

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition :

of :

MARK GERINGER :

for Redetermination of a Deficiency or for Refund of :
New York State and New York City Personal :
Income Taxes under Article 22 of the Tax Law and :
the New York City Administrative Code for the :
Years 2006, 2007 and 2008. :

DECISION
DTA NOS. 825304
AND 825903

In the Matter of the Petition :

of :

MARK AND ROBIN GERINGER :

for Redetermination of a Deficiency or for Refund of :
New York State and New York City Personal :
Income Taxes under Article 22 of the Tax Law and :
the New York City Administrative Code for the :
Years 2009 and 2010. :

Petitioners, Mark and Robin Geringer, filed an exception to the determination of the Administrative Law Judge issued on August 13, 2015. Petitioner Mark Geringer appeared pro se and on behalf of his spouse. The Division of Taxation appeared by Amanda Hiller, Esq. (Peter B. Ostwald, Esq., of counsel).

Petitioners filed a letter brief in support of the exception. The Division of Taxation filed a letter brief in opposition. Petitioners filed a letter brief in reply. Oral argument was not requested. The six-month period for the issuance of this decision began on December 3, 2015, the date petitioners' letter brief in reply was received.

After reviewing the entire record in this matter, the Tax Appeals Tribunal renders the following decision.

ISSUES

I. Whether petitioners have substantiated their entitlement to certain claimed losses and costs that were disallowed upon audit.

II. Whether, assuming petitioners are unable to substantiate entitlement to the disallowed losses and costs, they have nonetheless established any bases warranting reduction or cancelation of penalties imposed.

FINDINGS OF FACT

We find the facts as determined by the Administrative Law Judge. These facts are set forth below. We note that this matter was determined on submission pursuant to 20 NYCRR 3000.12.

1. Petitioner Mark Geringer was a partner in an accounting firm known as Koch, Geringer & Company, LLP.¹ This firm ceased its business activities in or about 2002.

2. By a letter dated October 28, 2009, the Division of Taxation (Division) advised petitioner that while there was information indicating that he had received income for the years 2006 and 2007, there was no information indicating that he had filed a New York State or New York City personal income tax return for either year.

3. Petitioner subsequently filed a resident income tax return (form IT-201) for each of the years 2006 and 2007. He also filed a return for 2008. His filing status for each of these years

¹ Petitioner Robin Geringer's name appears herein because she filed a joint return with petitioner Mark Geringer for the years 2009 and 2010. Since there is no assertion that her actions are in any manner relevant to the issues presented, unless otherwise specified or made necessary by context, references to petitioner herein shall be to petitioner Mark Geringer.

was “single.” The returns for the years 2006 and 2007 were dated as signed on November 10, 2009, and it is undisputed that each return was filed late. Petitioner’s 2008 return was filed on or about October 15, 2009.

4. Petitioners, Mark Geringer and Robin Geringer, filed a resident income tax return for each of the years 2009 and 2010, under the filing status “married filing joint return.”

5. In connection with the filing of his Form IT-201 for 2008, petitioner also filed a claim for credit or refund of personal income tax (form IT-113-X), dated as signed on October 20, 2009, for both of the years 2006 and 2007.

6. As is relevant to this matter, on his return for the year 2008, petitioner claimed a loss (at line 11) in the amount of \$553,237.00. This loss appears on (federal) schedule E at part II (income or loss from partnerships and S corporations) as a claimed ordinary business nonpassive loss from schedule K-1, along with the notation “P” for partnership and the advice “see footnote regarding judgement.”

7. The foregoing claimed loss on petitioner’s return for the year 2008 served to offset reported income (wages, salaries, tips) in the amount of \$152,543.00, and resulted in a net loss, reported by petitioner as New York negative adjusted gross income (AGI), in the amount of \$400,694.00. This net loss amount was adjusted by: a) increasing the same to account for unused itemized deductions in the amount of \$16,099.00, and b) decreasing the same to account for nonbusiness deductions (taxes paid) in the amount of \$5,300.00, thus resulting in a claimed unused net loss in the amount of \$411,493.00.

8. On his return for 2006, and in conjunction with his claim for refund (form IT-201-X) for such year, petitioner applied the \$411,493.00 unused portion of the foregoing 2008 claimed business loss as a net operating loss carry back against his income for 2006. Petitioner utilized

such unused claimed loss to offset income (wages, salaries, tips) in the amount of \$130,415.00, resulting in a claimed New York negative AGI in the amount of \$281,078.00. This net loss amount was adjusted by increasing the same to account for unused itemized deductions in the amount of \$25,073.00, thus resulting in a claimed unused net loss in the amount of \$306,151.00.

9. On his return for 2007, and again in conjunction with his claim for refund (form IT-201-X) for such year, petitioner applied \$304,133.00 as the remaining unused portion of the claimed 2008 business loss as a net operating loss carryover against his income for 2007.² Petitioner utilized such unused claimed loss to offset income (wages, salaries, tips) in the amount of \$143,764.00, resulting in a claimed New York negative AGI in the amount of \$160,369.00. This net loss amount was adjusted by: a) increasing the same to account for a separately claimed partnership loss in the amount of \$42,840.00 (*see* finding of fact 10), b) a claimed expense (cost of goods sold) on (federal) schedule C in the amount of \$13,725.00 (*see* finding of fact 11), and c) unused itemized deductions in the amount of \$27,947.00, thus resulting in a claimed unused net loss in the amount of \$244,881.00.

10. As referenced above for 2007, petitioner claimed a separate loss (at line 11) in the amount of \$42,840.00. This loss appears on (federal) schedule E at part II (income or loss from partnerships and S corporations) as a claimed ordinary business nonpassive loss from schedule K-1, along with the notation “P” for partnership, the listed partnership name of “MJG Consulting Associates,” and the statement “applied for” under the column requesting (the partnership’s) “employer identification number.” The partnership’s address on schedule K-1, as issued to

² The amount of claimed loss carryover applied for 2007 (\$304,133.00) is \$2,018.00 less than the claimed remaining unused net loss calculated for 2006 (\$306,151.00 [*see* finding of fact 8]). The record does not reveal the basis for the discrepancy.

petitioner, is listed as MJG Consulting Associates, 780 South Sapodilla Avenue, Unit 5, West Palm Beach, Florida, and schedule K-1 lists for petitioner a loss in the amount of \$56,565.00.³

11. As referenced above for 2007, petitioner claimed “gross receipts or sales” at schedule C (profit or loss from business), line 1, in the amount of \$13,725.00, and claimed “other costs” on such schedule, at line 39, in the like amount of \$13,725.00, resulting in net profit of \$0.00. Schedule C, in turn, lists petitioner as the “proprietor,” the “principal business or profession” as “consulting,” and the “business address” as 116 Central Park South, New York, New York. Statement 5 to petitioner’s form 1040 (U. S. individual income tax return) for 2007 describes this “cost” amount as “Nominee Transfer - 1099 Misc. reported within MJG Consulting - see Schedule E.” The record on submission contains no further explanation with regard to this cost item, including the manner in which it was computed or reported. It is noted, however, that adding the reported loss for MJG Consulting Associates per schedule E (\$42,840.00) to the schedule C amount of “other costs” or “cost of goods sold” (\$13,725.00) equals the amount of the loss set forth on schedule K-1 for MJG Consulting Associates (\$56,565.00).

12. For the year 2009, petitioner claimed a loss (at line 15) in the amount of \$411,493.00. This amount equaled the unused portion of the previously claimed \$553,237.00 business loss for 2008 (*see* finding of fact 6) that had been reported as a net operating loss carry back and had been applied against his income for 2006 (*see* finding of fact 8). Petitioner identified this claimed loss as a “prior year NOL” (i.e., a net operating loss carryforward or carryover). As filed, petitioner’s return for 2009 makes no adjustment in reporting the claimed net operating loss carryover to

³ Judgment listings indicate petitioner’s name as “Mark Jeffrey Geringer,” and it is presumed that the name of the partnership (“MJG Consulting Associates”) reflects petitioner’s initials “MJG.”

account for any amounts thereof previously utilized as net operating loss carry backs or carry overs in reduction of income either of the years 2006 or 2007 (*see* findings of fact 8 through 11).

13. For the year 2010, petitioner reported income in the total amount of \$282,394.00.⁴ Petitioner claimed a loss (at line 15) in the amount of \$180,407.00. Petitioner identified this claimed loss as a “prior year net operating loss” (i.e., a net operating loss carryforward or carryover). The manner of calculating this claimed loss amount (described at finding of fact 23) is, at best, unclear.

14. In addition, and for 2010, petitioner also claimed a separate loss (at line 11) in the amount of \$76,762.00. This loss appears on (federal) schedule E at part II (income or loss from partnerships and S corporations) as a claimed ordinary business nonpassive loss from schedule K-1, along with the notation “P” for partnership, the listed partnership name of “MJG Consulting Associates,” and the statement “applied for” under the column requesting (the partnership’s) “employer identification number.”

15. The Division initially audited petitioner’s returns for the years 2006, 2007 and 2008, and thereafter audited petitioners’ returns for the years 2009 and 2010. In its audits, the Division requested that petitioner furnish documents substantiating the \$553,237.00 amount claimed as a business loss in 2008, as carried back to 2006, and subsequently carried over (forward) to 2007, 2009 and 2010, as an unused net operating loss. Specifically, the Division requested documents and work papers calculating the amount of the loss and showing the computation of the subsequent carry back and carry overs thereof, as well as substantiation supporting petitioner’s claim that the loss was a business loss and that such loss (or expense) had been paid by

⁴ This sum consists of wages, salaries, tips, etc. (line 1: \$248,405.00), taxable interest income (line 2: \$1,084.00), ordinary dividends (line 3: \$1,492.00) and business income (line 6: \$31,413.00).

petitioner. The Division also sought documentary support for the other losses claimed by petitioner, as detailed above.

16. Petitioner supplied very little in response to the Division's repeated audit requests for substantiation. On or about January 11, 2010, petitioner submitted his federal income tax returns for the years 2006 and 2007, and a schedule K-1 from MJG Consulting Associates. By a letter dated May 5, 2010, petitioner set forth the dollar amounts applied as carried back and carried over net operating losses for 2006 and 2007, together with his statement that such carried loss amounts represented unused losses remaining from a \$553,237.00 business loss claimed in 2008 as the result of a prior lawsuit brought against petitioner by a former client. By a letter dated June 24, 2010, the Division responded to petitioner's May 10, 2010 letter, again requesting work papers calculating the initially claimed loss, documents substantiating such loss as a business loss, proof of payment of the claimed amount, and calculations of the carry back and carryover loss amounts. No further substantiation for the claimed amounts was furnished by petitioner.

17. The Division issued to petitioner Mark Geringer a notice of deficiency (L-036292505-3), dated June 23, 2011, asserting additional New York State and New York City personal income taxes due in the aggregate amount of \$41,507.00 for the years 2006, 2007 and 2008, plus interest and penalties for late filing (Tax Law § 685[a] [1], negligence (Tax Law § 685[b] [1] and [2]), failure to supply information (Tax Law § 685 [i]) and substantial understatement of liability (Tax Law § 685 [p]).

18. The Division issued to petitioners Mark and Robin Geringer a notice of deficiency (L-038294481-2) dated July 17, 2012, asserting additional New York State and New York City personal income taxes due in the aggregate amount of \$50,929.00 for the years 2009 and 2010,

plus interest and penalties for negligence (Tax Law § 685[b] [1] and [2]) and failure to supply information (Tax Law § 685 [i]).

19. The record on submission includes a number of judgment and lien filing reports. Of relevance to the claimed losses here are two judgment and lien reports. The first report lists a judgment amount of \$553,237.00, identifies the judgment creditor as Chris Fountoukis, and identifies two judgment debtors, petitioner Mark J. Geringer and Biltmore Development Corporation. The second report lists a judgment amount of \$763,125.00, identifies the judgment creditor as Smrzlic Marica, and identifies two judgment debtors, petitioner Mark Geringer and Boler Associates.⁵ The record does not disclose any information with regard to either Biltmore Development Corporation or Boler Associates nor, with respect to the foregoing two judgements, does it disclose any information tying the same to petitioner's former accounting firm (Koch, Geringer & Company, LLP).⁶

20. The record also references a decision of the Appellate Division, Second Department concerning a lawsuit brought by Chris Fountoukis against petitioner and Eric D.W. Cohler, Inc. (*Fountoukis v Geringer*, 33 AD3d 756 [2006]). The Court affirmed the December 22, 2004 order of Supreme Court, Kings County (Hubsher, J) denying plaintiff Fountoukis' motion for summary judgment and dismissing his complaint as asserted against defendant Cohler, Inc., thus

⁵ "Smrzlic Marica" is referred to in other instances as "Marcia Smrzlic." Presumably, the former name listing is a misspelling.

⁶ The record includes a report of a separate lawsuit brought against petitioner's former accounting firm (*Lonuzzi v Koch, Geringer & Co., LLP*, 2009 NY Slip Op 51051[U] [23 Misc 3d 1132 (A)], May 28, 2009, Sup Ct., Kings County, Demarest, J.). That suit, concerning allegations of professional negligence, breach of contract, breach of fiduciary duty, and (as against petitioner solely) fraud with respect to the misappropriation of one million dollars of petitioner Lonuzzi's money, commenced in 2003. There is nothing in the record to tie that lawsuit, either by dollar amount, resolution, judgment listing or named plaintiff, in any manner to the losses at issue in this matter claimed by petitioner to be business losses arising out of his association with the firm of Koch, Geringer & Company, LLP, or any relationship to either of the other named judgment creditors, Chris Fountoukis or Smrzlic Marica (Marcia Smrzlic).

effectively limiting plaintiff's avenue for recovery only to defendant Geringer (petitioner herein).

The Court's recitation of facts is relevant to the issues presented herein as follows:

"The plaintiff, Chris Fountoukis, was induced by his accountant, the defendant Mark Geringer, to transfer the sum of \$200,000 to the defendant Eric D.W. Cohler, Inc. (hereinafter Cohler). Fountoukis did so based upon Geringer's representation that the \$200,000 purchased a tax loss that would result in a \$50,000 tax credit, and that the principal sum would be fully repaid four days later. In fact, Cohler applied the \$200,000 toward a \$332,617.39 debt owed to it by Geringer for furniture and interior decorating services, and the money was disbursed by Cohler to its third-party suppliers based on its belief that the payment was intended to partially discharge Geringer's debt. Only after the \$200,000 was not timely repaid and Fountoukis communicated with Cohler, did Fountoukis and Cohler learn of the true circumstances by which the payment was made and received. Geringer moved to Panama, and is subject to a default judgment."⁷

21. Petitioner's submission of documents herein consisted of:

a) a newspaper article describing his incapacitation as the result of an August 9, 2002 incident in the Republic of Panama wherein petitioner, apparently in fear of being abducted and harmed by two individuals, suffered severe injury when he either leapt or fell from an eighth floor apartment in which he was staying.

b) a copy of a January 6, 2005 cashier's check in the amount of \$1,049,531.30, drawn on Hanvit America Bank and payable jointly to "Robinson Brog Leinwand Greene Genovese & Gluck and the Barrisons." The remitter is listed as Crescent Street, LLC.

c) the two judgment and lien filings reflecting petitioner, as debtor, and Smrzlic Mracia (Marcia Smrzlic) and Chris Fountoukis, respectively, as creditors, and indicating The Barrisons as attorneys of record for both of the creditors (*see* finding of fact 19).

d) a credit report pertaining to petitioner and reflecting the judgment against petitioner in favor of Chris Fountoukis in the amount of \$553,237.00.

e) a schedule K-1 for petitioner, pertaining to the partnership MJG Consulting Associates, reflecting his share of partnership income, deductions, credits and other items (at lines 1 thereof) as an ordinary business loss in the amount of \$42,840.00.

⁷ Attorneys of record for appellant (creditor) Chris Fountoukis were listed as Earl Barrison (Steven M. Barrison, of counsel).

f) a chart wherein petitioner lists:

the amount of loss he claimed for 2008	(\$553,237.00)
less: the amounts of income offset by such loss:	
- for 2008 (income offset by loss)	<u>\$152,543.00</u>
- available unused loss	(\$440,694.00)
- for 2006 (income offset by loss)	<u>\$130,415.00</u>
- available unused loss	(\$270,279.00)
- for 2007 (income offset by loss)	\$100,924.00
- available unused loss	(\$169,355.00)

22. Petitioner also submitted additional documents consisting of:

a) a form 1065 (U.S. return of partnership income) in the name of MJG Consulting Associates for the year 2007, reporting gross receipts of \$66,275.00, total deductions of \$109,115.00, and a resulting loss (at line 22) in the amount of \$42,840.00. This return was accompanied by a schedule K-1 for petitioner, reflecting his share of partnership income, deductions, credits and other items (at lines 1 thereof) as an ordinary business loss in the amount of \$42,840.00, and a schedule K-1 for one Raissa Vikki, reflecting guaranteed payments (reflected on form 1065 at line 10 as “guaranteed payments to partners”) in the amount of \$33,000.00.

b) a schedule K-1 for petitioner for the year 2010, pertaining to the partnership “Wadsworth Ave/Wadsworth Terrace,” LLC, 24-15 Queens Plaza North, Ste. 11A, Long Island City, NY., indicating a contribution of capital during the year in the amount of \$160,000.00, a current year capital decrease in the amount of \$160,000.00 and an ordinary business loss (at line 1) in the amount of \$149.00. A “supplemental information” page describes the net impact of the foregoing as an “abandonment of partnership interest - section 165 ordinary loss (\$159,851.00).” Petitioner asserts this loss was claimed for 2010 but was disallowed on audit as unsubstantiated. No additional information or documents were provided concerning this claimed item. Review of the audit work papers reveals no information or indication that this amount was addressed in any manner, questioned on audit or in fact disallowed by the Division so as to result in any portion of the deficiency asserted and at issue for 2010.

c) an expansion of the foregoing chart (*see* finding of fact 21 [f]) describing petitioner’s version of the application of the 2008 claimed loss as used to offset income for the years at issue herein, as follows:

the amount of loss he claimed for 2008	(\$553,237.00)
less: the amounts of income offset by such loss:	
- for 2008 (income offset by loss)	<u>\$152,543.00</u>
- available unused loss (NOL)	(\$440,694.00)
- for 2006 (income offset by loss)	<u>\$130,415.00</u>

- available unused loss (NOL)	(\$270,279.00)
- for 2007 (income offset by loss)	\$100,924.00
- available unused loss (NOL)	(\$169,355.00)
- for 2009 (income offset by loss)	<u>\$242,644.00</u>

23. Petitioner's chart goes on to indicate an additional loss in the amount of \$253,700.00 "recognized in 2009." Petitioner attributes this amount to the "Smrzlic litigation." According to petitioner, combining such amount (\$253,700.00) with the claimed unused NOL carryover allegedly available for 2009 (\$169,355.00) results in a total loss of \$423,055.00 available for 2009. Thus, petitioner asserts that offsetting income of \$242,644.00 for such year by a portion of such total available loss results in a \$180,411.00 unused loss available to be carried over and used to offset income for 2010. Combining such amount with the claimed loss of \$76,762.00 (*see* finding of fact 14) results in a total loss of \$257,000.00 available for 2010. Although unstated, it would appear that petitioner claims such available loss amount, plus the noted claimed \$160,000.00 Wadsworth partnership loss for 2010 (*see* finding of fact 22[b]), results in available losses sufficient to offset petitioner's reported income for 2010 (\$282,394.00; *see* finding of fact 13).

24. In his brief submitted to the Administrative Law Judge, petitioner also alludes to a loss in the amount of \$17,429.00 allegedly stemming from claimed "unreimbursed partner expenses in 2010 that were reflected as income on petitioner's K-1 for 2011 from Nasberg CPA, PLLC." No such Schedule K-1 or other documentation or additional explanation as to this claimed item was provided for the record.

THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE

The Administrative Law Judge determined that petitioner failed to provide sufficient evidence to sustain his burden of proof to show that he is entitled to the \$557,237.00 net operating loss claimed on his 2008 personal income tax return and thus to the consequent losses

claimed for the other years at issue. The Administrative Law Judge also determined that petitioner did not meet his burden of proof as to the other claimed losses at issue as described in the findings of fact herein.

In reaching these conclusions, the Administrative Law Judge observed that the Division made repeated requests for substantiation of petitioner's claimed losses and that petitioner provided few documents in response to such requests. The Administrative Law Judge also noted that, as petitioner elected to proceed in this matter by submission, there was no testimony and thus no opportunity to inquire as to petitioner's "essentially bare assertions." Additionally, the Administrative Law Judge noted that petitioner did not submit any affidavits in support of his factual claims.

The Administrative Law Judge also sustained the imposition of penalties asserted in the subject notices of deficiency because petitioner provided no basis to support any reduction to or abatement of such penalties.

SUMMARY OF ARGUMENTS ON EXCEPTION

Petitioner asserts that the Administrative Law Judge improperly found that the evidence submitted was insufficient to establish entitlement to the claimed losses. He claims that the Administrative Law Judge failed to recognize the documentation in the record detailing the claimed expenses. Petitioner further asserts that the \$553,237.00 owed to Chris Fountoukis was a valid debt and a viable business expense. Petitioner concedes that the Smrzlic liability was not a business expense, but that the payment of the Fountoukis liability was coupled with the Smrzlic liability as part of the settlement of both issues, and that the attorneys representing both parties have been paid an amount in satisfaction of both respective claims. Petitioner further claims that the Administrative Law Judge failed to realize that petitioner was both mentally and physically

incapacitated from injuries sustained in Panama, which left him apparently unable to explain various lawsuits and allegations against him.

Petitioner acknowledges a miscalculation of the 2009 net operating loss carry forward as originally reported.

Petitioner further contends that, contrary to the Administrative Law Judge's conclusion, he substantiated his claimed losses related to MJG Consulting Associates and Wadsworth Ave./Wadsworth Terrace.

Petitioner also argues that the Administrative Law Judge failed to consider whether reasonable cause existed such that penalties imposed herein should be abated. Petitioner did not, however, make any argument in support of a finding of reasonable cause.

Petitioner also requests additional time to submit further documentation to substantiate his claimed expenses.

The Division asserts that the Administrative Law Judge correctly determined that petitioner did not provide substantiation sufficient to establish entitlement to any of the losses or expenses claimed herein, including the claimed net operating loss for 2008, as carried back to 2006 and carried over to 2007, 2009 and 2010, as well as the other claimed loss or expense items.

The Division also asserts that penalties were properly imposed and that petitioner's request to submit additional documentation must be rejected.

OPINION

Petitioner has the burden to show entitlement to all expenses and deductions claimed on his returns and to substantiate the amount of such expenses and deductions (*see Matter of Goode*, Tax Appeals Tribunal, October 17, 2013; Tax Law §§ 658 [a], 689 [e]; 20 NYCRR

158.1). Petitioner was required under the Tax Law to maintain adequate records of his items of expense and deduction for the years in issue (Tax Law § 658 [a]; 20 NYCRR 158.1 [a]).

Upon review of the record, we agree with the Administrative Law Judge's conclusion that petitioner's "scant submission of evidence falls far short of that necessary to prove his claims." Specifically, we find that petitioner failed to establish that the \$553,237.00 judgment against him was a business loss in that amount. We note, as did the Administrative Law Judge, that petitioner failed to provide sufficient documentation to explain even the amount of the judgment. That is, while there is some evidence of a transfer of \$200,000.00 from Fountoukis to petitioner (*see* finding of fact 20), there is no evidence to explain the balance of the judgment amount. Like the Administrative Law Judge, we also note that petitioner provided no evidence to prove that the judgment was a business expense, i.e., that it resulted from activities involving his former firm, as claimed. We also agree with the Administrative Law Judge that petitioner's net operating loss carry over calculations are unclear and that petitioner's claimed losses with respect to MJG Consulting Associates are entirely unsubstantiated.⁸

Additionally, we note our agreement with the Administrative Law Judge's observation that, as a result of petitioner's decision to proceed in this matter by submission, there was no testimony elicited and, consequently, there was no opportunity to inquire with respect to petitioner's factual contentions. This evidentiary problem is exacerbated by the lack of any affidavits from petitioner that might have provided greater detail to his contentions.

With respect to penalties, the burden of proof to show reasonable cause to abate penalties is on petitioner (*see Matter of Philip Morris, Inc.*, Tax Appeals Tribunal, April 29, 1993). We

⁸ We also agree with the Administrative Law Judge's finding that, petitioner's contention notwithstanding, the claimed "Wadsworth" loss for 2010 does not appear to have been addressed in any manner, challenged on audit or disallowed by the Division so as to result in any portion of the deficiency asserted for 2010 (*see* finding of fact 22 [b]).

find that the Administrative Law Judge correctly determined that petitioner provided no basis, i.e., reasonable cause, to support any penalty abatement. Indeed, petitioner advanced no argument in support of a finding of reasonable cause. Accordingly, the penalties imposed herein are sustained.

We note petitioner's claim that injuries he sustained in Panama in 2002 created significant difficulties for him. While a taxpayer's serious illness may constitute reasonable cause under certain circumstances (*see* 20 NYCRR 2392.1 [d] [1]), petitioner presented no evidence establishing the extent of his injuries or the duration of any incapacitation resulting from such injuries. Petitioner thus failed to show how such injuries impacted his reporting of income tax for the years 2006 through 2010 and thereby failed to show that such injuries supported a finding of reasonable cause herein.

Finally, we reject petitioner's request to submit additional evidence on exception to substantiate his claims. This Tribunal does not consider evidence that was not presented to the Administrative Law Judge (*see Matter of Shi Ying Tan*, Tax Appeals Tribunal, October 16, 2014).

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Mark Geringer and of Mark and Robin Geringer is denied;
2. The determination of the Administrative Law Judge is affirmed;
3. The petitions of Mark Geringer and of Mark and Robin Geringer are denied; and

4. The notices of deficiency, numbered L-036292505-3 and L-038294481-2, and dated June 23, 2011, and July 17, 2012, respectively, are sustained .

DATED: Albany, New York
June 2, 2016

/s/ Roberta Moseley Nero
Roberta Moseley Nero
President

/s/ James H. Tully, Jr.
James H. Tully, Jr.
Commissioner