

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition :  
of :  
**ELAINE ROBINSON** : DETERMINATION  
for Redetermination of a Deficiency or for Refund of : DTA NO. 830618  
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 2018. :

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Petitioner, Elaine Robinson, electronically 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 2018.

A formal hearing was held by videoconference before Alejandro Taylor, Administrative Law Judge on August 30, 2023, with all briefs due by January 2, 2024, which date began the six-month period for the issuance of this determination. Petitioner appeared pro se. The Division of Taxation appeared by Amanda M. Hiller, Esq. (Amy Seidenstock, Esq., of counsel). This matter was reassigned to Alexander Chu-Fong, Administrative Law Judge, pursuant to the authority of the Rules of Practice and Procedure of the Tax Appeals Tribunal (20 NYCRR 3000.15 [f]).

After reviewing the evidence and arguments, Alexander Chu-Fong, Administrative Law Judge, renders the following determination.

***ISSUE***

Whether petitioner's claimed New York State and New York City earned income credits and the Empire State child credit.

***FINDINGS OF FACT***

1. Petitioner, Elaine Robinson, filed a 2018 New York State resident income tax return, form IT-201 claiming a single filing status, with two dependent exemptions (2018 return).

Petitioner reported the following: federal and New York adjusted gross income of \$15,858.00; no wage income or New York State and New York City withholdings; and New York State and New York City income taxes due in the amount of \$371.00.

2. Petitioner claimed credits in the amount of \$2,689.00, which consisted of the following: a New York State earned income credit of \$1,670.00; an Empire State child credit of \$660.00; a New York City earned income credit of \$286.00; and a total New York City school tax credit of \$73.00. Less the reported income tax due of \$371.00, petitioner claimed a refund of \$2,318.00.

3. Attached to petitioner's 2018 return were form IT-215, claim for earned income credit, and form IT-213, claim for Empire State child credit. These forms listed the same two claimed dependents as set forth on petitioner's income tax return for 2018.

4. Also attached to petitioner's return was federal schedule C-EZ, net profit from business, reporting petitioner's business as "care provider child care." Petitioner reported gross receipts in the amount of \$18,500.00 and net profit in the amount of \$17,064.00. The schedule C-EZ listed the business name "Elaine Robinson." The schedule listed a business address that bears the same New York, New York, street address listed as petitioner's mailing address on her form IT-201.

5. The Division of Taxation (Division) selected petitioner's return for a desk audit. On February 6, 2019, the Division sent an audit inquiry letter to petitioner (audit inquiry letter),

requesting documentation to support the reported business income, total expenses in the amount of \$1,436.00 and credits claimed on her 2018 return.

6. As part of its case file, the Division included petitioner's March 27, 2019, response to the audit inquiry letter. Petitioner responded via facsimile. Petitioner responded by providing: (i) a January 9, 2019, notarized letter from Michelle Lopez, a babysitting client (Lopez Letter); (ii) birth certificates and social security cards for petitioner's two children; (iii) petitioner's birth certificate, social security card, and driver's learner permit; and (iv) a letter from petitioner's landlord, indicating that she resides at the New York, New York address with her two children. The file contains the facsimile's transmission cover letter, which indicates that petitioner submitted these documents to the Division.

7. The Lopez Letter provides the following statement: "I Michelle Lopez pay Elaine Robinson \$350 weekly to babysit both my children... from Monday – Friday." This document indicates the names of Ms. Lopez's children, and bears her printed name, her signature, date, and a proper notary stamp. <sup>1</sup>

8. On May 15, 2019, the Division issued a notice of disallowance, audit case ID: X-187716562 (notice), to petitioner, stating, in part, as follows:

"You did not respond to our audit inquiry letter for the tax year shown above. The amount of the claim disallowed is also shown above. If you agree with the disallowance of your refund, you do not need to respond to this letter. Note, this is not a bill. No payment is due."

The notice disallowed the entirety of petitioner's claimed refund, i.e., \$2,318.00 and provided instructions on how to protest the disallowance. This notice failed to acknowledge petitioner's response to the audit inquiry letter.

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<sup>1</sup> Ms. Lopez's children's names have been omitted.

9. Petitioner filed a request for conciliation conference with the Division's Bureau of Conciliation and Mediation Services (BCMS). On April 21, 2021, a conciliation conference was held. BCMS issued conciliation order, CMS No. 000314176, dated July 16, 2021, which modified the notice. BCMS recomputed the claimed Empire State child credit based upon two dependents, utilizing no verifiable income, and allowed a credit of \$200.00. It also allowed the entirety of the claimed New York City school tax credit of \$73.00.

10. On August 25, 2021, petitioner protested the conciliation order by timely filing a petition with the Division of Tax Appeals.

11. The Division submitted the affidavit of Rachel L. Major (Major Affidavit), a Tax Technician 3 in the Division's Income/Franchise Desk Audit Bureau since February 2019, who has been employed at the Division for 14.5 years. Included with her affidavit are copies of the following: (i) petitioner's 2018 return; (ii) the audit inquiry letter; (iii) the notice; (iv) the petitioner's request for conciliation conference, including her March 27, 2019 response to the audit inquiry; and (v) the conciliation order.

12. Paragraph 6 of the Major Affidavit states, "[p]etitioner failed to respond to the Division's audit inquiry letter dated February 6, 2019 for tax year 2018," which mirrors the erroneous statement provided in the notice.

13. At the hearing in this matter, petitioner credibly testified regarding her employment. She derived her income from babysitting and caring for two children, as needed, for approximately 30 to 40 hours a week for 12 to 18 months. Petitioner provided everything needed to care for the children. She was paid in cash and spent her earnings on living expenses. Petitioner did not deposit her income into a bank account because she did not have one. Petitioner expressed difficulty remembering details from 2018, stating that she no longer had the

documents that she submitted. She expressed that she did not want to be incorrect on the record. When offered time to provide additional proof, petitioner declined, stating that she did not have any more documentation to provide. Petitioner offered that had she known that more records were required at that time, she would have provided them.

### ***STATEMENT OF THE PARTIES' POSITIONS***

14. The Division disallowed petitioner's claimed credits on the basis that she did not substantiate her reported income for 2018. It adopts the position in the notice and Major Affidavit, stating, "Petitioner failed to respond to the Division's audit inquiry letter." The Division argues that failure to respond and thus, failure to substantiate income, led to the determination that petitioner was not entitled to the claimed credits. Accordingly, it argues that the notice, as modified by the conciliation order, should be sustained.

15. Petitioner relies on the previously submitted documents. She concedes that she lacks further documentation other than that which was provided in response to the audit inquiry letter. Petitioner prays for any relief that can be provided regarding the claimed credits.

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

A. In proceedings before the Division of Tax Appeals, petitioners typically bear the burden of proof (Tax Law § 689 [e]; 20 NYCRR 3000.15 [d] [5]; *Matter of Gilmartin v Tax Appeals Trib.*, 31 AD3d 1008, 1010 [3d Dept 2006]). The burden rests with petitioner to demonstrate, by clear and convincing evidence, that the Division erred, here, in disallowing the refund claim (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. The Division's basis for denial was that petitioner failed to respond to the audit inquiry letter. The Division, in fact, introduced petitioner's response to its audit inquiry letter as

one of its exhibits. The Major affidavit mistakenly states that petitioner failed to respond, and that error continued in the Division's brief in opposition to the petition. In reviewing petitioner's testimony coupled with the documents provided to the Division on March 27, 2019, it is determined that petitioner has met her burden of proof in this case.

C. A taxpayer seeking to establish a right to tax credits bears "the burden of showing 'a clearcut entitlement' to the statutory benefit" (*Matter of Golub Serv. Sta. v Tax Appeals Trib.*, 181 AD2d 216, 219 [3d Dept 1992], citing *Matter of Luther Forest Corp. v McGuiness*, 164 AD2d 629, 632 [3d Dept 1991]). It must also be noted that a taxpayer's credible testimony, or this combined with documentary evidence, can meet this evidentiary standard (*see Matter of Avildsen*, Tax Appeals Tribunal, May 19, 1994).

D. For tax year 2018, petitioner claimed a New York State earned income credit pursuant to Tax Law § 606 (d) (1), which provides a credit of 30% of the earned income credit allowed under Internal Revenue Code (IRC) (USC 26) § 32. Similarly, she claimed the New York City earned income credit under Tax Law § 1310 (f) (1) and Administrative Code of the City of New York § 11-1706 (d) (1), which provides a credit of 5% of the federal earned income credit under IRC (26 USC) § 32. As eligibility is tied to a percentage of the federal calculation, the IRC provisions on eligibility control for the state and city credits (*see Matter of Espada*, Tax Appeals Tribunal, January 28, 2016). The federal earned income credit is a refundable tax credit for eligible low-income workers (*id.*) To be eligible for the federal earned income credit, IRC (26 USC) § 32 requires that a taxpayer have earned income, such as earnings from self-employment (IRC [26 USC] § 32 [c] [2]).

Here, credible testimony and documents establish petitioner's 2018 reported business income. As described in the Lopez Letter, petitioner babysat her client's children. Ms. Lopez

paid her \$350.00 weekly for these services. Petitioner's reported gross receipts of \$18,500.00 roughly correlates to this weekly amount once annualized. In weighing the proof, the following factors affected this conclusion: petitioner conducted her business informally and on a cash basis; rigid application of formal record-keeping requirements does not comport with the nature of petitioner's business and financial acumen; and, at the hearing, petitioner testified credibly and expressed a desire to comply with the law. Moreover, the record establishes that petitioner acted in accordance with this desire through her response to the audit inquiry letter. Petitioner's testimony and acts stand in stark contrast against the Division's apparent disregard of her response. Considering the record, particularly the Lopez Letter coupled with credible testimony, petitioner clearly and convincingly established her 2018 reported income.

E. By establishing her income, petitioner has carried her burden of establishing clear entitlement to the New York State and New York City earned income credits. By proving her income, petitioner has also established clear entitlement to the remaining balance of her claimed 2018 Empire State child tax credit. Accordingly, it is concluded that petitioner is entitled to the entirety of the requested refund for tax year 2018.

F. The petition of Elaine Robinson is granted, the notice of disallowance, dated May 15, 2019, is cancelled, and the remainder of the refund claim, as modified by the conciliation order, is granted.

DATED: Albany, New York  
June 6, 2024

/s/ Alexander Chu-Fong  
ADMINISTRATIVE LAW JUDGE