

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition :  
of :  
**ADNAN A. KASSIM AND** : **DETERMINATION**  
**SABREEN M. MASSAR** : **DTA NO. 829948**  
: :  
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 2017. :

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Petitioners, Adnan A. Kassim and Sabreen M. Massar, 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 2017.

A videoconferencing hearing via CISCO Webex was held before Barbara J. Russo, Administrative Law Judge, on January 12, 2023 at 10:30 a.m., with the final brief to be submitted by May 4, 2023, 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. (Christopher O'Brien, Esq., of counsel).

***ISSUE***

Whether petitioners have established that the Division of Taxation erred in disallowing their claimed earned income credit for the year 2017.

***FINDINGS OF FACT***

1. Petitioners, Adnan A. Kassim and Sabreen M. Massar, filed a New York State resident income tax return, form IT-201, for the year 2017, reporting one dependent exemption, business income of \$15,600.00, and requesting a refund in the amount of \$1,315.00. The refund consisted

of a New York State earned income credit in the amount of \$1,020.00, New York City earned income credit of \$170.00, and New York City school tax credit of \$125.00.

2. Attached to petitioners' return was schedule C, profit or loss from business, reporting petitioner Adnan A. Kassim's business as "grocery store" with the business name "Brooklyn Smoke Shop" and reporting gross receipts and net profit in the amount of \$15,600.00.

3. Also attached to petitioners' return was form IT-215, claim for earned income credit, listing one claimed qualifying child with a date of birth listed as September 11, 2017.

4. Based on petitioners' return, the Division of Taxation (Division) issued a refund in the amount of \$1,315.00 for tax year 2017.

5. Petitioners' return was selected for a desk audit by the Division after the issuance of the requested refund. The Division sent an audit inquiry letter to petitioners, dated July 26, 2018, requesting documentation to support the business income, credits, and claimed refund for 2017.

6. Petitioners did not submit the requested documentation in response to the audit inquiry letter.

7. The Division issued a statement of proposed audit changes for tax year 2017, dated September 5, 2018, stating, in part, as follows: "We have disallowed the business income reported on your return. You have not provided sufficient business records to substantiate the amounts reported."

Based on the lack of verifiable income, the Division denied the claimed New York State and City earned income credits. The Division allowed the New York City school tax credit claimed on the return in the amount of \$125.00. As a result of the adjustments, the Division determined tax due for 2017 in the amount of \$1,190.00 plus interest.

8. The Division issued a notice of deficiency (notice) to petitioners, dated July 11, 2019, asserting tax due of \$1,190.00 plus interest.

9. No conciliation order from the Bureau of Conciliation and Mediation Services (BCMS) was entered into the record, but attached to the petition is a copy of a cover letter from BCMS, dated January 17, 2020. The letter is addressed to petitioners and references CMS No. 000317176. It states that BCMS dismissed petitioner's request for conciliation conference because it was not filed within the time allowed by the Tax Law. However, the letter does not indicate to what tax year or notice number it pertains.

10. Petitioners filed a petition with the Division of Tax Appeals on November 28, 2019.

11. The Division of Tax Appeals issued a notice of intent to dismiss petition on December 14, 2020, indicating that it appeared the petition was not filed within 90 days of the conciliation order.

12. On March 26, 2021, the Division of Tax Appeals rescinded the notice of intent to dismiss petition because the Division did not have sufficient documentation for proof of mailing.

13. At the hearing in this matter, Mr. Kassim testified that he worked for Brooklyn Tobacco for approximately eight or nine months in 2017 and was paid \$300.00 a week in cash.

14. Attached to the petition are bank statements for petitioners' account from December 28, 2016 through December 27, 2017. The bank statements do not show consistent weekly deposits of \$300.00. The statements show the following deposits:

Date	Description	Amount
March 22, 2017	Transfer from checking	\$1,500.00
June 6, 2017	Transfer from checking	\$1,000.00
July 10, 2017	Transfer from checking	\$2,000.00
August 21, 2017	ATM cash deposit	\$2,400.00
August 21, 2017	ATM cash deposit	\$ 300.00
September 5, 2017	ATM cash deposit	\$2,000.00
September 13, 2017	ATM cash deposit	\$2,500.00
September 27, 2017	ATM cash deposit	\$1,150.00
September 27, 2017	ATM cash deposit	\$ 600.00
October 4, 2017	Deposit	\$ 269.00
October 11, 2017	ATM cash deposit	\$1,000.00

October 16, 2017	Deposit	\$ 632.00
October 17, 2017	ATM cash deposit	\$ 1,290.00
October 20, 2017	ATM cash deposit	\$ 600.00
November 6, 2017	ATM cash deposit	\$ 700.00
November 14, 2017	ATM cash deposit	\$ 1,300.00
November 17, 2017	Deposit	\$ 600.00
November 24, 2017	Deposit	\$ 300.00
December 6, 2017	Deposit	\$ 426.00
December 11, 2017	ATM cash deposit	\$ 1,050.00
December 11, 2017	ATM cash deposit	\$ 60.00
December 13, 2017	ATM cash deposit	\$ 900.00
December 14, 2017	ATM cash deposit	\$ 270.00
Total		\$22,847.00

15. Petitioners did not present any documentary evidence during the hearing. The record was held open until February 2, 2023, for petitioners to provide documents to support the amount of income claimed on the return. Petitioners did not provide any additional documentation within the time allowed.

### ***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]). 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) (1) 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* IRC [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 year in issue. Petitioners did not produce sufficient records or testimony to clearly establish the income claimed on their return. The bank statements provided with the petition do not support Mr. Kassim's testimony that he was paid \$300.00 a week in 2017. Additionally, the total deposits shown in the bank statements, \$22,847.00, is inconsistent with the business income reported on petitioners' return for 2017 in the amount of \$15,600.00. 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 credits was erroneous (*see Matter of Espada*, Tax Appeals Tribunal, January 28, 2016).

D. The petition of Adnan A. Kassim and Sabreen M. Massar is denied and the notice of deficiency, dated July 11, 2019, is sustained.

DATED: Albany, New York  
October 12, 2023

/s/ Barbara J Russo  
ADMINISTRATIVE LAW JUDGE