

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition :

of :

**CHAIM TYBERG** :

DETERMINATION  
DTA NO. 830436

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 2014.

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Petitioner, Chaim Tyberg, 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 2014.

A formal hearing by videoconference was held before Donna M. Gardiner, Administrative Law Judge, on February 14, 2023, with the final brief to be submitted by June 7, 2023, 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. (Peter B. Ostwald, Esq., of counsel).

***ISSUE***

Whether petitioner has established that a notice of deficiency issued to him for additional tax due for the tax year 2014 was erroneous.

***FINDINGS OF FACT***

1. On January 9, 2019, the Division of Taxation (Division) sent a letter to petitioner, Chaim Tyberg, that stated it did not receive a New York State income tax return for the year 2014 from him. The letter explained that, although it received petitioner's application for an

automatic six-month extension of time to file his return, there was no record that the 2014 return was filed.

2. On January 24, 2020, the Division issued a statement of proposed audit change (statement) to petitioner for the tax year 2014. The explanation portion of the statement indicated that the Division used information from petitioner's federal income tax return that he filed for 2014 to compute his tax as a resident of New York. The statement asserted additional tax in the amount of \$67,504.00, plus interest and penalties.

3. Thereafter, on February 18, 2020, petitioner filed a New York resident income tax return, form IT-201, for the year 2014 (return). The tax return was dated February 13, 2020, and was prepared by Aaron Tag, CPA.

4. On the return, petitioner reported gambling winnings in the amount of \$648,855.00, on line 16 as other income. The return indicated, on line 80, that petitioner owed \$34,080.00 in additional State and City personal income taxes. However, this amount was not remitted with the return. As a result of petitioner filing his 2014 return, the Division cancelled the January 24, 2020, statement that was issued to him.

5. On March 11, 2020, the Division issued another statement, bearing assessment number L-051314273, that reduced the amount of tax asserted due for the year 2014. This statement asserted additional tax in the amount of \$34,394.84, plus interest and penalties. Although petitioner reported on his return that he owed tax in the amount of \$34,080.00, the Division made an adjustment to his return and the amount of tax asserted due was \$34,394.84, plus interest and penalties, pursuant to Tax Law § 685 (a) (1) and (2), for late filing of the return and late payment of tax due.

6. On April 27, 2020, the Division issued a notice of deficiency, bearing assessment number L-051314273, for the tax year 2014 for tax due in the amount of \$34,394.84, plus interest and penalties.

7. Petitioner protested the notice by filing a request for conciliation conference (request) with the Division's Bureau of Conciliation and Mediation Services. By conciliation order, CMS. No. 000320267, dated February 5, 2021, the request was denied, and the notice was sustained.

8. On May 3, 2021, petitioner filed a timely petition with the Division of Tax Appeals in protest of the conciliation order.

9. At the hearing, petitioner claimed that his gambling winnings, as he reported on his 2014 return, appeared to be much larger than he remembered winning during that year. Petitioner testified that he was divorced in 2014 and that, as a single father of four children, he did not have the time to engage in gambling at the level required to win that amount of money. Petitioner asserted that someone else must have engaged in gambling using his player card from the casino. Petitioner never explained why he reported winnings in the amount of \$648,855.00 on his 2014 return. The record was left open until March 14, 2023, for petitioner to submit any evidence that could support his position. He failed to submit any documentation by March 14, 2023, and the record was closed on that date.

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

A. It is well settled that a determination of the Division contained in a notice of deficiency is entitled to a presumption of correctness and a petitioner bears the burden of demonstrating by clear and convincing evidence that the proposed assessment, or the method used to arrive at the assessment, is improper or erroneous (*Matter of Gilmartin v Tax Appeals*

*Trib.*, 31 AD3d 1008, 1010 [3d Dept 2006]; *Matter of Leogrande v Tax Appeals Trib.*, 187 AD2d 768, 769 [3d Dept 1992], *lv denied* 81 NY2d 704 [1993]; *Matter of Scarpulla v State Tax Commn*, 120 AD2d 842, 843 [3d Dept 1986]; *see also* Tax Law § 689 [e]).

B. The facts of this case indicate that petitioner filed his 2014 return on February 18, 2020. On this return, petitioner reported gambling winnings in the amount of \$648,855.00 and reported tax due in the amount of \$34,080.00. There is no dispute that the return was untimely filed, and that the tax was not paid.

Petitioner argues that the winnings as reported appear exaggerated. Petitioner was provided until March 14, 2023, to submit additional documentation to demonstrate that his winnings were erroneously reported. Petitioner failed to reply by March 14, 2023 and, thus, the record was closed on that date. Thereafter, on April 10, 2023, petitioner submitted documents with his brief.

As correctly noted by the Division, the Tax Appeals Tribunal (Tribunal) has established a firm policy of not allowing the submission of evidence after the record is closed. In *Matter of Saddlemire* (Tax Appeals Tribunal, June 14, 2001), the Tribunal stated, in pertinent part, that:

“[w]e have held that in order to maintain a fair and efficient hearing system, it is essential that the hearing process be both defined and final. If the parties are able to submit additional evidence after the record is closed, there is neither definition nor finality to the hearing. Further, the submission of evidence after the closing of the record denies the adversary the right to question the evidence on the record (*Matter of Saddlemire*, citing *Matter of Emerson*, Tax Appeals Tribunal, May 10, 2001, quoting *Matter of Schoonover*, Tax Appeals Tribunal, August 15, 1991).”

Therefore, the documents attached to petitioner’s brief are not properly in the record and were not considered in this determination.

C. Petitioner has simply failed to sustain his burden of proof. The Division used the amount of gambling winnings as reported by petitioner on his 2014 return (*see* Tax Law § 682 [a]). He provided no documentation to establish that this amount was inaccurate and, thus, he failed to show that the notice was incorrect.

D. The petition of Chaim Tyberg is denied and the notice of deficiency, dated April 27, 2020, is sustained.

DATED: Albany, New York  
December 7, 2023

Donna M. Gardiner  
ADMINISTRATIVE LAW JUDGE