

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
MOHMMED ABDELHALIM : DETERMINATION
AND ASMAA M. ELDBAH : DTA NO. 830503
:
for Redetermination of a Deficiency or for Refund of New
York State and New York 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. :

Petitioners, Mohammed Abdelhalim and Asmaa M. Eldbah, filed a petition for redetermination of a deficiency or for refund of New York State and New York 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 was held in Brooklyn, New York, before Donna M. Gardiner, Administrative Law Judge, on March 27, 2023, at 11:30 a.m. The final brief was due on July 11, 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).

ISSUE

Whether the Division of Taxation properly disallowed the New York State and New York City earned income credits and the Empire State child credit claimed by petitioners for the year 2019.

FINDINGS OF FACT

1. Petitioners, Mohammed Abdelhalim and Asmaa M. Eldbah, timely filed a New York State resident income tax return, form IT-201, for the year 2019 (2019 return), as married filing a joint return, with four dependent exemptions. Petitioners calculated and reported total New York State and New York City taxes due in the amount of \$231.00, and payments and refundable credits in the amount of \$2,869.00, that resulted in an overpayment in the amount of \$2,638.00. The credits claimed consisted of a New York State earned income credit in the amount of \$1,867.00, New York City school tax credits in the amount of \$133.00, a New York City earned income credit in the amount of \$328.00, and an Empire State child credit in the amount of \$541.00.

2. Attached to petitioners' 2019 return was schedule C, profit or loss from business, on which petitioner, Mohammed Abdelhalim, reported his business as "limitedservice [sic] restaurants" and reported gross receipts in the amount of \$26,580.00, for his employment as a street food vendor, with no expenses.

3. Also attached to petitioners' 2019 return was form IT-215, claim for earned income credit, and form IT-213, claim for Empire State child credit. On form IT-215, petitioners listed three dependents with dates of birth for two dependents as November 6, 2017, and January 4, 2014, for the third dependent. On form IT-213, petitioners claimed the three previously mentioned dependents and a fourth dependent with a date of birth of February 27, 2011.

4. The Division of Taxation (Division) selected petitioners' 2019 return for a desk audit. On February 21, 2020, the Division sent a request for additional information to petitioners that requested substantiation of wages and verification of their three claimed dependents' relationship to them and the residency of the dependents.

5. On October 28, 2020, the Division issued a notice of disallowance to petitioners that disallowed a portion of the claimed refund in the amount of \$2,513.00. The Division stated that the amount claimed for the Empire State child credit was adjusted to the amount allowable with no income, which was \$125.00. The Division did not allege that it issued a refund to petitioners in this amount.

6. Petitioners filed a request for conciliation conference with the Division's Bureau of Mediation and Conciliation and Mediation Services (BCMS) in protest of the notice of disallowance. On June 4, 2021, a conciliation order, CMS No. 000325515, was issued to petitioners that allowed an additional refund in the amount of \$200.00. There is no evidence that this refund was issued.

7. On June 22, 2021, petitioners filed a timely petition with the Division of Tax Appeals in protest of the conciliation order.

8. The Division did not present any witnesses at the hearing. Instead, it submitted the affidavit of Angela Pettes, a Tax Technician 4, employed by the Division, dated March 23, 2023. As a Tax Technician 4, Ms. Pettes stated that her duties include supervising personal income tax audits, and her affidavit is based upon a review of the Division's official records.

In her affidavit, Ms. Pettes explained that petitioners' 2019 return was chosen for an audit and that a letter was sent that requested additional information. Ms. Pettes asserted that although the response from petitioners established petitioners' entitlement to claim the three dependents, the reported business income could not be verified and, thus, the earned income credits were denied, and the Empire State child credit was adjusted to an allowable amount with no verifiable income.

9. Although the Division's letter requesting additional information was attached to the affidavit of Ms. Pettes, petitioners' response to such letter was not included. Ms. Pettes affirmed that petitioners proved both the relationship and residency of the dependents, yet "verifiable information of the petitioners ['] income has not been provided." There was no description of the documents provided or any analysis conducted by an auditor that determined the documents were unverifiable.

10. Petitioner Mohammed Abdelhalim testified at the hearing. He explained that he sold food from a food truck in 2019. Mr. Abdelhalim was employed by Meals on the Go Inc., and the manager/owner of the business was Sherif Emish. He explained that it is an all-cash business. Mr. Abdelhalim testified that he did not make weekly deposits of his wages into his bank account because most of his expenditures, including his rent in the amount of \$1,150.00 per month, were paid in cash. He testified that he worked five days a week and earned \$600.00 per week. He explained that for the months of July and August, he was travelling and not working.

11. To establish his earned income, Mr. Abdelhalim submitted two documents. The first document is a one-page, notarized statement on the letterhead of Sunrise Delight LLC, that stated Mr. Abdelhalim worked for the business from January 2019 through January 2020, and that his gross salary was \$600.00 per week. This statement was signed by Mr. Emish, as manager, and is dated January 24, 2023.

The second document is two pages, dated September 25, 2021, on the letterhead of Meals on the Go Inc. This document provided much more specificity than the other document. Mr. Abdelhalim's wages are set forth weekly and showed that he was not paid from the weeks of June 5, 2019, through August 10, 2019, and for the week August 17, 2019, he worked only two days. Therefore, working 42 weeks at \$600.00 per week, plus a two-day work week at \$240.00,

amounted to wages of \$25,440.00. This document is unsworn and it is signed by Mr. Emish. The phone number for the manager is consistent and it appears that Meals on the Go Inc., changed its name, subsequent to 2021, to Sunrise Delight LLC.

12. Petitioners submitted 10 months of bank statements for the months commencing mid-January through mid-November of 2019. According to these statements, petitioners did not have any bank transactions from June 20, 2019 through August 18, 2019. On March 4, 2019, the bank statements reflect six charges by EgyptAir that totaled \$4,845.68.

Petitioners also submitted a copy of their monthly electric and gas usage from ConEdison. Payments made on this account can be traced to the bank statements for the months provided. Lastly, there were credits to the bank accounts in the months of October and November from Uber, Doordash and Postmates. Mr. Abdelhalim explained that he would perform food delivery services for these companies. The credits, as reflected on the bank statements, totaled \$526.02.

CONCLUSIONS OF LAW

A. It is initially noted that, determinations made by the Division are presumed correct and the burden of proof rests with petitioner to demonstrate, by clear and convincing evidence, that those determinations are erroneous (*see* Tax Law § 689 [e]; 20 NYCRR 3000.15 [d] [5]; *see Matter of Leogrande v Tax Appeals Trib.*, 187 AD2d 768, 769 [3d Dept 1992], *lv denied* 81 NY2d 704 [1993]).

B. Tax Law § 606 (d) provides for a New York State earned income credit based upon a percentage of the earned income credit allowed under section 32 of the Internal Revenue Code (IRC) (26 USC). The New York City earned income credit is equal to five percent of the federal earned income credit (*see* Tax Law § 1310 [f] [1]; Administrative Code of the City of

New York § 11-1706 [d] [1]). Since the New York State and New York City earned income credits are 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 upon a determination of a taxpayer's "earned income," which includes earnings from self-employment (*see* IRC [26 USC] § 32 [c] [2]). In this case, petitioners reported business income derived from Mr. Abdelhalim's employment as a food truck vendor. As part of its desk audit of petitioners' 2019 return, the Division requested documentation substantiating the income reported on the 2019 return. The Division determined that petitioners were unable to substantiate their income and, thus, it denied petitioners' claims for the earned income credits.

D. Mr. Abdelhalim's testimony was credible and supported by the documents that he submitted into evidence. He testified that he worked weekly at the food truck, except for the weeks when he traveled during the summer. The bank statements reflected that petitioners purchased airline tickets and that petitioners did not have any bank transactions during the weeks that they traveled. Although the Division wanted to see regular deposits into the bank account, Mr. Abdelhalim credibly testified that he was paid in cash and that he paid a majority of his expenses in cash, including his rent. The ConEdison summary statement reflected monthly payments that tied directly to the debits for those payments from their bank account. Petitioners submitted a notarized statement from Mr. Abdelhalim's employer that he was paid \$600.00 per week during the year 2019. Lastly, Mr. Abdelhalim testified that he worked for various food delivery companies and the payments from these companies were reflected in the bank statements.

The Tax Appeals Tribunal has held that in cases where the documentary evidence has not met the standard of clear and convincing evidence, a taxpayer's credible testimony can meet this evidentiary standard (*see Matter of Avildsen*, Tax Appeals Tribunal, May 19, 1994). The amount of earned income reported on the tax return is very close to the amount demonstrated by the documents and testimony. In fact, the Division did not question the veracity of Mr. Abdelhalim's testimony, rather, it simply argued that it expected to see Mr. Abdelhalim's weekly earnings deposited in regular intervals and amounts into petitioners' bank account. Mr. Abdelhalim credibly testified that he was paid in cash and paid most of his expenditures in cash. Accordingly, it is determined that the testimony, coupled with the evidence, demonstrates that petitioners established their earned income, as reported, in the amount of \$26,580.00, for 2019, and are entitled to a refund in the amount of \$2,638.00 (*see* findings of fact 5 and 6).

E. The petition of Mohammed Abdelhalim and Asmaa M. Eldbah is granted, and the Division of Taxation is directed to issue a refund in the amount of \$2,638.00, plus interest.

DATED: Albany, New York
January 11, 2024

/s/ Donna M. Gardiner
ADMINISTRATIVE LAW JUDGE