

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition :  
of :  
**YVETTE VANCE** : **DETERMINATION**  
 : **DTA NO. 830870**  
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 2020. :

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Petitioner, Yvette Vance, 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 2020.

A hearing was held before Nicholas A. Behuniak, Administrative Law Judge, in Brooklyn, New York, on August 3, 2023, with all briefs due by November 30, 2023, 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. (Amy Seidenstock, Esq., of counsel).

***ISSUE***

Whether petitioner has established that the Division of Taxation improperly included unemployment compensation in her New York State adjusted gross income for tax year 2020.

***FINDINGS OF FACT***

1. On April 12, 2021, petitioner, Yvette Vance, electronically filed with the Division of Taxation (Division) form IT-201, New York State resident income tax return, with attached form IT-215, claim for earned income credit, form IT-213, claim for Empire State child credit, and form IT-272, claim for college tuition credit or itemized deduction (2020 form IT-201).

2. Petitioner's 2020 form IT-201 reported federal and New York State adjusted gross income of \$8,191.00; New York State tax withheld of \$264.00; New York City tax withheld of \$186.00; total New York State and New York City taxes due of \$0.00; and requested a refund of \$2,023.00. The \$2,023.00 refund requested by petitioner for tax year 2020 included an Empire State child credit of \$330.00, a New York State earned income credit of \$834.00, a New York City school tax credit of \$63.00, a college tuition credit of \$207.00, and a New York City earned income credit of \$139.00. Petitioner's 2020 form IT-201 does not reflect the receipt of any unemployment compensation.

3. The Division processed petitioner's 2020 form IT-201 and issued petitioner, by a check dated May 5, 2021, her requested refund amount of \$2,023.00. Subsequent thereto, the New York State Department of Labor (NYSDOL) provided the Division with information indicating that petitioner received unemployment compensation in the amount of \$19,608.00 during 2020.

4. On January 5, 2022, the Division issued petitioner a statement of proposed audit change, bearing assessment identification number L-055050586, for the tax year 2020 (statement). The statement explained, in relevant part, that:

“There is a discrepancy between our records and the amount of Unemployment Compensation you reported on your New York State 2020 Income Tax return. As a result, we changed your federal adjusted gross income to include the Unemployment Compensation you received from New York State. We used the amount that the New York State Department of Labor reported to us on Form 1099-G.

The total amount of Unemployment Compensation you received is taxable to New York State under New York State Tax Law. While you may be eligible to exclude a portion of your Unemployment Compensation on your federal tax return, there is no exclusion for New York State.

If you do not agree with the amount of Unemployment Compensation reported to us, you should get a copy of your 1099-G. Go to the New York State Department

of Labor's 1099-G website at [web address]. Follow the instructions on that page to get a copy of your 1099-G.

That website also has a section labeled 'Disagree with your 1099-G information?' From that section, you can get a form to fill out and send to the Department of Labor explaining why you think the 1099-G is not correct. If you get a corrected 1099-G from the Department of Labor, send us a copy of the corrected Form 1099-G.

\* \* \*

Since your federal adjusted gross income was increased, we have adjusted or disallowed any New York deductions or credits that are based on federal adjusted gross income."

5. The statement reflected the recomputation of petitioner's 2020 New York State tax liability by including the \$19,608.00 of unreported unemployment compensation in petitioner's income. This adjustment resulted in New York State and New York City 2020 income taxes due, and the reduction or elimination of the New York State and New York City tax credits previously taken by petitioner. As a result, petitioner's 2020 New York State refund amount was calculated to be \$734.00. The difference in the 2020 refund previously requested and paid of \$2,023.00, and the corrected 2020 refund amount of \$734.00, resulted in an overpayment of the 2020 refund of \$1,289.00 (\$2,023.00 - \$734.00) to petitioner.

6. The Division issued to petitioner a notice of deficiency, dated February 22, 2022, bearing assessment identification number L-055050586 (notice), assessing petitioner tax due of \$1,289.00, plus interest, for the tax year 2020.

7. Petitioner filed a petition with the Division of Tax Appeals on March 14, 2022, in protest of the notice.

8. At the hearing, petitioner offered into evidence an Internal Revenue Service account transcript (IRS transcript), dated April 20, 2022, reflecting petitioner's 2020 federal adjusted gross income of \$8,191.00. The IRS transcript did not reflect the inclusion of any unemployment compensation. Petitioner did not submit any additional documentation

supporting the amount of unemployment compensation she received in 2020. Petitioner testified that she only received \$11,000.00 in unemployment compensation during 2020.

### ***SUMMARY OF THE PARTIES' POSITIONS***

9. Petitioner argues that her 2020 unemployment compensation is not taxable as evidenced by the fact that such income is not reflected as taxable on her IRS transcript. Petitioner also argues that she only received \$11,000.00 in 2020 unemployment compensation.

10. The Division argues that petitioner's 2020 unemployment compensation is taxable income for State purposes even if not taxable for federal purposes. The Division also argues that petitioner fails to adequately establish that a lesser amount than what was reported by the NYSDOL of unemployment compensation was received by her in 2020.

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

A. It is initially noted that determinations made in a notice of deficiency are presumed correct, and the burden of proof is upon petitioner to establish, 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]). The burden does not rest with the Division to demonstrate the propriety of the deficiency (*see Matter of Scarpulla v State Tax Commn.*, 120 AD2d 842, 843 [3d Dept 1986]). A taxpayer who fails to present any evidence to show that the notice is incorrect surrenders to this presumption (*id.*). Furthermore, a taxpayer seeking to establish a right to a tax credit bears "the burden of showing 'a clear-cut entitlement' to the statutory benefit" (*see Matter of Kane*, Tax Appeals Tribunal, October 19, 2023, citing *Matter of Golub Serv. Sta. v Tax Appeals Trib.*, 181 AD2d 216, 219 [3d Dept 1992]; *see also Matter of Luther Forest Corp. v McGuinness*, 164 AD2d 629, 632 [3d Dept 1991], citing *Matter of Grace v State Tax Commn.*, 37 NY2d 193, 196 [1975], *rearg denied* 37 NY2d 816 [1975], *lv denied* 338 NE2d 330 [1975]). In this case, the

Division received information from the NYSDOL, another New York State agency, that petitioner had received unemployment compensation in 2020. There is no question that petitioner received unemployment compensation in 2020 and that she did not include it as income on her 2020 form IT-201. Petitioner challenges both the amount reported by the NYSDOL as paid to her and that such amount is taxable under the Tax Law.

B. Pursuant to Tax Law § 612 (a), “[t]he New York adjusted gross income of a resident individual means his federal adjusted gross income as defined in the laws of the United States for the taxable year.” Internal Revenue Code (IRC) (26 USC) § 85 (a) provides: “In the case of an individual, gross income includes unemployment compensation.” Furthermore, under the IRC, unemployment compensation includes amounts received by a state (*see* IRC [26 USC] § 85 [b]). Thus, the amount of unemployment compensation received from petitioner is properly included as income in her New York State tax calculation (*see* Tax Law §§ 611 [a]; 612 [a]).

The Division correctly points out that the American Rescue Plan Act of 2021 (Pub Law 117-2, March 11, 2021) amended the IRC by providing relief to individuals who received unemployment compensation in 2020, by excluding up to \$10,200.00 of such compensation from their federal gross income if their adjusted gross income was less than \$150,000.00 (*see* IRC [26 USC] § 85 [c] [1]). However, section 607 (a) of the Tax Law provides: “for taxable years beginning before January first, two thousand twenty-two, any amendments made to the [IRC] after March first, two thousand twenty shall not apply to this article.” Accordingly, since the relevant limitations of American Rescue Plan Act of 2021 on the taxation of unemployment compensation were an amendment to the IRC implemented on March 11, 2021, a date which falls after March 1, 2020, such amendments do not impact New York State’s calculation of an individual’s income subject to tax. As a result, the Division correctly determined that all of

petitioner's 2020 unemployment compensation was properly included in the calculation of her gross income for State purposes.

C. Petitioner claims that she only received \$11,000.00 in unemployment compensation in 2020, rather than \$19,608.00 as asserted by the Division. The Division's source for the dollar amount of unemployment compensation petitioner received in 2020 came directly from the NYSDOL. Other than petitioner's unsubstantiated claims, petitioner offers no evidence that her 2020 unemployment compensation was a lesser amount, nor did she challenge the information provided by the NYSDOL in the appropriate manner (*see* finding of fact 4). As such, petitioner has not met her burden of establishing that the notice was incorrect (*see* Tax Law § 689 [e]; 20 NYCRR 3000.15 [d] [5]).

D. The petition of Yvette Vance is denied and the notice of deficiency, dated February 22, 2022, is sustained.

DATED: Albany, New York  
May 30, 2024

/s/ Nicholas A. Behuniak  
ADMINISTRATIVE LAW JUDGE