

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petitions	:	
of	:	
SYLVESTER L. AND YONGJIE TUOHY	:	DETERMINATION
for Redetermination of Deficiencies or for Refund	:	DTA NOS. 830325,
of New York State Personal Income Taxes under	:	830326, 830716 AND
Article 22 of the Tax Law for the Years 2015	:	830926
through 2018.	:	

Petitioners, Sylvester L. and Yongjie Tuohy, filed petitions for redetermination of deficiencies or for refund of New York State personal income tax under article 22 of the Tax Law for the years 2015 through 2018.

A formal hearing by videoconference was held before Nicholas A. Behuniak, Administrative Law Judge, on May 1, 2023, with briefs to be submitted by August 28, 2023, which date commenced the six-month period for the issuance of this determination. Petitioners appeared pro se. The Division of Taxation appeared by Amanda Hiller, Esq. (Christopher O'Brien, Esq., of counsel).

ISSUES

I. Whether petitioners met their burden of establishing their entitlement to the New York State child and dependent care credit claimed in 2015.

II. Whether petitioners met their burden of establishing that certain income and expense information, which the Division of Taxation received from the Internal Revenue Service for 2016, 2017 and 2018, was incorrect.

FINDINGS OF FACT

1. For each of the tax years 2015 through 2018, petitioners, Sylvester L. and Yongjie Tuohy, filed New York nonresident and part-year resident income tax returns forms IT-203 (state returns), under filing status two, i.e., “[m]arried filing joint return.”

2015

2. Petitioners filed their 2015 state return claiming a refund in the amount of \$4,405.00, and claiming a child and dependent care credit of \$600.00 relating to dependent care expenses alleged to have been incurred for the care of Virginia M. Tuohy, Sylvester L. Tuohy’s mother.¹ Attached to petitioners’ 2015 state return was form IT-216, claim for child and dependent care credit, wherein petitioners reported that Sylvester L. Tuohy was the “persons or organizations who provided the care” and the amount paid for such care was \$0.00. Form IT-216 further indicates that the “[q]ualified expenses paid” were allegedly \$3,750.00.²

3. The Division performed an audit of petitioners’ 2015 state return and determined that the dependent care expense credit petitioners claimed should be disallowed because petitioners failed to establish that any care provider was paid the expenses claimed. The Division issued an account adjustment notice, dated May 24, 2016, disallowing petitioners’ dependent care expense credit claimed for 2015 and reducing petitioners’ 2015 refund to \$3,896.72.³

¹ The Division of Taxation (Division) does not contest that Virginia M. Tuohy is a qualifying individual for purposes of the 2015 child and dependent care credit.

² Based on petitioners’ reported income, the relevant dependent care expenses claimed resulted in a child and dependent care credit of \$600.00 for 2015.

³ Another unrelated adjustment was made in the audit of petitioners’ 2015 state return; however, such is not at issue in this matter.

4. On February 26, 2021, petitioners filed a petition with the Division of Tax Appeals in protest of the May 24, 2016 account adjustment notice.⁴

2016

5. Petitioners filed their 2016 state return reporting \$70,763.00 as their federal adjusted gross income (AGI) and claiming a refund of \$5,046.00. The Division received federal tax information from the Internal Revenue Service (IRS) which indicated that petitioners had a federal AGI of \$126,629.00 and that petitioners had declared a greater amount of state, local and foreign income taxes paid on their 2016 federal return than they had declared on their 2016 state return. As a result of the information received from the IRS, the Division adjusted petitioners' 2016 state return to reflect a federal AGI of \$126,629.00, and itemized deductions to account for the state, local and foreign income taxes paid that petitioners reflected on their 2016 federal return.

6. The Division issued a statement of proposed audit change, and bearing assessment identification number L-051086479, dated December 16, 2019, denying petitioners' 2016 refund claim and setting forth additional income tax due of \$551.00 plus interest for 2016.

7. Based upon the federal information received for 2016, the Division issued petitioners a notice of disallowance, dated November 3, 2021, disallowing petitioners' 2016 refund claim of \$683.09.⁵

⁴ On August 6, 2021, the Division of Tax Appeals issued a notice of intent to dismiss petition based on the timeliness of the petition. In response, the Division indicated that it did not have proof of mailing for the May 24, 2016 account adjustment notice. As a result, the notice of intent to dismiss petition was rescinded.

⁵ The November 3, 2021 notice of disallowance indicated that petitioners made previous payments of \$350.00 and \$333.09 to the Division and the Division applied such payments to petitioners' 2016 liability. Petitioners sought a refund of the \$683.09 (\$350.00 + \$333.09) in payments applied against their 2016 liability.

8. On December 20, 2021, petitioners filed a petition with the Division of Tax Appeals in protest of the November 3, 2021 notice of disallowance.

2017

9. Petitioners filed their 2017 state return reporting \$75,173.00 as their federal AGI and claiming a refund of \$4,071.00. The Division received federal tax information from the IRS which indicated that petitioners had a 2017 federal AGI of \$296,206.00 and that petitioners had declared a greater amount of state, local and foreign income taxes paid on their 2017 federal return than they had declared on their 2017 state return.

10. As a result of the information received from the IRS, the Division adjusted petitioners' 2017 state return to reflect a federal AGI of \$296,206.00 and itemized deductions to account for the state, local and foreign income taxes paid that petitioners reflected on their 2017 federal return.

11. The Division issued to petitioners a notice of deficiency, dated February 3, 2021, and bearing assessment identification number L-052456691, asserting additional income tax of \$1,829.00, plus interest for 2017.

12. On February 17, 2021, petitioners filed a petition with the Division of Tax Appeals in protest of the February 3, 2021 notice of deficiency.

2018

13. Petitioners filed their 2018 state return reporting \$109,465.00 as their federal AGI and claiming a refund of \$3,926.00. The Division received federal tax information from the IRS which indicated that petitioners had a 2018 federal AGI of \$127,574.00.

14. As a result of the information received from the IRS, the Division adjusted petitioners' 2018 state return to reflect a federal AGI of \$127,574.00 and adjust petitioners' itemized deductions.

15. The Division issued a statement of proposed audit change, dated January 27, 2022, and bearing assessment identification number L-055250920, setting forth additional income tax due of \$581.00, plus interest.

16. The Division issued petitioners a notice of deficiency, dated April 1, 2022, and bearing assessment identification number L-055250920, asserting petitioners' additional income tax of \$581.00, plus interest.

17. On April 5, 2022, petitioners filed a petition with the Division of Tax Appeals in protest of the April 1, 2022 notice of deficiency.

18. At the hearing, petitioners failed to provide any evidence supporting: (i) dependent care expenses petitioners paid during 2015; (ii) the amount and types of income petitioners earned during 2016, 2017 or 2018; or (iii) the amount of state, local or foreign income taxes petitioners paid during 2016 or 2017.

CONCLUSIONS OF LAW

A. For petitioners' 2015 tax year, the Division denied petitioners' child and dependent care credit claimed because petitioners failed to establish or provide evidence that a care provider was paid for dependent care expenses or even the amount of such expenses. "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 New York State Tax Commn.*, 37 NY2d 193, 197 [1975]). A taxpayer carries "the burden of showing 'a clearcut entitlement' to the statutory benefit" (*Matter of Golub Serv. Sta.*, 181 AD2d at 219, citing *Matter of Luther Forest Corp. v McGuinness*, 164 AD2d 629, 632 [3d Dept 1991]).

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 . . ." Since the allowable New York child and dependent care credit is

determined based solely on the corresponding federal credit, it is appropriate to refer to the provisions of the Internal Revenue Code (IRC) to determine petitioners' eligibility for this credit.

IRC (26 USC) § 21 provides a tax credit for expenses a taxpayer incurs for the care of a dependent so that the taxpayer is free to work or actively search for a job. The Division does not take issue with petitioners claiming Mr. Tuohy's mother as a qualifying person for the credit.

The issue in dispute is whether petitioners provided sufficient documentation to substantiate the alleged dependent care expenses claimed in 2015. In this case, petitioners neither established that they paid expenses for the care of Mr. Tuohy's mother, nor the amount thereof.

Accordingly, petitioners have failed to meet their burden of proof entitling them to the claimed child and dependent care credit for 2015 (*see Matter of Carroll*, Tax Appeals Tribunal, May 18, 2018; Tax Law § 689 [e]).

B. When the Division issues a notice of deficiency to a taxpayer, a presumption of correctness attaches to the notice, and the burden of proof is on the taxpayer to demonstrate, by clear and convincing evidence, that the deficiency assessment is erroneous (*see Matter of Leogrande v Tax Appeals Trib.*, 187 AD2d 768, 769 [3d Dept 1992], *lv denied* 81 NY2d 704 [1993]; *see also Matter of O'Reilly*, Tax Appeals Tribunal, May 17, 2004; 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, 843 [3d Dept 1986]). Petitioners were required under the Tax Law to maintain adequate records of their items of income, credits, expenses and deductions for the years in issue (*see* Tax Law § 658 [a]; 20 NYCRR 158.1 [a]). As noted, petitioners carry the burden of proof in this proceeding, and accordingly, it was incumbent upon them to prove the correct amount of income and expenses at issue (*see* Tax Law § 689 [e]). The Division received tax information for petitioners from the IRS pursuant to section 6103 (d) of the IRC. The Division adjusted petitioners' state return numbers based upon

such information received. Petitioners failed to provide evidence supporting the amount of income earned during 2016, 2017 or 2018, or the amount of state, local or foreign income taxes they paid during 2016 and 2017. Petitioners have failed to substantiate that the information provided to the Division from the IRS for 2016, 2017 and 2018 was incorrect. Petitioners also appear to argue that the Division should have accounted for different sources and types of their income differently. However, as noted, petitioners fail to establish what their income was in the first place, making it inappropriate to speculate if potential different sources or types of income should have been accounted for differently.

C. The petitions of Sylvester L. and Yongjie Tuohy are denied, and the account adjustment notice, dated May 24, 2016, the notice of disallowance, dated November 3, 2021, and the notices of deficiency, dated February 3, 2021 and April 1, 2022, respectively, are sustained.

DATED: Albany, New York
February 22, 2024

/s/ Nicholas A. Behuniak
ADMINISTRATIVE LAW JUDGE