

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition	:	
of	:	
<b>ANTHONY M. BRYANT</b>	:	DETERMINATION
	:	DTA NO. 830370
for Redetermination of a Deficiency or for Refund of	:	
New York State and City Personal Income Tax	:	
under Article 22 of the Tax Law and the Administrative	:	
Code of the City of New York for the Year 2019.	:	

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Petitioner, Anthony M. Bryant, filed a petition for a redetermination of deficiency or for refund of New York State and City personal income tax under article 22 of the Tax Law and the Administrative Code of the City of New York for the year 2019.

A formal hearing by videoconference was held before Nicholas A. Behuniak, Administrative Law Judge, on February 1, 2023, with the final brief to be submitted by June 16, 2023, which date commenced the six-month period for issuance of this determination. Petitioner appeared by Me'Linda Bryant. The Division of Taxation appeared by Amanda Hiller, Esq. (Maria Matos, Esq., of counsel).

***ISSUE***

Whether petitioner has met his burden of proof entitling him to receive the noncustodial parent earned income credit claimed for 2019.

***FINDINGS OF FACT***

1. Petitioner, Anthony M. Bryant, filed a New York State resident income tax return, form IT-201, dated February 28, 2020, for tax year 2019, claiming head of household filing status (2019 return). Petitioner reported New York State and City tax withholdings in the amount of

\$108.00 and \$79.00, respectively. Petitioner claimed a New York State noncustodial parent earned income credit of \$1,230.00, a New York City earned income credit of \$25.00, and a New York City school tax credit of \$63.00, and requested a refund of \$1,505.00 for 2019.

2. The Division of Taxation (Division) processed petitioner's 2019 return and denied the noncustodial parent earned income credit of \$1,230.00, but allowed a New York State earned income credit of \$147.60.<sup>1</sup>

3. An account adjustment notice, dated March 27, 2020, was issued to petitioner. The account adjustment notice indicated that petitioner's claimed 2019 noncustodial parent earned income credit was denied based upon information the Division received from the New York State Office of Temporary and Disability Assistance (OTDA) that he did not comply with orders directing him to make child support payments. The account adjustment notice also indicated that petitioner's entire remaining overpayment of \$422.60 had been applied toward a legally enforceable debt with OTDA and, as a result, petitioner was not entitled to a refund for 2019.<sup>2</sup>

4. The Division issued a notice of disallowance (notice), document locator number PF2000254350, dated June 4, 2020 to petitioner, disallowing his refund claim of \$1,230.00 for 2019.

5. Petitioner requested a conciliation conference before the Bureau of Conciliation and Mediation Services (BCMS) protesting the notice. By conciliation order, CMS No. 000320963, dated February 26, 2021, BCMS sustained the notice and noted: "[t]he aforementioned taxpayer is not presently listed in NYS OTDA data file of Non-Custodial Parents who meet the

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<sup>1</sup> The earned income credit allowed by the Division is not at issue in this matter.

<sup>2</sup> Petitioner does not challenge the appropriateness of the Division's offset of his remaining refund to pay outstanding debts with OTDA.

qualifications for the Earned Income Credit.”

6. At the hearing, petitioner entered into evidence a copy of correspondence from the Tax Offset Unit of New York State Office of Child Support Enforcement (OCSE), dated August 30, 2020, addressed to him that indicated, as of August 28, 2020, petitioner owed \$724.38 in New York State child support.

7. At the hearing the Division’s Taxpayer Service Specialist 2 testified that the only item at issue was that petitioner had not paid the amount owed in child support, at least equal to the amount of current child support he was required to pay by all court orders. The Division’s witness also testified that, as of the date of the hearing for this matter, the Division had not received any notification from OTDA that petitioner had appropriately satisfied his support obligations for 2019.

8. The record includes a copy of the first page of an Order of Support on Consent issued by the New York State Family Court for the County of New York dated March 29, 2013 (order of support). The order of support indicates that petitioner is obligated to pay \$25.00 monthly in support of two children.

9. Petitioner submitted into evidence what was represented as copies of website pages for his child support account with OTDA. The pages noted that “[a]s of 12/18/2020, the total arrears owed on this account is \$0.00.”

10. Petitioner submitted into evidence correspondence, dated March 4, 2021, from the OCSE to petitioner. The correspondence indicates that petitioner made a total of \$4,198.00 in child support payments between August 5, 2013 through March 3, 2021. The correspondence included a four-page document titled “Payment History” dated March 2, 2021 (payment

history).<sup>3</sup> The payment history reflects petitioner's separate child support payments made from August 5, 2013 through March 3, 2021, including the March 27, 2020 offset of petitioner's otherwise approved refund amount of \$422.60 (see finding of fact 3).<sup>4</sup> The payment history indicates the following payments were made by petitioner during 2019:

Date Credited	Amount Paid
12/30/2019	\$8.65
12/23/2019	\$8.65
12/10/2019	\$25.00
12/09/2019	\$8.65
12/02/2019	\$8.65
11/25/2019	\$17.30
11/18/2019	\$8.65
11/13/2019	\$25.00
11/12/2019	\$8.65
11/04/2019	\$8.65
10/28/2019	\$8.65
10/21/2019	\$8.65
10/15/2019	\$8.65
10/10/2019	\$25.00
10/09/2019	\$8.65
10/07/2019	\$8.65
09/23/2019	\$8.65
09/16/2019	\$8.65
09/11/2019	\$25.00
09/09/2019	\$8.65
09/03/2019	\$8.65
08/26/2019	\$8.65
08/12/2019	\$25.00
07/23/2019	\$37.50
06/25/2019	\$37.50
05/23/2019	\$37.50
04/23/2019	\$37.50
03/25/2019	\$37.50

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<sup>3</sup> The parties do not explain why the payment history is dated March 2, 2021, yet covers payments through March 3, 2021. The anomaly is deemed immaterial.

<sup>4</sup> Although the relevant offset took place on March 27, 2020, the payment history reflects the offset as being credited against petitioner's child support account on May 14, 2020. Neither party provides an explanation for this difference, and it is deemed immaterial.

The payment history does not provide any detail of what petitioner's outstanding child support obligations were at any time during the period it covers. The correspondence does note that the total amount of current or past due child support owed was \$0.00 as of March 2, 2021.

11. Petitioner submitted into evidence what appears to be a copy of an internet account statement for petitioner with the New York State Office of Child Support Services indicating that, as of January 15, 2021, petitioner owed \$0.00 on his account. Petitioner submitted a copy of a check for \$8.65, dated December 28, 2020, issued by the New York City Support Collection Unit and payable to him; petitioner asserts that the check represents an overpayment of his child support.

12. Petitioner represents that several attempts were made by him, or his representative, to contact OTDA to have that agency send information to the Division indicating that petitioner met all his support obligations for 2019.

13. Petitioner did not attend the hearing or otherwise submit an affidavit into the record.

14. Both the Division and petitioner have offered proposed findings of fact in a narrative format, relevant portions of which have been incorporated herein. Since neither the Division nor petitioner have separately numbered each of their respective proposed findings of fact, they have not been so ruled upon (*see* State Administrative Procedure Act § 307 [1]).

### ***CONCLUSIONS OF LAW***

A. Determinations made by the Division are presumed correct (Tax Law § 689 [e]; 20 NYCRR 3000.15 [d] [5]). A taxpayer seeking to establish a right to a tax credit bears “the burden of showing ‘a clear-cut entitlement’ to the statutory benefit” (*Matter of Kane*, Tax Appeals Tribunal, October 19, 2023, citing *Matter of Golub Serv. Sta. v Tax Appeals Trib. of*

*State of NY*, 181 AD2d 216, 219 [3d Dept 1992], and *Matter of Grace v State Tax Commn.*, 37 NY2d 193, 197 [1975], *rearg denied* 37 NY2d 816 [1975], *lv denied* 338 NE2d 330 [1975]).

Petitioner here has failed to adduce sufficient evidence to meet this burden.

B. New York courts recognize that the significant purpose of child support is “to assist [the] custodial parent in providing the child with shelter, food, and clothing” (*T.H. v M.B.*, 79 Misc 3d 1097, 1099 [Sup Ct, NY County 2023], citing *Rubin v Salla*, 107 AD3d 60 [1st Dept 2013]).

Petitioner's 2019 form IT-201 claimed a noncustodial parent earned income credit. Tax Law § 606 (d-1) provides that to be eligible for this credit, the taxpayer must: 1) be a resident; 2) have attained the age of 18; 3) be the parent of a minor child or children with whom the taxpayer does not reside; 4) have an order requiring him to make child support payments, which are payable through a support collection unit established pursuant to § 1011-h of the social services law, which order must have been in effect for at least one-half of the taxable year; and 5) have paid an amount in child support in the taxable year at least equal to the amount of current child support due during the taxable year for every order requiring him to make child support payments (*see* Tax Law § 606 [d-1] [2]). In the case at hand the last requirement (number 5) is the only one at issue.<sup>5</sup>

C. Tax Law § 606 (d-1) further provides, in relevant part, that no claim for the noncustodial parent earned income credit shall be allowed unless the Division has verified, from information provided by OTDA, that a taxpayer has satisfied the qualifications set forth in

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<sup>5</sup> In its brief, the Division raises, for the first time, the claim that petitioner did not provide a copy of the full signed order of support and therefore fails the fourth requirement of Tax Law § 606 (d-1) (2). However, during the hearing, the Division's witness testified that only the fifth requirement of Tax Law § 606 (d-1) (2) was at issue. The Division's newly found argument is rejected as inappropriate and untimely since it thwarts petitioner's ability to effectively address such during the hearing.

certain subparagraphs of Tax Law § 606 (d-1), including the requirement that the taxpayer has paid an amount in child support in the taxable year at least equal to the amount of current child support due during the taxable year for every order requiring him to make child support payments (*see* Tax Law § 606 [d-1] [4]).

Tax Law § 606 (d-1) (4) goes on to specify that OTDA:

“shall provide to the [Division] by January fifteenth of each year information applicable for the immediately preceding tax year necessary for the [Division] to make such verification. Such information shall be provided in the manner and form agreed upon by the [Division] and such office. If a taxpayer’s claim for a credit under this subsection is disallowed because the taxpayer has not satisfied the qualifications set forth in [certain subparagraphs of the statute, including the subparagraph containing the requirement at issue in this case], the taxpayer may request a review of those qualifications by the support collection unit established pursuant to section one hundred eleven-h of the social services law through which the child support payments were payable. The support collection unit shall transmit the result of that review to the [OTDA] on a form developed by such office. Such office shall then transmit such result to the [Division] in a manner agreed upon by the [Division] and such office” (Tax Law § 606 [d-1] [4]).

D. Petitioner advances that during 2019 he did pay more than the \$300.00 (12 months x \$25.00 per month) due pursuant to the order of support for that year and is therefore entitled to the credit at issue. The payment history reflects that petitioner remitted \$476.85,<sup>6</sup> in child support during 2019. However, the relevant statute’s requirement of payment of at least the “amount of current child support due during the taxable year” requires a taxpayer to pay, during the taxable year at issue, all amounts that are then currently due for child support during that year. Such amounts would include any child support immediately due even if relating to a prior period. Those amounts would be “currently” due and immediately collectable even though they may pertain to an earlier period. Petitioner has failed to establish such remittances were made.

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<sup>6</sup> Petitioner incorrectly asserts the amount of child support paid in 2019 as reflected on the payment history was \$451.85. The difference does not affect the conclusions found herein.

Petitioner offers no evidence that all amounts of child support currently due during 2019 were paid during 2019. In fact, shortly after the end of 2019, petitioner was required to utilize his otherwise approved refund of \$422.60 to offset his existing child support liabilities with OTDA (*see* finding of fact 3). This amount, which significantly exceeds his otherwise 2020 monthly child support payments due at that point of \$75.00 (3 months x \$25.00 per month) supports the conclusion that a balance of child support was likely due from petitioner in 2019 and unpaid in that year.

E. Petitioner fails to establish that during 2019 he was only subject to payments under the order of support and not other orders. The fact that OTDA did not confirm to the Division that petitioner was current on all his support payments due in 2019 and that the record indicates that petitioner had significant amounts due to OTDA at the time of the March 27, 2020 offset heighten suspicion that petitioner possibly did not disclose all of his support obligations for 2019. Therefore, petitioner fails to meet his burden of proof.

F. Petitioner points out that subsequent account balance statements show that he did not owe any balance of child support. However, these balance statements confirm that no support obligations were due on dates after the close of the year at issue and they do not confirm that petitioner did not have any outstanding balance of then due child support at the end of 2019. The terms of the relevant statute require that a taxpayer “*have paid* an amount in child support in the taxable year” (emphasis added). The statute requires that a taxpayer make the required payments in the taxable year itself. So, even if petitioner subsequently cured the child support debts that were due in 2019 (*see* findings of fact 9 and 10), the credit is contingent upon such payments being made in the year the party seeks the credit, not remedial action taken in subsequent years.

G. Finally, the statute prohibits the Division from paying the credits at issue unless OTDA



has verified with the Division that a taxpayer has appropriately met yearly payment requirements. Such did not take place in this case. As the record reflects, the Division has limited access to certain relevant information and it does not appear to be within its ability to independently make accurate determinations whether a taxpayer has properly and timely met their child support obligations. Accordingly, the Division properly disallowed petitioner's 2019 claimed noncustodial parent earned income credit.

H. The petition of Anthony M. Bryant is denied, and the notice of disallowance, dated June 4, 2020, is sustained.

DATED: Albany, New York  
December 7, 2023

/s/ Nicholas A. Behuniak  
ADMINISTRATIVE LAW JUDGE