STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
SARAH FORST	:	DETERMINATION DTA NO. 850725
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, Sarah Forst, 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 the year 2020.

A formal hearing by videoconference was held before Jennifer L. Baldwin, Administrative Law Judge, on May 13, 2025, with all briefs to be submitted by August 20, 2025, which date began the six-month period for the issuance of this determination. Petitioner appeared by Nancy Diamond/Forst. The Division of Taxation appeared by Amanda Hiller, Esq. (Zoe R. Huber, Esq., of counsel).

ISSUES

I. Whether petitioner filed a timely petition with the Division of Tax Appeals following the issuance of a conciliation order.

II. Whether petitioner is liable for interest for tax year 2020.

III. 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. Petitioner, Sarah Forst, electronically filed with the Division of Taxation (Division) form IT-203, nonresident and part-year resident income tax return, for tax year 2020 (return). On the return, petitioner reported $13,131.00 of unemployment compensation on line 14 (federal and New York State amounts) and subtracted other income in the amount of $10,200.00 on line 16 (federal and New York State amounts) described as nontaxable unemployment. Included with the return was federal form W-2, wage and tax statement, information indicating that petitioner received wages in the amounts of $186.00 from Jewish Community Center of Binghamton, Vestal, New York (JCC of Binghampton), and $2,946.00 from Jewish Community Center, Tenafly, New Jersey (JCC of Tenafly), in tax year 2020. Petitioner reported tax due of $81.00.

2. The Division received information from the New York State Department of Labor (NYSDOL) indicating that petitioner received unemployment compensation in the amount of $13,130.50 during tax year 2020, as reported on form 1099-G, statement for recipients of certain government payments. Petitioner's form 1099-G explains that unemployment compensation includes unemployment insurance payments, federal extended benefits payments, trade adjustment act basic, retroactive and additional training payments, pandemic unemployment assistance payments and lost wages assistance payments. Her form 1099-G indicates that New York State is the payer.

3. The Division conducted an audit of petitioner's return and, on May 3, 2022, issued to petitioner a statement of proposed audit change (statement), asserting tax due of $425.00, plus interest, for tax year 2020. The statement explained as follows:

> "We adjusted your **recomputed** federal adjusted gross income (line 19a of Form IT-203) to include the unemployment compensation that was excluded from your federal gross income.
>
> Under New York State tax law, unemployment compensation is fully subject to tax. The amount that was excluded on your federal return (up to $10,200 per taxpayer) should have been reported as an add back to your New York State return on Line 1, Schedule A of Form IT-558.
>
> The adjustments resulted in a change to the income percentage used to calculate your New York tax.
>
> The income percentage is multiplied by the base tax to compute the correct New York tax.
>
> Interest is due on the underpayment of tax from the due date of the return to the date the tax is paid in full. Interest is required under section 684(a) of the Tax Law."

The statement reflected the recalculation of petitioner's federal and New York adjusted gross income to include the previously subtracted amount of $10,200.00.

4. On June 3, 2022, petitioner made a payment of $425.00, reflecting the tax asserted due in the statement.

5. On June 22, 2022, the Division issued a notice of deficiency, notice number L-055877363 (notice), to petitioner asserting additional tax due of $425.00, plus interest due of $34.74, less assessment payments/credits of $425.00 for a balance due of $34.74 for tax year 2020. The notice was issued to petitioner at an address in Fort Lee, New Jersey, without any apartment designation.

6. Petitioner requested a conciliation conference with the Division's Bureau of Conciliation and Mediation Services (BCMS), which was conducted on June 29, 2023. By conciliation order, dated August 11, 2023, CMS number 000342485 (conciliation order), BCMS sustained the notice. The conciliation order was issued to petitioner at an address in Fort Lee,

New Jersey, with an apartment designated as "Apt. LE." The conciliation order stated that "[t]he requester was represented by Nancy Diamond/Forst."

7. On November 13, 2023, petitioner filed a petition with the Division of Tax Appeals in protest of the conciliation order. The envelope in which the petition was mailed bears a United States Postal Service (USPS) postmark, dated November 13, 2023. In the petition, petitioner asserted, in part, as follows:

> "The contested amount was unfairly incurred. It was due to unclear instructions provided by NY regarding the amount of tax due and the delay in notifying me that there was in fact a discrepancy - specifically whether certain income was taxable or not taxable. This was penalty applied to me which I had no control over and would not have occurred if New York notified me immediately, not over a year later."

Petitioner indicated that the contested amount was $38.22.

8. At the hearing, Nancy Diamond/Forst testified on behalf of petitioner. Ms. Diamond/Forst explained that when petitioner's return was filed, there was proposed legislation in New York State that would have exempted from taxation the $10,200.00 of unemployment compensation that was not taxable for federal purposes. She stated that "[petitioner] should not have been penalized for a year and a half of not paying that 400-something dollars because we were under the assumption that it wasn't going to be taxable."

9. Ms. Diamond/Forst also stated as follows:

> "If you look at [petitioner's return], you see that in New York she made a whole whopping -- where is this? -- I think a hundred-and-something dollars in New York. Yep, a whole whopping $186 in New York income out of $3,000 of total income, and previous years were the same thing.
>
> So most of that unemployment was coming from New Jersey sources where she paid into New Jersey unemployment, and New Jersey unemployment covered that portion of it, plus the federal government with the pandemic assistance. It might have been paid through New York, but it was coming from the federal government. It was sourced from the federal government. It was not sourced through New York."

She explained that petitioner worked at the JCC of Binghampton while she attended college in New York and the JCC of Tenafly when she was home in New Jersey when school was not in session. She further explained that petitioner applied for unemployment compensation in New York:

> "[b]ecause at the particular time she was in school when they said we're closing down and you need to file for unemployment. If they closed down two months earlier, she would have been in New Jersey, applying in New Jersey. If it was a month later, she would have been home, spring break, working in New Jersey. So it was just the matter of when exactly it was, but she could have applied [in] New York or New Jersey theoretically because she was scheduled spring break to work in New Jersey, and that was cancelled."

Ms. Diamond/Forst confirmed that petitioner received $13,130.50 of unemployment compensation in 2020, however, she argued that it was not from but "[p]assed through [the] New York Department of Labor."

10. Petitioner submitted into evidence a copy of a corrected form IT-203 for tax year 2020.[1] On this return, petitioner reported unemployment compensation of $13,131.00 (federal amount) and $187.00 (New York State amount) on line 14. Unlike her (original) return, petitioner did not subtract $10,200.00 on line 16 (federal or New York State amounts) on this corrected version. Petitioner reported tax due of $15.00, total payments and credits of $506.00 and an overpayment of $491.00.

11. The Division submitted into evidence a motion for summary determination in this matter, dated January 23, 2025. The Division previously filed two motions, both of which were denied by the undersigned administrative law judge in orders, dated July 18, 2024 and December

[1] Petitioner submitted a copy of the same corrected form IT-203 with its post-hearing brief, as well as a second corrected form IT-203 for tax year 2020 and a copy of Internal Revenue Service form 843, claim for refund and request for abatement. As the record was closed, the documents were not considered in rendering this determination (***see Matter of Schoonover***, Tax Appeals Tribunal, August 15, 1991).

5, 2024. The undersigned administrative law judge informed the parties that the third motion would not further delay the hearing and that the merits of such would be addressed with all other issues at the hearing.

In its third motion, the Division asserts that "[a]s the petition was filed more than 90 days from the date the Conciliation Order was issued, it was untimely filed and the Division of Tax Appeals lacks jurisdiction to review the Notice." Petitioner was allowed to respond to the Division's motion in its brief.

12. In support of its motion and to show proof of proper mailing of the conciliation order, the Division, by affidavit of Zoe Huber, Esq., sworn to on January 23, 2025, submitted the following with its motion papers: (i) an affidavit of Carla Podlucky, Assistant Supervisor of Tax Conferences of BCMS, sworn to on January 6, 2025; (ii) a "CERTIFIED RECORD FOR MANUAL MAIL - CMS-37 - BCMS Order" (CMR), postmarked August 11, 2023; (iii) a copy of the request for conciliation conference, wherein petitioner indicated that her address was correct on the bill she received and that no one would represent her regarding her protest; (iv) copies of the conciliation order and cover sheet, dated August 11, 2023, both of which were addressed to petitioner and Ms. Diamond/Forst at the Fort Lee, New Jersey, address with the apartment designation; (v) an affidavit of Justin Lombardo, a manager of the Division's mail room, sworn to on January 7, 2025; and (vi) a copy of a power of attorney form, dated June 2, 2023, authorizing Ms. Diamond/Forst to represent petitioner and indicating the power of attorney was for "[a] conciliation conference or Tax Appeals hearing." The form lists petitioner's and Ms. Diamond/Forst's Fort Lee, New Jersey, address with the apartment designation.

13. Ms. Podlucky, in her affidavit, sets forth BCMS's general practice and procedure for preparing and mailing conciliation orders. The procedure culminates in the mailing of the

conciliation orders by USPS, via certified mail, and confirmation of such mailing through receipt by BCMS of a postmarked copy of the CMR.

14. The BCMS Data Management Services Unit prepares and forwards the conciliation orders and the accompanying cover letters, predated with the intended date of mailing, to the conciliation conferee for review. The conciliation conferee, in turn, submits the orders and cover letters to the conference supervisor for final approval.

15. The name, mailing address, order date and BCMS number for each conciliation order to be issued are electronically sent to the Division's Advanced Function Printing Unit (AFP Unit). For each mailing, the AFP Unit assigns a certified control number and produces a cover sheet that indicates the BCMS return address, date of mailing, addressee's name, mailing address, BCMS number, certified control number and certified control number bar code.

16. The AFP Unit also produces a computer-generated CMR. The CMR is a listing of taxpayers (and representatives) to whom conciliation orders are sent by certified mail on a particular day. The certified control numbers are recorded on the CMR under the heading "CERTIFIED NO." The BCMS numbers are recorded on the CMR under the heading "REFERENCE NO." The AFP Unit prints the CMR and cover sheets using a printer located in BCMS, and these documents, along with the conciliation orders and cover letters, are delivered to the BCMS clerk assigned to process conciliation orders.

17. The clerk's regular duties include associating each cover sheet, cover letter and conciliation order. The clerk verifies the names and addresses with the information listed on the CMR and on the cover sheet. The clerk then folds and places the cover sheet, cover letter and conciliation order into a three-windowed envelope through which the BCMS return address, certified control number, bar code and name and address of the addressee appear.

18. The "TOTAL PIECES AND AMOUNTS" is indicated on the last page of the CMR. It is the general office practice that the BCMS clerk stamps "MAILROOM: RETURN LISTING TO: BCMS BLDG 9 RM 180 ATT: CONFERENCE UNIT" on the bottom left corner of the CMR.

19. The BCMS clerk also writes the date of mailing of the conciliation orders on the CMR at the top of each page of the CMR. In this case, "8-11-23" was written in the upper right corner of each page of the CMR.

20. The CMR, along with the envelopes containing the cover sheets, cover letters and conciliation orders, are picked up from BCMS by an employee of the Division's mail processing center.

21. Ms. Podlucky attests to the truth and accuracy of the copy of the 14-page CMR, which contains a list of the conciliation orders issued by BCMS on August 11, 2023. Each such certified control number is assigned to an item of mail on the 14 pages of the CMR. Specifically, corresponding to each listed certified control number is a reference number or BCMS number and the name and address of the addressee.

22. Information regarding the conciliation order issued to petitioner is contained on page 12 of the CMR. Specifically, corresponding to certified control number 9207 1041 0029 7353 353428 is reference number 000342485, along with petitioner's name and the Fort Lee, New Jersey, address, including "Apt. LE." Additionally, information regarding the copy of the conciliation order issued to Ms. Diamond/Forst is contained on page 9 of the CMR. Specifically, corresponding to certified control number 9207 1041 0029 7353 353138 is reference number 000342485, along with Ms. Diamond/Forst's name and the same Fort Lee, New Jersey, address as petitioner.

23. Mr. Lombardo, a manager of the Division's mail room since 2016 and currently an Associate Administrative Analyst, whose duties include the management of the mail processing center staff, attested to the regular procedures followed by his staff in the ordinary course of business of delivering outgoing mail to branch offices of the USPS in his affidavit. He stated that after a conciliation order is placed in the "Outgoing Certified Mail" basket in the mail processing center, a member of the staff weighs and seals each envelope and affixes postage and fee amounts. A clerk then counts the envelopes and verifies the names and certified control numbers against the information contained on the CMR. Thereafter, a member of the staff delivers the stamped envelopes to a branch of the USPS in the Albany, New York, area. A postal employee affixes a postmark and his or her initials or signature to the CMR indicating receipt by the post office.

24. In this instance, the postal employee affixed a postmark, dated August 11, 2023, to each page of the 14-page CMR. The postal employee wrote the number "159" and initialed or signed page 14 to indicate the total pieces of mail received at the post office.

25. Mr. Lombardo stated that the CMR is the Division's record of receipt, by the USPS, for pieces of certified mail. In the ordinary course of business and pursuant to the practices and procedures of the Division's mail processing center, the CMR is picked up at the post office by a member of Mr. Lombardo's staff on the day after its initial delivery and is then returned to the originating office, in this case, BCMS. The CMR is maintained by BCMS in the regular course of business.

26. Based on his review of the affidavit of Ms. Podlucky, the exhibits attached thereto and the CMR, Mr. Lombardo averred that on August 11, 2023, an employee of the mail room processing center delivered an item of certified mail addressed to petitioner at the Fort Lee, New

Jersey, address, including "Apt. LE," and an item of certified mail addressed to Ms. Diamond/Forst at the same address to a branch of the USPS in the Albany, New York, area in sealed postpaid envelopes for delivery by certified mail. He stated that he can also determine that a member of his staff obtained a copy of the CMR delivered to, and accepted by, the post office on August 11, 2023, for the records of BCMS. Mr. Lombardo asserted that the procedures described in his affidavit are the regular procedures followed by the mail processing center in the ordinary course of business when handling items to be sent by certified mail, and that these procedures were followed in mailing the pieces of certified mail to petitioner and Ms. Diamond/Forst on August 11, 2023.

CONCLUSIONS OF LAW

A. The Division brings a motion for summary determination under section 3000.9 (b) of the Rules of Practice and Procedure of the Tax Appeals Tribunal (Rules).[2] A motion for summary determination is properly granted:

> "if, upon all the papers and proof submitted, the administrative law judge finds that it has been established sufficiently that no material and triable issue of fact is presented and that the administrative law judge can, therefore, as a matter of law, issue a determination in favor of any party" (20 NYCRR 3000.9 [b] [1]).

Section 3000.9 (c) of the Rules provides that a motion for summary determination is subject to the same provisions as a motion for summary judgment pursuant to CPLR 3212. "The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case" (***Winegrad v New York Univ. Med. Ctr.***, 64 NY2d 851, 853 [1985], citing

[2] It is noted that "[a] motion to dismiss, rather than a motion for summary determination, is appropriate where . . . the threshold issue is whether a petition has been timely filed with the Division of Tax Appeals" (***Matter of Marrero***, Tax Appeals Tribunal, May 21, 2020). The standard of review, however, is the same for both (***Matter of Nwankpa***, Tax Appeals Tribunal, October 27, 2016).

Zuckerman v City of New York, 49 NY2d 557, 562 [1980]). As summary judgment is the procedural equivalent of a trial, it should be denied if there is any doubt as to the existence of a triable issue or where the material issue of fact is "arguable" (***Glick & Dolleck v Tri-Pac Export Corp.***, 22 NY2d 439, 441 [1968]; ***Museums at Stony Brook v Village of Patchogue Fire Dept.***, 146 AD2d 572, 573 [2d Dept 1989]). If material facts are in dispute, or if contrary inferences may be drawn reasonably from undisputed facts, then a full trial is warranted and the case should not be decided on a motion (***see Gerard v Inglese***, 11 AD2d 381, 382 [2d Dept 1960]). "To defeat a motion for summary judgment, the opponent must . . . produce 'evidentiary proof in admissible form sufficient to require a trial of material questions of fact on which he rests his claim'" (***Whelan v GTE Sylvania***, 182 AD2d 446, 449 [1st Dept 1992], citing ***Zuckerman v City of New York***, 49 NY2d at 562).

B. Tax Law § 170 (3-a) (e) provides, in pertinent part, that a conciliation order is binding on the taxpayer unless the taxpayer files a petition for a hearing in the Division of Tax Appeals within 90 days after the conciliation order is issued. A conciliation order is "issued" within the meaning of Tax Law § 170 (3-a) (e) at the time of its mailing to the taxpayer at the taxpayer's last known address (***see Matter of Wilson***, Tax Appeals Tribunal, July 13, 1989). The Division of Tax Appeals lacks jurisdiction to consider the merits of any petition filed beyond the 90-day time limit (***see Matter of Victory Bagel Time***, Tax Appeals Tribunal, September 13, 2012).

C. Where the timeliness of a taxpayer's petition following a conciliation order is in question, the initial inquiry focuses on whether the conciliation order was properly issued (***see Matter of Cato***, Tax Appeals Tribunal, October 27, 2005; ***Matter of DeWeese***, Tax Appeals Tribunal, June 20, 2002). BCMS is responsible for providing conciliation conferences and issuing conciliation orders (***see*** Tax Law § 170 [3-a]). As noted above, a conciliation order is

"issued" within the meaning of Tax Law § 170 (3-a) (e) at the time of its proper mailing to the taxpayer (***see Matter of Dean***, Tax Appeals Tribunal, July 24, 2014; ***Matter of Cato***; ***Matter of DeWeese***; ***Matter of Wilson***). An order is properly mailed when it is delivered into the custody of the USPS, properly addressed and with the requisite amount of postage affixed (***see Matter of Air Flex Custom Furniture***, Tax Appeals Tribunal, November 25, 1992).

D. The evidence required of the Division to establish proper mailing is twofold: first, there must be proof of a standard procedure used by the Division for the issuance of orders by one with knowledge of the relevant procedures; and second, there must be proof that the standard procedure was followed in the particular instance in question (***see Matter of Katz***, Tax Appeals Tribunal, November 14, 1991; ***Matter of Novar TV & Air Conditioner Sales & Serv.***, Tax Appeals Tribunal, May 23, 1991).

E. In this case, the Division has not met its burden of establishing proper mailing of the conciliation order with the accompanying cover sheet and cover letter to petitioner. Specifically, BCMS was required to mail the conciliation order to petitioner's last known address (***see Matter of Wilson***). The phrase "last known address," for purposes of the Division's issuance of statutory notices carrying with them the right to a hearing, is defined as "the address given in the last return filed by [the taxpayer], unless subsequently to the filing of such return the taxpayer shall have notified the [Division] of a change of address" (Tax Law § 691 [b]).

Relying on ***Matter of Bruel*** (Tax Appeals Tribunal, January 16, 2025), the Division argues that BCMS properly used the address listed for petitioner on the power of attorney form submitted in connection with her conciliation conference. In ***Matter of Bruel***, the Tax Appeals Tribunal (Tribunal) held that "the Division exercised the requisite diligence in relying on the address used in petitioner's Power of Attorney and the request for conciliation conference."

However, it is unclear if the Tribunal was referring to the address of the petitioner or the address of the petitioner's representative in that matter. The only finding of fact with respect to the power of attorney form states that the Division provided "a copy of a fully executed power of attorney, form POA-1, dated December 2, 2021, that authorized Nora Sagendorf as petitioner's representative, and listed a Stamford, Connecticut, address" in response to the notice of intent to dismiss petition (***Matter of Bruel***, finding of fact 4). But, the conciliation order was mailed to the petitioner at a New York, New York, address (***id.***, findings of fact 1 and 18). While a power of attorney "puts the representative in the taxpayer's place" and has been used to establish the last known address of a taxpayer's representative[3] (***see Matter of Oberlander***, Tax Appeals Tribunal, August 24, 2020), it cannot be determined that a power of attorney form can be used to establish a taxpayer's last known address here absent clear and concise notification to the Division that petitioner permanently changed her address (***see Matter of Kallianpur***, Tax Appeals Tribunal, May 29, 2019). Accordingly, the Division has failed to make a prima facie showing of entitlement to judgment as a matter of law on the issue of whether petitioner filed a timely petition with the Division of Tax Appeals.

F. Turning to the matter of interest, Tax Law § 684 (a) provides, in pertinent part, as follows:

> "If any amount of income tax is not paid on or before the last date prescribed in this article for payment, interest on such amount . . . shall be paid for the period from such last date to the date paid, whether or not any extension of time for payment was granted."

Tax Law § 3008 (a) provides for the abatement of interest attributable to certain unreasonable errors or delays by the Division. The application of the statute is limited to

[3] The Division has proven that its standard procedure for mailing a copy of the order to petitioner's representative, Ms. Diamond/Forst, at the address listed on the power of attorney form, was followed in this case.

unreasonable errors or delays by Division employees in performing "ministerial or managerial" acts, and only if no significant aspect of the unreasonable error or delay can be attributed to the taxpayer involved (***see*** Tax Law § 3008 [a] [1] [A] and [2]). Petitioner argues that the Division took too long to find petitioner's error on her return. The notice, however, was issued well within the statute of limitations for assessment (***see*** Tax Law § 683 [a]) and, therefore, is not the result of an unreasonable error or delay by the Division.

By requesting that interest be abated, petitioner, in essence, seeks an interest-free loan from New York State. As noted by the Tribunal in ***Matter of Rizzo*** (Tax Appeals Tribunal, May 13, 1993):

> "Failure to remit tax gives the taxpayer the use of funds which do not belong to him or her, and deprives the State of funds which belong to it. Interest is imposed on outstanding amounts of tax due to compensate the State for its inability to use the funds and to encourage timely remittance of tax due . . . It is not proper to describe interest as substantial prejudice, as it is applied to all taxpayers who fail to remit . . . tax due in a timely manner. Rather, a more accurate interpretation would be to say that interest represents the cost to the taxpayer for the use of the funds . . ."

As such, petitioner has not proven that interest should be abated.

G. After the petition was filed, and at the hearing, petitioner asserted that all or most of the unemployment compensation she received was not taxable in New York State because she was a nonresident. As the Division of Tax Appeals may determine an overpayment after a notice of deficiency is mailed and a timely petition filed (***see*** Tax Law § 687 [f]), as is the case herein, such argument will be considered.

H. Tax Law § 601 (e) (1) imposes tax on nonresident individuals on income from New York sources. The tax imposed on a nonresident individual is equal to the tax imposed on a New York resident for the full year, reduced by certain credits, and then multiplied by the New York source fraction (***see*** Tax Law § 601 [e] [1], [2] and [3]). The New York source fraction, in turn,

is equal to the individual's New York source income divided by the individual's New York adjusted gross income from all sources for the entire year (***see*** Tax Law § 601 [e] [3]). A nonresident individual's New York source income is defined by Tax Law § 631 (a) (1) and (2) and consists of the sum of the items of income, gain, loss and deduction entering into federal adjusted gross income derived from or connected with New York sources. Income derived from or connected with New York sources includes income attributable to a business, trade, profession or occupation carried on in New York State (***see*** Tax Law § 631 [b] [1] [B]). The tax is determined by applying the appropriate graduated rate in Tax Law § 601 (a) through (c) to the taxpayer's New York taxable income (***see*** Tax Law § 611 [a]). New York taxable income is the taxpayer's "New York adjusted gross income," less any statutory deductions or exemptions (***see id.***), which is determined by reference to the taxpayer's "federal adjusted gross income as defined in the laws of the United States for the taxable year" (Tax Law § 612 [a]).

I. Internal Revenue Code (IRC) (26 USC) § 85 (a) provides that, "[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]). 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]).

Tax Law § 607 (a) provides that, "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.

J. In this case, there is no dispute that the unemployment compensation petitioner received in 2020 was paid by the NYSDOL. Petitioner nevertheless argues that the money originated from the federal government or that it was attributable to her employment in New Jersey and, in either case, should not be considered New York source income.

As noted above, New York source income includes income attributable to a business, trade, profession or occupation carried on in New York State (***see*** Tax Law § 631 [b] [1] [B]). Petitioner has not established, by clear and convincing evidence, that the unemployment compensation she received as a nonresident from New York State resulted from her employment in New Jersey (***see Matter of Suburban Restoration Co. v Tax Appeals Trib.***, 299 AD2d 751, 752 [3d Dept 2002]; Tax Law § 689 [e]).

The only evidence in the record regarding petitioner's unemployment compensation is petitioner's form 1099-G, which shows that the NYSDOL paid $13,130.50 of unemployment compensation to petitioner in 2020. Petitioner's form 1099-G does not indicate what type of unemployment compensation she received, only that New York State was the payer (***see*** finding of fact 2). There is no indication on the form, or otherwise in the record, how the NYSDOL determined the amount of her payments or on what they were based. Other than petitioner's unsubstantiated claims, petitioner has provided no evidence that the unemployment

compensation she received was from the federal government or was based on wage or salary income earned partly in and partly out of New York State.[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]).

K. The motion of the Division of Taxation for summary determination is denied, the petition of Sarah Forst is denied and the notice of deficiency, dated June 22, 2022, is sustained.

DATED: Albany, New York
February 12, 2026

/s/ Jennifer L. Baldwin
ADMINISTRATIVE LAW JUDGE

[4] Petitioner points to her 2020 forms W-2 to show that almost all her wage income is from her New Jersey employment and the same should be used to determine what, if any, of her unemployment compensation resulted from her employment in New York State. It seems unlikely, however, that the NYSDOL used her 2020 wage income to determine her 2020 payments.