

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
NIURKA MUNOZ : DETERMINATION
 : DTA NO. 820575
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 2003. :

Petitioner, Niurka Munoz, 648 West 160th Street, #21, New York, New York 10032, 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 2003.

A hearing was held before Frank W. Barrie, Administrative Law Judge, at the offices of the Division of Tax Appeals, 641 Lexington Avenue, New York, New York, on February 22, 2006 at 10:30 A.M., which date began the six-month period for the issuance of this determination. Petitioner appeared *pro se*. The Division of Taxation appeared by Christopher C. O'Brien, Esq. (Andrew Haber, Esq., of counsel).

ISSUE

Whether the earned income credit of \$1,261.00 and the child and dependent care credit of \$2,310.00 claimed by petitioner on her 2003 tax return were properly disallowed by the Division of Taxation on the basis that petitioner failed to provide sufficient documentation to substantiate that she was entitled to claim these two credits.

FINDINGS OF FACT

1. On her New York State resident personal income tax return for 2003, petitioner reported business income of \$13,000.00 as a “beautician helper.” Claiming a child and dependent care credit of \$2,310.00, an earned income credit of \$1,261.00 and a City of New York school tax credit of \$63.00 on her return, petitioner sought a refund in the amount of \$3,634.00.

2. By a letter dated February 23, 2004, the Division of Taxation (“Division”) requested “verifiable information to document” petitioner’s earned income and “any qualifying children claimed.” After reviewing petitioner’s response, the Division by a letter dated May 12, 2004 advised that “the refund you requested cannot be allowed” because either incomplete or unverifiable information was provided. For example, a document described as a “cash income statement” for the year merely shows, in a summary fashion, \$250.00 received weekly over the course of 12 months from Romulo Barber Shop. In addition, such statement conflicted with petitioner’s assertion at a prehearing conference that she worked only ten months a year. Further, “receipts” for child care expenses inexplicably show petitioner’s name on the line “received of” as well as on the line which identified the person who received the payment, while the name of the child care provider is not noted.

3. By a formal notice of disallowance dated June 25, 2004, the Division disallowed petitioner’s claim for refund on the basis that she did not “provide substantiation for the business income reported,” and “cancelled checks or check stubs” were not provided to substantiate payments to the child care provider. Petitioner was allowed the City of New York school tax credit of \$63.00.

4. At the hearing in this matter, petitioner posed no questions for the Division's witness who detailed the inadequacy of the information provided by petitioner to support the credits she claimed on her tax return. Petitioner also declined to testify at the hearing and presented no additional documentation in support of her claim. Furthermore, she chose not to make an argument in support of her claim.

CONCLUSIONS OF LAW

A. Tax Law § 606(d) provides that the New York State earned income credit for the 2003 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” With respect to the child and dependent care credit, Tax Law § 606(c) provides that the New York State credit is based on the Federal child and dependent care credit “allowable under section twenty-one of the internal revenue code.” Since the allowable New York earned income credit and child and dependent care credit are both determined based solely on the corresponding Federal credit, it is appropriate to refer to the provisions of the Internal Revenue Code and Treasury Regulations to determine petitioner's eligibility for these two credits.

B. The Federal earned income credit, provided for pursuant to section 32 of the Internal Revenue Code, is a refundable tax credit for eligible low-income workers. The credit is computed based on a percentage of a taxpayer's “earned income” which includes, inter alia, earnings from self-employment (Treas Reg §1.44A-2[b][2][ii]). Therefore, petitioner had the burden of proof (Tax Law § 689[e]) to show that she in fact generated \$13,000.00 of earned income as a “beautician helper” during the 2003 tax year.

The child and dependent care credit allowed pursuant to Internal Revenue Code § 21 is determined based on a percentage of employment related expenses, including expenses for the

care of a qualified dependent under the age of 13, incurred by a taxpayer to be gainfully employed. Internal Revenue Code § 21(c)(2) places a \$6,000.00 limitation on employment related expenses for two or more qualifying dependents, and Internal Revenue Code § 21(d)(1)(A) further provides that employment related expenses cannot exceed a taxpayer's earned income for the tax year. Consequently, petitioner was required to substantiate the amount of her employment related expenses that she paid in 2003 and also to show that she had \$13,000.00 of earned income as a self-employed beautician assistant. She failed to do so.

C. The evidence in the record is clearly insufficient to establish that petitioner generated \$13,000.00 of income as a beautician assistant for the 2003 tax year. Petitioner maintained no books and records from which her income and expenses as a self-employed beautician assistant could be determined and no independent proof, such as forms W-2 or 1099, or other reliable evidence, to verify that she received \$13,000.00 of earned income from Romulo Barber Shop. In particular, the statement noted in Finding of Fact "2" was not a contemporaneous record and was undoubtedly produced solely to support petitioner's claimed credits and may be accorded little or no weight. Furthermore, as noted in Finding of Fact "4", at the hearing in this matter, she declined to testify under oath in support of her claim. In sum, petitioner must suffer the consequences of her failure of proof (*cf, Matter of Meixsell v. Commissioner of Taxation*, 240 AD2d 860, 659 NYS2d 325, *lv denied* 91 NY2d 811, 671 NYS2d 714).

D. The petition of Niurka Munoz is denied, and the notice of disallowance dated June 25, 2004 is sustained.

DATED: Troy, New York
July 20, 2006

/s/ Frank W. Barrie
ADMINISTRATIVE LAW JUDGE