STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition of **ABIR ELSAYAD AND MOHAMED HAMZA** 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 Administrative Code of the City of New York for the Year 2020.	: : : : : :	DETERMINATION DTA NO. 831295

Petitioners, Abir Elsayad and Mohamed Hamza, filed a petition 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 Administrative Code of the City of New York for the year 2020.

A formal hearing by videoconference was held before Alexander Chu-Fong, Administrative Law Judge, on September 30, 2025, with all briefs to be submitted by January 19, 2026, which date began the six-month period for the issuance of this determination. Petitioners appeared pro se. The Division of Taxation appeared by Amanda Hiller, Esq. (Colleen M. McMahon, Esq., of counsel).

ISSUE

Whether petitioners have established that the Division of Taxation improperly included unemployment compensation in their New York State adjusted gross income for tax year 2020.

FINDINGS OF FACT

1. Petitioners, Abir Elsayad and Mohamed Hamza, electronically filed with the Division of Taxation (Division) form IT-201, New York State resident income tax return, for tax year 2020 (return).

2. On their return, petitioners claimed two dependents. Petitioners' return reported federal and New York State adjusted gross income of $9,313.00; New York State tax withheld of $389.00; New York City tax withheld of $271.00; and requested a refund of $2,208.00. The $2,208.00 refund requested by petitioners included: an Empire State child credit of $313.00; a New York State earned income credit of $951.00; a New York City school tax credit of $125.00; and a New York City earned income credit of $159.00.

3. Petitioners' return does not reflect the receipt of any unemployment compensation. Specifically, line 14, which corresponds to unemployment compensation, is blank.

4. The Division received information from the New York State Department of Labor (NYSDOL) indicating that during tax year 2020, petitioners Ms. Elsayad and Mr. Hamza received unemployment compensation in the amounts of $19,826.00 and $30,080.00, respectively, for a total amount of $49,906.00.

5. On December 23, 2021, the Division issued to petitioners a statement of proposed audit change, asserting tax due of $4,409.00, plus interest, for tax year 2020 (statement). The statement explained, in relevant part:

> "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 *on.ny.gov/1099-G*. 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 that 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.
>
> We adjusted your household credit based on our changes.
>
> Based on the information provided, we have adjusted or disallowed your New York earned income credit(s).
>
> We allowed the appropriate NYC school tax credit (rate reduction amount)."

6. The statement reflected an adjustment to petitioners' return by including the $49,906.00 of unreported unemployment compensation as income on their return. The adjustment resulted in New York State and New York City income taxes due and reduced or eliminated the New York State and New York City tax credits claimed by petitioners. As a result, petitioners had a tax liability of $4,409.00.

7. Neither party submitted copies of either petitioner's form 1099-G for tax year 2020. Accordingly, the record does not contain documents indicating the amounts of unemployment compensation received by either petitioner for tax year 2020.

8. On February 9, 2022, the Division issued a notice of deficiency, notice number L-054951813 (notice), to petitioners, which asserted additional tax due in the amount of $4,409.00, plus interest, for tax year 2020.

9. Petitioners requested a conciliation conference with the Division's Bureau of Conciliation and Mediation Services (BCMS), which was conducted on February 8, 2023. By conciliation order, dated March 17, 2023, CMS number 000340510 (conciliation order), BCMS sustained the notice.

10. On May 5, 2023, petitioners filed a petition with the Division of Tax Appeals in protest of the conciliation order. The petition contained several unnumbered attachments, including documents regarding Mr. Hamza's medical conditions and petitioners' non-payment of rent. In the petition, petitioners asserted, in part: "[t]he commissioner of taxation and finance did not consider our financial situation and we explained to them that we can't even pay our rent and expenses." Based on their medical and financial situations, petitioners request forgiveness of the deficiency.

11. The Division submitted into evidence the affidavit of Carl Rossbach, along with attachments, sworn to on September 11, 2025. Mr. Rossbach states that he has worked for the Division since December 1998 and, since April 2020, has been a Tax Audit Administrator I in its Personal Income Tax Desk Audit Bureau. He states that, in this position, his job duties and responsibilities include overseeing the work performed by three audit groups, including the personal income tax credit unit, the federal change unit and the state modification unit. Mr. Rossbach states that he is involved in monitoring the production and efficiency of these various audit programs, and that he helps prepare multiple reports, including audit plans, quarterly reviews and information about the Division's data matching program. He also assists audit

group managers with staffing issues and complex audits, as well as being involved with the training and hiring of desk audit staff.

12. Mr. Rossbach states that his affidavit is based on his personal knowledge of the facts in this matter and based upon a review of the Department's official records, which are kept in the ordinary course of business. The affidavit has the following copies as attached exhibits: the return; screenshots capturing the Division's payroll tax processing system containing information related to petitioners (screenshots); the statement; and the notice. About the screenshots, Mr. Rossbach states the following:

> "I, and other Division employees, view various data fields regarding wage reporting through the Division's payroll tax processing system. Specifically, the Division maintains a record of all individual taxpayer data received from employers within the payroll tax processing system. Specifically, the payroll tax processing system displays the following when using the 'WRESUM' query which displays the Withholding Tax Processing Wage Reporting Employee Detail for each fiscal quarter as supplied by the employer. A copy of the WRESUM screen indicating the Petitioners' Department of Labor Unemployment information, specifically that the Petitioners received $49,906 in unemployment compensation…."

The affidavit of Mr. Rossbach lacks an explanation as to how the information on the screenshots came into the Division's possession, or the accuracy or significance of that data. The affidavit also lacks an explanation connecting the information on the screenshots to either petitioner's form 1099-G or how they relate to the amounts listed in the notice.

13. At the hearing, petitioner, Abir Elsayad, testified on behalf of petitioners. Ms. Elsayad admitted that in tax year 2020, petitioners did receive unemployment compensation, which Mr. Hamza requested by telephone. Ms. Elsayad averred, without support, that the unemployment compensation they received did not match the amounts shown in the Division's records. She testified that she did not know that unemployment compensation needed to be reported on the return and apologized for the error. Ms. Elsayad also testified to petitioners'

financial condition, which she described as very low. She testified that petitioners cannot pay their $5,000.00 monthly rent, and that they are being evicted.

14. After closing statements, the undersigned set forth a briefing schedule and closed the record in this matter.

15. Subsequent to the expiration of the briefing schedule, petitioners submitted a letter brief and additional documents, which they sought to be considered in rendering this determination. These items were returned to petitioners. Ms. Elsayad contacted the Division of Tax Appeals stating that these materials were late because she was out of the country.

CONCLUSIONS OF LAW

A. As a preliminary matter, petitioners' submission of a brief with additional documents after the record was closed must be addressed. The brief was submitted after the date on which it was due, and the documents were submitted long after the record in this matter was closed. Regarding the latter, in ***Matter of Schoonover*** (Tax Appeals Tribunal, August 15, 1991), the Tax Appeals Tribunal rejected a party's attempt to introduce new evidence after the record had been closed, stating that:

> "[i]n 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. For these reasons we must follow our policy of not allowing the submission of evidence after the closing of the record" (***id.***, citing ***Matter of Oggi Rest.***, Tax Appeals Tribunal, November 30, 1990; ***Matter of Morgan Guar. Trust Co. of N.Y.***, Tax Appeals Tribunal, May 10, 1990; ***Matter of International Ore & Fertilizer Corp.***, Tax Appeals Tribunal, March 1, 1990; ***Matter of Ronnie's Suburban Inn***, Tax Appeals Tribunal, May 11, 1989; ***Matter of Modern Refractories Serv. Corp.***, Tax Appeals Tribunal, December 15, 1988).

Similarly, herein, petitioners sought to provide additional evidence, as well as a brief, after the record was closed and the due date for the brief had passed. The attachments to the brief simply cannot be accepted (***see Matter of Schoonover***). Petitioners' rationale does not require a different outcome. It is noted that, regarding the brief, if petitioners requested more time *prior* to the expiration of the time to file, that request may have been granted. However, they made no such request. Accordingly, the brief and attachments are rejected and were not considered in rendering this determination (***see id.***).

B. Turning to the substantive dispute, a presumption of correctness attaches to a notice of deficiency issued by the Division (***see*** Tax Law § 689 [e]; ***Matter of Greenfeld***, Tax Appeals Tribunal, March 7, 2019, citing ***Matter of Leogrande v Tax Appeals Trib.***, 187 AD2d 768, 769 [3d Dept 1992], ***lv denied*** 81 NY2d 704 [1993]; ***Matter of Tavolacci v State Tax Commn***., 77 AD2d 759, 760 [3d Dept 1980]). In ***Matter of Atlantic & Hudson Ltd. Partnership*** (Tax Appeals Tribunal, January 30, 1992), the Tribunal stated:

> "Although a determination of tax must have a rational basis in order to be sustained upon review, the presumption of correctness raised by the issuance of the assessment, in itself, provides the rational basis, so long as no evidence is introduced challenging the assessment. Evidence that both rebuts the presumption of correctness and indicates the irrationality of the audit may appear: on the face of the audit as described by the Division through testimony or documentation; from factors underlying the audit which are developed by the petitioner at hearing; or in the inability of the Division to identify the bases of the audit methodology in response to questions posed at the hearing" (citations omitted).

It is well established in New York law that a notice of deficiency that has no rational basis must be set aside (***see Matter of Donahue v Chu***, 104 AD2d 523, 526 [3d Dept 1984]; ***Matter of Rosenthal v State Tax Commn.***, 102 AD2d 325, 328 [3d Dept 1984]; ***Matter of Welch v State Tax Commn.***, 89 AD2d 683, 684 [3d Dept 1982]).

C. 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: "[i]n 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]) in tax year 2020. However, they claim that the amount of unemployment compensation they received did not match the Division's records. As explained more fully below, the facts in evidence rebut the presumption of correctness that attaches to the issuance of the notice and establish that it has no rational basis.

D. The Division asserted that in tax year 2020, petitioners received $49,406.00 in unemployment compensation in the notice. The notice clearly stated that the Division calculated this amount from the information on petitioners' forms 1099-G. Neither petitioner's form 1099-G for tax year 2020 appears in the record. As such, the record lacks direct evidence of the source of the amount of unemployment compensation attributed to petitioners by the Division. Further, the affidavit of Mr. Rossbach does not establish an alternative basis for the calculation of petitioners' unemployment compensation for tax year 2020. In that document, he relies on the information from screenshots, which was derived from a "WRESUM" query. Mr. Rossbach does not provide any meaningful explanation of this information, including how the information came into the Division's possession, whether it was reviewed or derived from another source, the significance of the information as it relates to either petitioner's form 1099-G or how the information on the screenshots relate to the calculation of petitioner's unemployment compensation for tax year 2020. In sum, the record lacks the source used to derive petitioners' unemployment compensation for tax year 2020. The Division's calculations, resulting in the additional tax asserted due, lack any evidentiary support in the record, thereby failing to establish the basis for the notice

E. The petition of Abir Elsayad and Mohamed Hamza is granted and the notice of deficiency, dated February 9, 2022, is cancelled.

DATED: Albany, New York
July 2, 2026

/s/ Alexander Chu-Fong
ADMINISTRATIVE LAW JUDGE