

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
DIANA PILGRIM	:	DETERMINATION
	:	DTA NO. 830236
for Redetermination of Deficiencies or for Refunds	:	
of New York State and New York City Personal	:	
Income Taxes under Article 22 of the Tax Law and	:	
the Administrative Code of the City of New York	:	
for the Years 2015, 2016 and 2017.	:	

Petitioner, Diana Pilgrim, filed a petition for redetermination of deficiencies or for refunds of New York State and New York City personal income taxes under article 22 of the Tax Law and the Administrative Code of the City of New York for the years 2015, 2016 and 2017.

A hearing was held before Nicholas A. Behuniak, Administrative Law Judge, in Albany, New York, on August 3, 2022, with all briefs to be submitted by November 25, 2022, which date began the six-month period for issuance of this determination. Petitioner appeared pro se. The Division of Taxation appeared by Amanda Hiller, Esq. (Michael Trajbar, Esq., of counsel).

ISSUES

I. Whether the Division of Tax Appeals has jurisdiction to address petitioner’s claim that she is due a refund for 2015.

II. Whether the Division of Tax Appeals has jurisdiction to address petitioner’s claim that she is due a refund for 2016.

III. Whether petitioner met her burden of establishing her entitlement to earned income credits for 2017.

IV. Whether petitioner met her burden of establishing her entitlement to the New York State child and dependent care credit claimed in 2017.

FINDINGS OF FACT

1. On April 18, 2016, petitioner, Diana Pilgrim, also known as Diana Garces Londono, electronically filed a New York State resident income tax return (form IT-201), for the tax year 2015, claiming a refund in the amount of \$232.00. The Division of Taxation (Division) issued petitioner a refund in the amount of \$232.00 for tax year 2015 on April 28, 2016.

2. On February 1, 2019, petitioner, with her husband, jointly filed an amended New York State resident income tax return (form IT-201-X), for the tax year 2015, claiming a refund in the amount of \$710.00. On April 23, 2019, the Division issued an account adjustment notice-personal income tax (form DTF-160), explaining that petitioner's \$710.00 claimed refund for tax year 2015 had been approved in full, that \$232.00 of petitioner's refund had already been refunded to petitioner (*see* finding of fact 1), and that the remainder of petitioner's approved refund was applied toward legally enforceable debts with the State.

3. During the hearing, the Division placed into evidence the affidavit of Kathleen Loos, the Division's assistant manager of the personal income tax credit unit. Ms. Loos asserted that she reviewed the Division's records and did not find a tax return filed by petitioner for tax year 2016. As additional support for her conclusion, Ms. Loos included with her affidavit a certification from the Division's deputy tax commissioner, Marianna E. Denier, who represented that a search of the Division's records had been performed and no tax return for petitioner was found for tax year 2016.

4. On April 16, 2018, petitioner and her husband jointly filed a New York State resident income tax return (form IT-201), for tax year 2017, requesting a refund of \$12,048.00. On the

2017 tax return, petitioner claimed: (i) \$6,328.00 as business income, (ii) \$11,224.00 as child and dependent care credits, (iii) \$599.00 as New York State earned income credits, (iv) \$100.00 as New York City earned income credits, and (v) \$125.00 in New York City school tax credits. Petitioner claimed herself as the qualifying person for her child and dependent care credits.

5. Petitioner's 2017 return was selected for a routine desk audit. After the Division sent petitioner an inquiry letter and received no response, the Division determined that petitioner failed to provide documentation to substantiate the credit amounts claimed. On December 24, 2018, the Division issued a notice of disallowance for audit case ID X-187186320 (notice) to petitioner which disallowed petitioner's claimed refund, for tax year 2017, in the amount of \$12,048.00.

6. On March 29, 2019, petitioner requested a conciliation conference with the Bureau of Conciliation and Mediation Services (BCMS). Petitioner's BCMS conciliation conference request indicated that she was challenging the Division's conclusions regarding tax years 2015, 2016 and 2017; however, petitioner only included a copy of the notice as an attachment to her conciliation conference request. Petitioner's BCMS conciliation conference request did not include any written notices issued by the Division pertaining to the 2015 or 2016 tax years.

7. BCMS issued a conciliation order (order) dated October 23, 2020, denying petitioner's refund request and sustaining the notice.

8. On January 19, 2021, petitioner filed a petition with the Division of Tax Appeals in protest of the order. In the petition heading, petitioner referred to the tax years 2015, 2016 and 2017 as the years in protest. The petition was approximately 90 pages. The petition included a copy of the order. The petition did not include any notices issued by the Division pertaining to petitioner's tax years 2015 or 2016.

9. In the petition, among other arguments, were references to the Internal Revenue Service (IRS) and petitioner's belief the service she received from the IRS was poor and the claim that she was subject to several illegal evictions. The petition included a copy of several New York City police incident information slips which apparently reported a grand larceny, an illegal eviction, a burglary, and a petit larceny. The petition also includes an identity theft declaration form completed by petitioner. The petition included: a "medical history page" completed by what appears to be petitioner's physician and dated January 22, 2019, asserting that petitioner suffered from various ailments and needed to be in a wheelchair. The petition also included a letter dated January 22, 2018, from a physician asserting that petitioner was the physician's patient since November 2017 and that she has become disabled and needs home health care.

10. At the hearing petitioner testified, among other things, that she was not pleased with the way she had been treated by the IRS, that she had been a victim of identity theft and several illegal evictions, and that her estranged former husband had manipulated her tax information with the IRS and the Division for the years at issue. She testified that she was disabled but did not provide any reference as to when she had become disabled or the extent of her disabilities during 2017.

SUMMARY OF THE PARTIES' POSITIONS

11. The Division argues that it already granted petitioner's 2015 refund claim in full and that it has no record of petitioner ever filing a return for tax year 2016. The Division asserts that therefore, there is nothing challengeable at issue for petitioner for those two years. The Division asserts that for the refund claimed for tax year 2017, the only issue with regard to the earned income credit is that petitioner has failed to provide proof that she generated earned income

during that year. For petitioner's 2017 claimed child and dependent care credits, the Division asserts that petitioner, as the taxpayer, cannot be a "qualifying individual" for the credit and therefore the Division correctly denied the refund.

12. Petitioner argues that between all the things going on in her life, including her illegal evictions, the fact that her property and identification were stolen, her problems with the IRS, her disability, and her ex-husband's manipulation of her federal and State tax records, she rightfully deserves refunds for the tax years 2015, 2016 and 2017.

CONCLUSIONS OF LAW

A. Petitioner bears the burden of establishing, by clear and convincing evidence, that the Division's denial of her claimed refund is erroneous (*see Matter of Suburban Restoration Co. v Tax Appeals Trib.*, 299 AD2d 751 [3d Dept 2002]). "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" (*Golub Serv. Sta.*, at 219).

B. Tax Law § 2008 (1) provides:

"All proceedings in the division of tax appeals shall be commenced by the filing of a petition with the division of tax appeals protesting any written notice of the division of taxation which has advised the petitioner of a tax deficiency, a determination of tax due, a denial of a refund or credit application, ... or any other notice which gives a person the right to a hearing in the division of tax appeals under this chapter or other law."

In the case at hand, petitioner has already been granted her full refund requested for 2015, petitioner has not provided any other statutory notice conferring jurisdiction to the Division of Tax Appeals. For petitioner's 2016 tax year, the Division has no record of her filing a tax return for that year and petitioner has again offered no statutory notice conferring jurisdiction to the

Division of Tax Appeals. Accordingly, petitioner's claims regarding 2015 and 2016 are dismissed.

C. Tax Law § 606 (d) (1) provides that the New York State earned income credit (EIC) for the 2017 tax year is equal to 30 percent “of the earned income credit allowed under Internal Revenue Code (IRC) (26 USC) § 32.” The New York City earned income credit is equal to five percent of the federal EIC under IRC (26 USCA) § 32 (*see* Tax Law § 1310 [f] [1]; Administrative Code of the City of New York § 11-1706 [d] [1]). Since petitioner's eligibility for the New York State and City earned income credits is determined based solely upon a percentage of the federal credit, her eligibility under the provisions of the IRC control (*see Matter of Espada*, Tax Appeals Tribunal, January 28, 2016).

D. The EIC, provided for pursuant to IRC (26 USC) § 32, is a refundable tax credit for eligible low-income workers. Among other criteria not relevant here, to be eligible to claim the credit, a taxpayer must have earned income with an adjusted gross income (AGI) below a certain level (*see* IRC [26 USC] § 32). 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 USC] § 32 [c] [2] [A]). Petitioner bears the burden of proof to substantiate the amount of earned income reported on her return (*see* Tax Law § 689 [e]).

E. Here, petitioner failed to meet her burden of substantiating the amounts of earned income reported on her 2017 return. She did not produce any books, records, receipts, or other documents to clearly show that she earned the business income claimed. Because she has not provided sufficient documentation to substantiate the claimed business income for 2017, she has failed to establish her entitlement to the claimed earned income credits.

F. The Division disallowed the child and dependent care credit claimed by petitioner

because, the Division claims, that petitioner cannot claim herself on her own return as a “qualifying individual” for purposes of the credit. The Division’s argument is rejected. Tax Law § 606 (C) (1) provides that the New York State child and dependent care credit is based on the federal child and dependent care credit “allowable under section twenty-one of the internal revenue code” Similar to the earned income credit, since the allowable New York child and dependent care credit is based upon on the corresponding federal credit, petitioner's eligibility under federal law is determinative.

G. IRC (26 USC) § 21 (b) (1) (C) provides that for purposes of the child and dependent care credit a “qualifying individual” includes: “the spouse of the taxpayer if the spouse is physically or mentally incapable of caring for himself or herself and who has the same principal place of abode as the taxpayer for more than one-half of such taxable year.” In the case at hand, petitioner and her then spouse filed a joint tax return for 2017, and accordingly the “taxpayer” is considered the joint filers together (*see Child and Dependent Care Expenses*, IRS Pub 503 [for 2017 returns]). The spouse of joint tax return filers may be considered a “qualifying individual” if that spouse is physically or mentally not able to care for herself and she lived with the other spouse for more than half of the year at issue (*id.*). In this case, petitioner provided evidence that she was physically not able to care for herself; however, she failed to establish the extent of that condition during 2017. The letters from her physician are dated after the year at issue and do not specify the extent of her disability in 2017. Moreover, petitioner failed to establish that she lived together with her husband for more than one-half of that year. Accordingly, petitioner has failed to meet her burden of proof entitling her to child and dependent care credits for 2017.

H. Tax Law § 606 (ggg) authorizes a school tax credit applicable to full or part-time residents of the City of New York with income less than \$250,000.00 who cannot be claimed as

a dependent on another taxpayer's federal income tax return. Petitioner has established that she was a resident of New York City; however, as noted above, she did not prove her earned business income for 2017, and therefore is not entitled to this credit.

I. The petition of Diana Pilgrim is denied, the refund claims for 2015 and 2016 are dismissed for lack of jurisdiction, and the Division's December 24, 2018, notice of disallowance is sustained.

DATED: Albany, New York
May 11, 2023

Nicholas A. Behuniak
ADMINISTRATIVE LAW JUDGE