

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition	:	
of	:	
<b>SONYA GRANT</b>	:	<b>DETERMINATION</b>
	:	<b>DTA NO. 830970</b>
for Redetermination of a Deficiency or for Refund of	:	
New York State Personal Income Tax under Article 22	:	
of the Tax Law for the Year 2020.	:	

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Petitioner, Sonya Grant, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under article 22 of the Tax Law for the year 2020.

A formal hearing was held in Rochester, New York, before Kevin R. Law, Administrative Law Judge, on May 29, 2024, with all briefs to be submitted by October 18, 2024, which date commenced the six-month period for the issuance of this determination. Petitioner appeared pro se. The Division of Taxation appeared by Amanda Hiller, Esq. (Jennifer Hink-Brennan, Esq., of counsel).

***ISSUE***

Whether petitioner may claim her nephew as a qualifying child for purposes of the New York State earned income credit and the Empire State child credit.

***FINDINGS OF FACT***

1. On February 20, 2021, petitioner, Sonya Grant, filed form IT-201, New York State resident income tax return, for the year 2020 (the return) on which she reported \$40,880.00 of New York adjusted gross income and reported tax due of \$1,301.00. Petitioner claimed total payments of \$2,853.00, consisting of \$1,778.00 of tax withheld from wages, an Empire State

child credit of \$660.00, and a New York State earned income credit of \$415.00. The amount of these two credits was based upon claiming two dependents, her granddaughter and her nephew, as qualifying children for purposes of the credits.

2. On March 23, 2021, the Division of Taxation (Division) sent petitioner a letter requesting verification of the dependents claimed on the return. Specifically, the letter requested the following:

“Documentation showing your relationship to each child or dependent.

Documentation showing proof of each child or dependent's residence that includes your address, your name, and each child or dependent's name. Include the dates that each child or dependent lived at the same address as you and any other documentation showing that they lived with you for more than half of the year.

If your documentation for each child or dependent's residence has their name and your address, but not your name, you must also include a copy of another document with your name showing the same address as each child or dependent.

If you do not have documentation with your name showing the same address as each child or dependent, provide a letter from each child or dependent's doctor or school, on their letterhead, showing each child or dependent's name, date of birth, address of record, name of the custodial parent, and time period covered by the letter, adoption or child placement documents or court records.”

3. On April 20 and 29, 2021, petitioner responded to the audit letter. In addition to submitting a copy of her birth certificate, petitioner submitted birth certificates of her daughter, her granddaughter, her sister and her nephew. The birth certificates established that petitioner was the claimed dependents’ grandmother and aunt, respectively. Petitioner also submitted school records for her granddaughter, who was nine years old as of December 31, 2020, that established that she lived with petitioner. In addition, petitioner submitted a letter explaining the basis for claiming her granddaughter and her nephew as dependents. With respect to her nephew, who was fourteen years old as of December 31, 2020, petitioner explained that he

stayed with her Thursdays through Sundays when school was in session and full-time when school was not in session, equating to roughly eight months of the year.

4. After reviewing petitioner's submission, the Division determined that she substantiated both her relationship with her granddaughter and her residency. With respect to her nephew, the Division determined that while she established her relationship to him, she failed to establish that he resided with her more than 50% of the year based upon the lack of documentation such as school or medical records. Therefore, the Division allowed petitioner's granddaughter as a qualifying child but disallowed her nephew as a qualifying child.

5. On June 10, 2021, the Division issued petitioner an account adjustment notice that allowed a refund of \$849.30 of the \$1,552.00 originally claimed.

6. On June 30, 2021, petitioner was issued a notice of disallowance that denied \$702.70 of the claimed refund.

7. Petitioner filed a request for conciliation conference (request) with the Division's Bureau of Conciliation and Mediation Services in protest of the notice. On February 11, 2022, conciliation order, CMS No. 000331116, was issued that denied the request and sustained the notice.

8. On July 20, 2022, petitioner filed a timely petition in protest of the conciliation order.

9. At the hearing in this matter, petitioner testified that her nephew stays with her Thursdays through Sundays when school is in session and full-time when school is not in session. Petitioner explained that her nephew is with his mother from Monday after school to Thursday morning when petitioner's sister would take him to school. On Thursdays, petitioner picks up her nephew from school and he stays with her until Monday morning when she drives him to school. Petitioner was asked on cross examination whether she had documentation from

either the child's school or his doctor that established that her nephew lived with her. She testified that she does not take him to his doctors' appointments and that he is enrolled in her school district. Petitioner explained that her nephew's mother was his primary caregiver and she would take him to doctors' appointments while petitioner was at work.

10. Ebony Jackson, petitioner's sister and the child's mother, also testified at the hearing. Ms. Jackson confirmed everything that petitioner testified to and explained that petitioner has cared for her son since he was born stating that petitioner "provided over-the-top care" for her son. Ms. Jackson explained that she was a single mother who works overnight and is unable to provide much care for her children. She stated that the father of her two daughters and his family assisted her with respect to them, but her son's father did not assist her in raising her son. Ms. Jackson stated that it was appropriate to allow petitioner to claim her son as a dependent given the amount of care she provided for him, explaining that petitioner provided more care for him than she did, and he was with petitioner for the majority of the time.

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

A. When the Division issues a notice of disallowance, petitioners bear the burden of proof in a case before the Division of Tax Appeals, except where that burden has been specifically allocated to the Division (*see* Tax Law § 689 [e]; 20 NYCRR 3000.15 [d] [5]). The burden of proof is on the taxpayer to show by clear and convincing evidence that the notice of disallowance was 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 Scarpulla v State Tax Commn.*, 120 AD2d 842, 843 [3d Dept 1986]).

B. First, addressing petitioner's entitlement to claim her nephew as a qualifying child for purposes of the New York State earned income credit, Tax Law § 606 (d) (1) provides that

the earned income credit for the 2020 tax year is equal to 30% “of the earned income credit allowed under section thirty-two of the internal revenue code for the same taxable year[.]”

Because eligibility for the New York State earned income credit is tied to a percentage of the federal calculation under the Internal Revenue Code (IRC), it is the IRC’s provisions on eligibility that control (*see Matter of Espada*, Tax Appeals Tribunal, January 28, 2016).

C. The federal earned income credit, provided for pursuant to IRC (26 USC) § 32, is a refundable tax credit for eligible low-income workers. To be eligible to claim the credit, a taxpayer must have earned income with an adjusted gross income (AGI) below a certain level, must have a valid social security number, must use a filing status other than married filing separately, must be a United States citizen or resident alien, must have no foreign income, and must have investment income less than a certain amount. “A small credit is provided to all eligible taxpayers, but the principal feature of the [earned income credit] is the more substantial credit available to eligible taxpayers who have one or more ‘qualifying’ children” (*Sherbo v Commr.*, 255 F3d 650, 651 [8th Cir 2001], citing *2 Bittker & Lokken, Federal Taxation of Income, Estate & Gifts* ¶ 37.1 [3d ed 2000]). The amount of credit varies depending on the number of the taxpayer’s “qualifying children” as defined by IRC (26 USC) § 152 (c) and the taxpayer’s AGI.

D. To claim a qualifying child, the following statutory requirements must be met:

(i) the individual (dependent) is a child of the taxpayer, descendant of a child of the taxpayer, a brother, sister, stepbrother, or stepsister of the taxpayer, or a descendant of any such relative (relationship test) (IRC [26 USC] §152 [c] [1] [A], [2]);

(ii) the individual has the same principal place of abode as the taxpayer for more than one-half of such taxable year (residency test) (IRC [26 USC] § 152 [c] [1] [B]);

(iii) the individual must not yet have attained the age of 19, or the individual is a student who has not yet attained the age of 24 (age test) (IRC [26 USC] § 152 [c] [1] [C], [3] [A]); and

(iv) the individual has not provided over one-half of such individual's own support (support test) (IRC [26 USC] § 152 [c] [1] [D]).

E. The Division has only contested the residency test, asserting that petitioner has not met her burden of proving that her nephew resided with her for more than one-half of the taxable year based upon the lack of corroborating documentation to support her claim. The Division's assertion is rejected as credible testimony alone may be sufficient for petitioner to sustain her burden of proof (*see Matter of Avildsen*, Tax Appeals Tribunal, May 19, 1994). Nevertheless, petitioner's testimony was corroborated by her sister's testimony. Petitioner credibly testified that her nephew stays with her Thursdays through Sundays when school is in session and full-time when school is not in session. Petitioner explained that her nephew is with his mother from Monday after school to Thursday morning when petitioner's sister would take him to school. On Thursdays, petitioner picks up her nephew from school and he stays with her until Monday morning when she drives him to school. This testimony, as corroborated by her sister, is consistent with the written explanation petitioner submitted during the audit. Having observed petitioner and her sister during their testimony, I find both were credible and forthright. In addition, although petitioner stated she was not the primary caregiver of the child, that statement can be reconciled with the rest of the testimony that established that while petitioner did not have decision making authority over her nephew because he had a mother, the rest of the testimony adduced at hearing clearly establishes that the child lived with petitioner the majority of the time. Therefore, petitioner has proven her entitlement to claim her nephew as a qualifying child for purposes of the earned income credit.

F. Turning to the Empire State child credit, Tax Law § 606 (c-1) (1) provides for a credit equal to the greater of \$100.00 times the number of qualifying children of the taxpayer or the applicable percentage of the child tax credit allowed the taxpayer under IRC (26 USC) § 24 for the same taxable year for each qualifying child who was at least 4 years old. Under IRC (26 USC) § 24, a taxpayer may claim a child tax credit for an individual who is their “qualifying child” as defined in IRC (26 USC) § 152 (c) and has not attained the age of 17 during the taxable year (IRC [26 USC] § 24 [a], [c] [1]). Because petitioner’s nephew is a qualifying child as determined in Conclusion of Law E, and he was 14 years old in the year 2020, he is a qualifying child with respect to the Empire State child credit.

G. The petition of Sonya Grant is granted, and the notice of disallowance, dated June 30, 2021, is cancelled.

DATED: Albany, New York  
April 10, 2025

/s/ Kevin R. Law  
ADMINISTRATIVE LAW JUDGE