/ Jessica DiFiore
ADMINISTRATIVE LAW JUDGE