

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
ERIC FLAKE	:	DETERMINATION DTA NO. 830918
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 2020.	:	

Petitioner, Eric Flake, 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 year 2020.

A formal hearing was held before Barbara J. Russo, Administrative Law Judge, in Brooklyn, New York, on April 18, 2024, at 10:00 a.m., with the final brief to be submitted by July 18, 2024, 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. (Amanda Alteri, at the hearing, and Christopher O'Brien, Esq., of counsel, on the brief).

ISSUE

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

FINDINGS OF FACT

1. On March 31, 2021, petitioner, Eric Flake, electronically filed with the Division of Taxation (Division) form IT-201, New York State resident income tax return, for tax year 2020 (2020 return).

2. Petitioner's 2020 return reported federal and New York adjusted gross income of \$19,241.00; New York State and City tax withheld of \$399.00 and \$299.00, respectively; and requested a refund of \$16.00. Petitioner's 2020 return does not reflect the receipt of any unemployment compensation.

3. The Division issued a refund of \$16.00 to petitioner on May 4, 2021.

4. The Division subsequently selected petitioner's 2020 return for a desk audit review. During the audit, the Division received information from the New York State Department of Labor (NYSDOL) indicating that petitioner received unemployment compensation in the amount of \$8,902.00 during 2020, as reported on NYSDOL's form 1099-G.

5. Based on the information received from NYSDOL, the Division recomputed petitioner's income to include unemployment compensation in the amount of \$8,902.00 and determined additional tax due of \$858.00 for tax year 2020.

6. On January 3, 2022, the Division issued to petitioner a statement of proposed audit change 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.”

7. The statement reflected the recomputation of petitioner’s 2020 New York State tax liability by including the \$8,902.00 of unreported unemployment compensation in petitioner’s income, resulting in tax due of \$858.00, plus interest.

8. On February 18, 2022, the Division issued to petitioner a notice of deficiency, bearing assessment identification number L-055020284 (notice), asserting tax due of \$858.00, plus interest, for the tax year 2020.

9. During the hearing in this matter, the Division introduced into evidence the NYSDOL form 1099-G, which reported that petitioner received unemployment compensation in the amount of \$8,902.00 in 2020 and that neither state nor federal income tax was withheld.

10. During the hearing, petitioner testified that “they’re stating in this paper that I got 8,000 or something like that” but that he did not get “\$8,000.00” and that he has been working part time since 2019. He did not contact NYSDOL to try and obtain a corrected form 1099-G.

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.*).

In this case, the Division received information from the NYSDOL that petitioner had received unemployment compensation in 2020. There is no question that petitioner did not include the amount of unemployment compensation reported on form 1099-G as income on his 2020 return. As such, petitioner bears the burden of proof to show that the Division improperly included unemployment compensation in its calculation of his tax due for the year 2020.

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 from a state (*see* IRC [26 USC] § 85 [b]). Thus, the amount of unemployment compensation received by a taxpayer is properly included as income in the calculation of New York State income tax (*see* Tax Law §§ 611 [a]; 612 [a]).

Although 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 gross income if their federal adjusted gross income was less than \$150,000.00 (*see* IRC [26 USC] § 85 [c] [1]), such amendment does not apply for New York State income tax purposes (*see* Tax Law § 607 [a]). 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 the 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.

C. Petitioner claims that he did not receive the amount of unemployment compensation in 2020 as reported on the NYSDOL form 1099-G. 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 he did not receive 2020 unemployment compensation or that he received a lesser amount than reported on the form 1099-G, nor did he challenge the information provided by the NYSDOL in the appropriate manner (*see* findings of fact 7 and 10). As such, petitioner has not met his burden of establishing that the notice was incorrect (*see* Tax Law § 689 [e]; 20 NYCRR 3000.15 [d] [5]).

D. The petition of Eric Flake is denied and the notice of deficiency, dated February 18, 2022, is sustained.

DATED: Albany, New York
December 5, 2024

/s/ Barbara J. Russo
ADMINISTRATIVE LAW JUDGE