STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition of **ORNEILIA DUNN** for Redetermination of Deficiencies or for Refund of New York State and New York City Personal Income Taxes under Article 22 of the Tax Law and the Administrative Code of the City of New York for the Years 2017 and 2018.	: : : : : :	DETERMINATION DTA NO. 850610

Petitioner, Orneilia Dunn, filed a petition for redetermination of deficiencies or for refund of New York State and New York City personal income taxes under article 22 of the Tax Law and the Administrative Code of the City of New York for the years 2017 and 2018.

A formal hearing was held before Jennifer L. Baldwin, Administrative Law Judge, in Brooklyn, New York, on January 13, 2026, with all briefs to be submitted by April 22, 2026, which date began the six-month period for the issuance of this determination. Petitioner appeared pro se. The Division of Taxation appeared by Amanda Hiller, Esq. (Albert Gawer, Esq., of counsel).

ISSUE

Whether petitioner established that the Division of Taxation improperly denied the credits claimed on her 2017 and 2018 personal income tax returns.

FINDINGS OF FACT

The Division of Taxation (Division) submitted 19 proposed findings of fact pursuant to State Administrative Procedure Act (SAPA) § 307 (1) and section 3000.15 (d) (6) of the Rules of

Practice and Procedure of the Tax Appeals Tribunal (Rules). The Division's proposed findings of fact 1 through 4, 6, 8 through 12, 14, 16 and 18 are supported by the record and have been substantially incorporated herein. Proposed findings of fact 5, 7, 13, 15, 17 and 19 have been modified to more accurately reflect the record.

1. Petitioner, Orneilia Dunn, filed form IT-201, New York State resident income tax return, for tax year 2017 (2017 return). Petitioner reported business income of $10,550.00. Petitioner claimed one dependent, her minor son. Petitioner requested a refund of $2,140.00 (2017 refund claim), comprised of the following refundable credits: Empire State child credit of $330.00; New York State earned income credit of $1,002.00; New York City earned income credit of $167.00; New York State child and dependent care credit of $578.00; and New York City school tax credit (fixed amount) of $63.00.

2. Petitioner included form IT-216, claim for child and dependent care credit, with her 2017 return on which she reported paying $1,500.00 of qualified expenses to Daketa Griffin for the care of her son in 2017. Petitioner also claimed her son for purposes of the Empire State child credit and New York State and New York City earned income credits.

3. On petitioner's federal schedule C-EZ, net profit from business, for 2017, petitioner listed her principal business as hairdresser. Petitioner reported gross receipts of $11,000.00, expenses of $450.00 and a net profit of $10,550.00.

4. On April 24, 2018, the Division sent an audit inquiry letter to petitioner, requesting substantiation of her business income, information about her minor child and information about her childcare expenses for 2017 (2017 audit inquiry letter). The 2017 audit inquiry letter also instructed petitioner to complete a questionnaire about her business income.

5. The Division did not receive a response to the 2017 audit inquiry letter and, on January 9, 2019, issued to petitioner a notice of disallowance, audit case identification number X-187108389, disallowing in full petitioner's 2017 refund claim (2017 notice). The 2017 notice stated that petitioner's 2017 refund claim was disallowed because petitioner did not respond to the 2017 audit inquiry letter.

6. Petitioner filed form IT-201 for tax year 2018 (2018 return). Petitioner reported business income of $11,100.00. Petitioner claimed one dependent, her minor son. Petitioner requested a refund of $2,105.00 (2018 refund claim), comprised of the following refundable credits: Empire State child credit of $330.00; New York State earned income credit of $1,038.00; New York City earned income credit of $173.00; New York State child and dependent care credit of $501.00; and New York City school tax credit (fixed amount) of $63.00.

7. Petitioner included form IT-216 with her 2018 return on which she reported paying $1,300.00 of qualified expenses to Daketa Griffin for the care of her son in 2018. Petitioner also claimed her son for purposes of the Empire State child credit and New York State and New York City earned income credits.

8. On petitioner's federal schedule C-EZ for 2018, petitioner listed her principal business as hairdresser. Petitioner reported gross receipts of $12,300.00, expenses of $1,200.00 and a net profit of $11,100.00.

9. On April 9, 2019, the Division sent an audit inquiry letter to petitioner, requesting substantiation of her business income, information about her minor child and information about her childcare expenses for 2018 (2018 audit inquiry letter). The 2018 audit inquiry letter also instructed petitioner to complete a questionnaire about her business income.

10. The Division did not receive a response to the 2018 audit inquiry letter and, on July 31, 2019, issued to petitioner a notice of disallowance, audit case identification number X-188027488, disallowing in full petitioner's 2018 refund claim (2018 notice). The 2018 notice stated that petitioner's 2018 refund claim was disallowed because petitioner did not respond to the 2018 audit inquiry letter.

11. After the Division issued the 2017 and 2018 notices, petitioner provided documentation in support of her claimed dependent, income and childcare expenses. The documentation included copies of the following: a letter, dated May 4, 2023, from petitioner explaining the documents provided; her son's birth certificate; a verification letter, dated December 20, 2022, from her son's medical provider; a notarized letter, sworn to on May 14, 2023, from her childcare provider (childcare provider letter); her childcare provider's bank statements; her business card listing both phone and fax numbers; records from her business; and her bank statements.

12. In the childcare provider letter, Ms. Griffin explained that she worked as a babysitter for petitioner's son in 2017 and 2018, that she was paid mostly in cash and occasionally by check or money order and that she was paid $1,500.00 in 2017 and $1,300.00 in 2018 to provide care for petitioner's son. Ms. Griffin's bank statements show deposits of at least $1,500.00 in 2017 and $1,300.00 in 2018.

13. Petitioner's business records show the number and name of clients that petitioner serviced per month, the services she performed and the amounts petitioner was paid for her services. Petitioner provided records for March and August 2017, reflecting earnings of $1,608.00. Petitioner provided records for January, April, May, June and December 2018, reflecting earnings of $6,765.00.

14. Petitioner's bank statements show deposits into her checking account, generally once or twice a month, of varying amounts and mostly in cash. Petitioner provided bank statements for all of 2017, reflecting deposits of at least $10,550.00, the business income she reported on her 2017 return. Petitioner provided bank statements for about half of 2018, reflecting deposits of about half of the $11,100.00 of business income she reported on her 2018 return.

15. Petitioner requested a conciliation conference with the Division's Bureau of Conciliation and Mediation Services (BCMS) in protest of the 2017 and 2018 notices. By conciliation order, CMS number 000326313, dated May 19, 2023, BCMS sustained the 2017 and 2018 notices.

16. On August 9, 2023, petitioner timely filed a petition with the Division of Tax Appeals in protest of the conciliation order.

17. At the hearing, Vincent Fisher, a Tax Technician 3 in the Division's Personal Income Tax Desk Audit Bureau, testified on behalf of the Division. Mr. Fisher supervises multiple teams of tax technicians and assists them with case resolutions. He also assists with case selection, billing programs and review of audits and assessments. Mr. Fisher familiarized himself with petitioner's case file in preparation for his testimony.

Mr. Fisher testified about the Division's review of petitioner's 2017 and 2018 returns. He explained that since it is difficult for the Division to verify self-employment income, the Division requests substantiation from taxpayers. He further explained that a hairdresser is required to have a cosmetology license and, in New York City, a hairdresser is required to collect sales tax, which requires a certificate of authority. Mr. Fisher testified that he did not see either document in petitioner's case file.

Mr. Fisher testified that the Division requested documentation from petitioner to substantiate the business income, dependent (including relationship and residency) and childcare expenses she claimed on her 2017 and 2018 returns. Mr. Fisher further testified that petitioner did not respond to the Division's requests, so the Division issued the 2017 and 2018 notices.

18. Mr. Fisher also testified about the documents petitioner submitted after the 2017 and 2018 notices were issued. Mr. Fisher stated that it appeared that petitioner's business records were not created contemporaneously, that bank statements alone do not substantiate business income and that petitioner did not provide business records and bank statements for all of 2017 and 2018.

19. Mr. Fisher further testified that petitioner substantiated her dependent for purposes of the credits she claimed on her 2017 and 2018 returns. According to Mr. Fisher, petitioner did not substantiate her business (earned) income or the childcare expenses she claimed on her 2017 and 2018 returns. Without such substantiation, the Division would only allow petitioner the minimum amount of Empire State child credit of $100.00 each year. In addition, Mr. Fisher explained that the Division would allow the New York City school tax credit of $63.00 claimed by petitioner on her 2017 and 2018 returns as that credit is not dependent on earned income.

20. Petitioner's childcare provider, Ms. Griffin, testified on behalf of petitioner. Ms. Griffin testified that she knew petitioner's son since he was a baby and that she has cared for him since at least 2017. She testified that she would babysit petitioner's son on an as-needed basis while petitioner was working. Ms. Griffin further testified that she was paid mostly in cash and that she received $1,500.00 in 2017 and $1,300.00 in 2018 to take care of petitioner's son.

21. Petitioner also testified at the hearing. She testified that she was a hairdresser for over 10 years and, in 2019, she became a teacher. She further testified that she did not provide

her services daily, that she saw clients mostly on Saturdays and that her business records reflected the way she conducted her hairdressing business. Petitioner also testified that Ms. Griffin became her childcare provider because Ms. Griffin had known petitioner's son for many years and that Ms. Griffin accepted payment on an as-needed basis.

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 Matter of Leogrande v Tax Appeals Trib.***, 187 AD2d 768, 769 [3d Dept 1992], ***lv denied*** 81 NY2d 704 [1993]; ***see also*** Tax Law § 689 [e]; 20 NYCRR 3000.15 [d] [5]). Here, the issue is whether petitioner established that the Division improperly denied the credits claimed on her 2017 and 2018 returns.

B. Tax Law § 606 (c-1) (1) provides for an Empire State child 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 Internal Revenue Code (IRC) (26 USC) § 24 for each qualifying child. A qualifying child is a child that meets the definition of qualifying child under IRC (26 USC) § 24 (c) and, for 2017 and 2018, was at least 4 years old (***see*** Tax Law former § 606 [c-1] [1]). Under IRC (26 USC) § 24, a taxpayer may claim a child tax credit for an individual who is a qualifying child as defined in IRC (26 USC) § 152 (c) and has not attained the age of 17 during the taxable year (***see*** IRC [26 USC] § 24 [a], [c] [1]). The refundable portion of the federal child tax credit, otherwise known as the additional child tax credit, is calculated as 15% of earned income that exceeds, in 2017, $3,000.00, up to the maximum amount of the credit[1] (***see*** IRC [26 USC] § 24 [a], [d] [1]).

[1] For 2018, the Tax Law was changed to base Empire State child credit eligibility and credit amounts on the federal child tax credit as it existed prior to Public Law 115-97 (the Tax Cuts and Jobs Act) (***see*** Tax Law § 606 [c-

The Division does not dispute that petitioner's son is a qualifying child for purposes of the Empire State child credit and the federal child tax credit under IRC (26 USC) § 24 and concedes that petitioner is entitled to Empire State child credit of $100.00 for her son. The Division argues, however, that petitioner has not substantiated the income she reported on her 2017 and 2018 returns and, therefore, she is not entitled to more than $100.00 per year.

Petitioner credibly testified that she was a hairdresser in 2017 and 2018 and that she saw her clients mostly on Saturdays. Ms. Griffin credibly testified that she cared for petitioner's son while petitioner worked. Petitioner also credibly testified that her records reflected the way she conducted her business and her business records and bank statements corroborate her testimony. While the documents petitioner provided are not complete, they show consistency in petitioner's earnings over two years and show that petitioner's income exceeded the minimum income threshold required for the federal child tax credit.

The Tax Appeals Tribunal has held that in cases where 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). Based on petitioner's testimony, Ms. Griffin's testimony and petitioner's business records and bank statements, it may be reasonably concluded that petitioner has met her burden of proof and has established income of $10,550.00 in 2017 and $11,100.00 in 2018. Accordingly, petitioner is entitled to the Empire State child credit of $330.00 claimed on her 2017 and 2018 returns.

C. Turning to the earned income credits, Tax Law § 606 (d) (1) provides for a New York State earned income credit generally equal to 30 percent of the earned income credit allowed under IRC (26 USC) § 32. In 2017 and 2018, the New York City earned income credit was

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1] [1]). Therefore, the federal credit amounts and income thresholds that were in effect for 2017 are used to calculate the Empire State child credit for 2018.

generally 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 both 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 petitioner's eligibility for the earned income credits.

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 on a determination of a taxpayer's earned income, which includes earnings from self-employment (***see*** IRC [26 USC] § 32 [c] [2] [A] [ii]). "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]). A qualifying child, for purposes of the earned income credit, is defined by IRC (26 USC) § 152 (c) (***see*** IRC [26 USC] § 32 [c] [3]).

The Division does not dispute that petitioner's son is a qualifying child for purposes of the New York State and New York City earned income credits and the federal earned income credit under IRC (26 USC) § 32. The Division again argues that petitioner has not substantiated the income she reported on her 2017 and 2018 returns and, therefore, she is not entitled to the earned income credits. As it has been determined that petitioner substantiated the income she reported on her 2017 and 2018 returns for purposes of the Empire State child credit, the same remains true for purposes of the earned income credits. Accordingly, petitioner is entitled to the New York State and New York City earned income credits claimed on her 2017 and 2018 returns.

D. Tax Law § 606 (c) (1) provides for a New York State child and dependent care credit determined as a percentage of the federal child and dependent care credit under IRC (26 USC) §

21. Since the child and dependent care credit is determined based on a percentage of the federal credit, it is appropriate to refer to the provisions of the IRC to determine petitioner's eligibility for the child and dependent care credit.

The amount of the federal child and dependent care credit under IRC (26 USC) § 21 is based upon a percentage of employment related expenses paid by a taxpayer (***see*** IRC [26 USC] § 21 [a] [1]). Employment related expenses include amounts paid for the care of a qualifying individual but only if such expenses are incurred to enable the taxpayer to be gainfully employed (***see*** IRC [26 USC] § 21 [b] [2] [A] [ii]). A qualifying individual includes a dependent under the age of 13 (***see*** IRC [26 USC] § 21 [b] [1] [A]).

The Division does not dispute that petitioner's son is a qualifying individual for purposes of the New York State child and dependent care credit and the federal child and dependent credit under IRC (26 USC) § 21. Initially, the Division argues that petitioner has not proven that she was gainfully employed since she did not substantiate the income she reported on her 2017 and 2018 returns. As it has been determined that petitioner did, in fact, substantiate her income, this argument is rejected. The Division also argues that petitioner has not substantiated the amount of childcare expenses she claimed on her 2017 and 2018 returns.

Petitioner credibly testified that Ms. Griffin cared for her son in 2017 and 2018 and that she paid Ms. Griffin on an as-needed basis. Petitioner provided a notarized letter from Ms. Griffin in which she explained that she worked as a babysitter for petitioner's son in 2017 and 2018, that she was paid mostly in cash and that she was paid $1,500.00 in 2017 and $1,300.00 in 2018 to provide care for petitioner's son. Ms. Griffin also credibly testified to the same at the hearing and her bank statements corroborate her testimony. Therefore, based on the documentary evidence and credible testimony, it may be reasonably concluded that petitioner has

met her burden of proof and established that she paid childcare expenses of $1,500.00 in 2017 and $1,300.00 in 2018 (***see Matter of Avildsen***). Accordingly, petitioner is entitled to the New York State child and dependent care credit she claimed on her 2017 and 2018 returns.

E. The petition of Orneilia Dunn is granted and the notices of disallowance, dated January 9, 2019 and July 31, 2019, are cancelled, and the Division of Taxation is directed to issue refunds consistent with this determination.

DATED: Albany, New York
November 12, 2026

/s/ Jennifer L. Baldwin
ADMINISTRATIVE LAW JUDGE