STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
RAYMOND AND HORTENSE MARAGH	:	DECISION DTA NO. 830290
for Redetermination of a Deficiency or for Refund of New York State Personal Income Tax under Article 22 of the Tax Law for the Years 2007, 2008, 2009 and 2011.	:	

Petitioners, Raymond and Hortense Maragh, filed an exception to the determination of the Administrative Law Judge issued on May 16, 2024. Petitioners appeared pro se. The Division of Taxation appeared by Amanda Hiller, Esq. (Peter B. Ostwald, Esq., of counsel).

Petitioners filed a brief in support of the exception. The Division of Taxation filed a letter brief in opposition. Petitioners filed a letter brief in reply. Oral argument was heard on July 24, 2025, in New York, New York, which date began the six-month period for issuance of this decision.

After reviewing the entire record in this matter, the Tax Appeals Tribunal renders the following decision.

ISSUE

Whether petitioners have sustained their burden of proof to establish entitlement to a refund of personal income taxes paid for the years 2007, 2008, 2009 and 2011.[1]

FINDINGS OF FACT

We find the facts as determined by the Administrative Law Judge, except for findings of

[1] Although the petition included protests for the years 2013 and 2014, petitioners no longer contest those years.

of fact 9, 11 and 12, which we have modified to reflect the record more completely. Former finding of fact 9 has been clarified and expanded into new findings of fact 10 and 11. Former findings of fact 11 and 12 have been modified and renumbered as 13 and 14. Accordingly, former finding of fact 10 is renumbered to 12 and former finding of fact 13 is renumbered to 15. We also add new finding of fact 16 for clarity. The modified findings of fact and the additional finding of fact, together with the facts as found by the Administrative Law Judge, are set forth below.

1. Petitioners, Raymond and Hortense Maragh, late-filed New York State resident income tax returns, forms IT-201, for each of the years 2007, 2008, 2009 and 2011 (returns).

2. Petitioners filed their 2007 return on October 1, 2012. On line 18, petitioners reported federal adjusted gross income in the amount of $1,298,948.00. Petitioners reported $1,190,949.00 in gambling losses as both a New York subtraction on line 31 of the return and also as part of its itemized deductions claimed on line 34 of the return. On March 13, 2013, the Division issued to petitioners a notice and demand for payment of tax due (notice and demand), assessment number L-039130214, in the amount of $87,319.90, plus interest for the year 2007. The notice and demand informed petitioners that the Division of Taxation (Division) audited their 2007 return and disallowed the New York subtraction in the amount of $1,190,949.00. The Division disallowed the reported subtraction based on its determination that gambling losses do not qualify as a New York subtraction. Additionally, the Division disallowed the itemized deduction for gambling losses and asked for proof for the claimed losses. No penalty was imposed.

3. Petitioners filed their 2008 return on October 1, 2012. On line 18, petitioners reported federal adjusted gross income in the amount of $1,448,034.00. Petitioners reported

$1,309,535.00 in gambling losses as both a New York subtraction on line 31 of the return and also as part of its itemized deductions claimed on line 34 of the return. On March 13, 2013, the Division issued to petitioners a notice and demand, assessment number L-039126605, in the amount of $93,097.40, plus interest and penalty. The penalty assessed was for a late-filed return. The notice and demand informed petitioners that the Division audited their 2008 return and disallowed the New York subtraction in the amount of $1,309,535.00. The Division determined that gambling losses do not qualify as a New York subtraction. Additionally, the Division disallowed the itemized deduction for gambling losses and asked for proof for the claimed losses.

4. Petitioners filed their 2009 return on December 4, 2012. On line 18, petitioners reported federal adjusted gross income in the amount of $398,297.00. Petitioners reported $270,092.00 in gambling losses as both a New York subtraction on line 31 of the return and also as part of its itemized deductions claimed on line 34 of the return. On January 15, 2016, the Division issued to petitioners a notice and demand, assessment number L-044254196, in the amount of $9,089.77, plus interest and penalties. The penalties assessed were for a late-filed return and for late payment of the taxes due. The notice and demand informed petitioners that the Division audited their 2009 return and disallowed the New York subtraction in the amount of $270,092.00. The Division determined that gambling losses do not qualify as a New York subtraction. Additionally, the Division adjusted the itemized deduction to an amount of $223,106.00, which reflects that a portion of the gambling losses was allowed.

5. Petitioners filed their 2011 return on May 1, 2017. The Division reviewed their 2011 return and determined that the amount of reported itemized deductions was too high. On line 18, petitioners reported federal adjusted gross income in the amount of $1,132,769.00.

Petitioners reported itemized deductions in the amount of $980,686.00, of which $945,293.00 represented claimed gambling losses. The Division determined that, since petitioners' adjusted gross income was over $1 million, the itemized deductions were limited to 50% of any charitable contributions claimed that year. Petitioners reported charitable contributions in the amount of $2,500.00. In recomputing petitioners' return, the Division used the standard deduction for petitioners, filing as married on a joint return, in the amount of $15,000.00. On August 23, 2017, the Division issued to petitioners a notice and demand, assessment number L-046966108, in the amount of $95,909.75, plus interest and penalties. The penalties assessed were for a late-filed return and for late payment of the taxes due.

6. On July 10, 2018, the outstanding liabilities were satisfied as a result of a collection action brought by the Division.

7. Petitioners filed requests for conciliation conference (requests) with the Division's Bureau of Conciliation and Mediation Services for a refund of the taxes paid. By conciliation orders, CMS. No. 000316138 and No. 000316163, dated December 11, 2020, the requests were denied.

8. On January 26, 2021, petitioners filed a timely petition with the Division of Tax Appeals in protest of the conciliation orders.

9. The Division did not present any witnesses nor an affidavit by an auditor. The notices and demands issued for the years 2007 through 2009 originated from the Audit Division-Income/Franchise Desk-AG15. The Division failed to provide any explanation as to the basis for issuing notices and demands rather than notices of deficiencies for these years.

10. At the hearing, the Division represented that its Processing and Civil Enforcement Units utilized the late-filed returns to issue the notices and demands. For tax year 2011, the record contains a reference to a notice of deficiency issued relating to tax year 2011.

11. For 2009, the Division allowed a portion of the gambling losses, yet the Division failed to elaborate on its decision to accept some of these losses in 2009, but not for 2007 and 2008.

12. Petitioners are not professional gamblers.

13. Petitioners introduced into evidence a one-page computer printout purported to be a W-2G Recap from the Internal Revenue Service (IRS) for each of the years 2007 and 2008.

14. For 2009 and 2011, petitioners introduced a summary page, for each year, created by petitioner, Raymond Maragh, that lists all the winnings earned from those years. The pages behind the summary page are numerous W-2G statements, for recipients of certain gambling winnings, from casinos in Connecticut, New Jersey and Nevada, that represent winnings to petitioners over that particular year. For 2011, there is a W-2G statement reflecting winnings issued by the New York State Lottery.

15. Mr. Maragh testified that he felt that the assessments from New York State are excessive given the hardships that petitioners have endured as a result of their gambling. Mr. Maragh stated that they had to sell their home in order to satisfy the lien placed on it by the Division for the outstanding tax liabilities.

16. The record contains credible evidence of losses in documents produced by casinos that reflect minimum losses. These documents purport to be estimates, but only so far as they contain minimum documented losses, indicating that other losses may have occurred. Such documents, however, reflect losses significantly less than those claimed by petitioners.

THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE

The Administrative Law Judge concluded that a determination of the Division contained in a notice of deficiency is entitled to a presumption of correctness and that 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.

The Administrative Law Judge next found that the record reflects that the Division did not issue notices of deficiencies for any of the years at issue (conclusion of law B). The Administrative Law Judge noted that for tax years 2007 through 2009, there has been no assertion by the Division that any mathematical or clerical errors were made that would result in the issuance of notices and demands in the first instance; that tax law explicitly states a notice and demand letter does not confer hearing rights upon a petitioner; and that the outstanding liabilities were satisfied from a collection action brought by the Division.

The Administrative Law Judge also noted that the Division did not present any witnesses nor an affidavit by an auditor; that it failed to provide any explanation as to the basis for issuing notices and demands rather than notices of deficiencies for tax years 2007 through 2009; and that for tax year 2009, the Division allowed a portion of the gambling losses. The Division did not elaborate on its decision to accept some of these losses in 2009, while not accepting losses for 2007 and 2008. The Division contended that the late-filed returns for the years in issue were utilized to justify the issuance of the notices and demands. The Administrative Law Judge noted for the record that this assertion is unsupported by the evidence.

With respect to the refund claimed for the years in issue, the Administrative Law Judge determined that for tax year 2009, the Division did not timely issue a notice of assessment to petitioners and therefore the notice for that tax year is invalid. The Administrative Law Judge

next determined that Tax Law § 689 [e] assigns the burden of proof to the taxpayer to demonstrate that they are entitled to a refund, and that for tax years 2007, 2008 and 2011, petitioners did not meet such burden.

ARGUMENTS ON EXCEPTION

On exception, petitioners assert that the Administrative Law Judge erred in finding that petitioners failed to meet their burden of proving entitlement to refunds for the years in issue. Petitioners assert that the documentation provided reflect a minimum amount of losses generated for the years in issue. Petitioners also highlight the unexplained allowance of their gambling loss deduction for tax year 2009, but not for the other years in issue.

The Division asserts that the documentation furnished to petitioners from the related casinos for the years in issue, and provided by petitioners at hearing, do not satisfy petitioners' burden of proof of entitlement to refunds for the years in issue, notwithstanding the partial allowance of gambling losses for the 2009 tax year. Petitioners disagree and assert that their casino win/loss statements do demonstrate losses for the years in issue.

OPINION

A presumption of correctness attaches to a notice of deficiency issued by the Division (***see Matter of Greenfeld***, Tax Appeals Tribunal, March 7, 2019, citing ***Matter of Leogrande v Tax Appeals Trib.***, 187 AD2d 768 [3d Dept 1992], ***lv denied*** 81 NY2d 704 [1993]). Such presumption can be overcome by a petitioner if it is established, by clear and convincing evidence, that a deficiency assessment is erroneous (***see*** Tax Law 689 [e]; ***Matter of Greenfeld***).

We first address the Administrative Law Judge's determination for tax year 2009 that the Division did not timely issue a notice and demand to petitioners and therefore the notice and demand for that tax year is invalid. We agree with the Administrative Law Judge's application

of Tax Law § 683 (a), which requires that "any tax . . . shall be assessed within three years after the return was filed . . ." The three years in which to make an assessment is measured from the date on which the return was either due or was filed, whichever is later (***see Matter of Gorski***, Tax Appeals Tribunal, November 17, 2022). The record reflects that petitioners filed their 2009 return on December 4, 2012. The Division had three years, or until December 4, 2015, to issue an assessment to petitioners. There is no evidence in the record that the Division issued any documents to petitioners regarding the 2009 tax return prior to or on December 4, 2015. The notice and demand for the 2009 tax year was issued on January 15, 2016. Accordingly, the three-year period within which to assess petitioners had expired and, thus, the notice and demand issued for the 2009 tax year is invalid. Therefore, claims relating to the 2009 tax year are resolved and are not further addressed herein.

The Administrative Law Judge next determined that based upon the information provided in response to the notices and demands issued for 2007, 2008 and 2011, petitioners did not satisfy their burden of proving entitlement to refunds.

We find that the refund claims at issue cannot yet be addressed because the record is incomplete as it relates to the matter of the notices and demands issued for tax years 2007, 2008 and 2011. The record reflects that petitioners were issued notices and demands for these years (conclusion of law B), without any justification for not providing hearing rights to petitioners by virtue of a lack of issuance of statutory notices. As a result of the Division's collection actions, the liabilities in question have been satisfied (finding of fact 6).

While the matter of the notices and demands being issued in the first instance was not raised by petitioners in their exception, the regulations of this Tribunal broadly provide that "the Tribunal shall review the record and shall, to the extent necessary or desirable, exercise all power

which it could have exercised if it had made the determination" (20 NYCRR 3000.17 [e]). As we have previously clarified, "[t]he Tribunal has the authority to determine what issues are properly before it on exception and to take appropriate action to insure that a just decision is reached in all cases (***see Matter of Mustafa***, Tax Appeals Tribunal, December 27, 1991, quoting ***Matter of Small***, Tax Appeals Tribunal, August 11, 1988; Tax Law § 2000).

The Division of Tax Appeals does not generally have jurisdiction over matters originating with the issuance of a notice and demand by the Division (Tax Law § 173-a [2]). However, the Division of Tax Appeals does have jurisdiction over matters arising from the denial of a refund claim (Tax Law § 2008 [1]). This Tribunal has clarified that due process for petitioners is provided by the Division's post-payment procedures that include formal protest options, such as refund claims (***Matter of Nevins***, Tax Appeals Tribunal, June 7, 2018; Tax Law § 2008 [1]). In the present matter, petitioners timely protested the denial of a refund claim, and we therefore have jurisdiction over this matter.

Had this matter commenced with the issuance of notices of deficiency or any statutory notice conferring hearing rights, it could have been followed by the filing of a petition and possible exception taken against the determination that followed. In that instance, the prevailing question before this Tribunal would have been whether the assessments had a rational basis or, in the alternative, whether petitioners met their burden of proving by clear and convincing evidence that, in view of the records available, the assessments lacked a rational basis. However, this was not the sequence of events in this case. Here, the Division examined petitioners' returns for 2007 and 2008 and observed what it considered to be significant gambling losses claimed which were first disallowed as improper subtractions from taxable income, then also considered to be unsubstantiated itemized deductions based on a lack of supporting documentation. The Division

proceeded by requesting additional documentation substantiating the itemized gambling deductions and also by issuing notices and demands for 2007 and 2008. It is unclear from the record what type of notice was issued for 2011, or why the Division issued notices and demands in the first instance for 2007 and 2008 instead of statutory notices which would confer hearing rights upon a taxpayer. We therefore find the matter of whether the notices and demands were properly issued to be a question which must be determined before a determination is made on the matter of the refund claim denial.

Tax Law § 681 (a) provides that "[i]f upon examination of a taxpayer's return . . . [the Division] determines that there is a deficiency of income tax," it may issue a *notice of deficiency* to the taxpayer. The statute further provides that "If a taxpayer fails to file an income tax return required under this article, the tax commission is authorized to estimate the taxpayer's New York taxable income and tax thereon, from any information in its possession, *and to mail a notice of deficiency to the taxpayer . . .*" (*emphasis added*) (***id.***).

While Tax Law § 681 (d) allows for exceptions to the issuance of a notice of deficiency for mathematical or clerical errors, the record reflects that no such assertion of a mathematical or clerical error was made by the Division. For the issuance of the notices and demands for 2007 and 2008, the record reflects that the Division appears to have only relied on the fact that such returns were untimely filed. Pursuant to Tax Law § § 681 (a) and 173-a (2), in this instance, the Division may have been authorized to issue a *notice of deficiency* for these years (***see also Matter of Beckerman v New York State Dept. of Taxation & Fin.***, 232 AD3d 961 [3d Dept 2024], citing ***Matter of Tavolacci v State Tax Commn.***, 77 AD2d 759, 760 [3d Dept 1980]).

The record does not establish that any such statutory notices were issued. With respect to notices and demands which do not confer formal prepayment hearing rights, we have clarified

that "a review of the legislative history of Tax Law § 173-a (2) demonstrates clearly the Legislature's intention to eliminate formal prepayment hearing rights in the Division of Tax Appeals w*here changes are made to a taxpayer's federal return by the IRS or other competent federal authority*" (*emphasis added*) (***see Matter of Nevins***, Tax Appeals Tribunal, June 7, 2018, referencing L 2004 Ch 60). The record does not reflect that any such changes were made herein necessitating the issuance of notices and demands in the first instance.

Conversely, the Administrative Law Judge found that for tax years 2007, 2008 and 2011, there has been no assertion that any mathematical or clerical errors were made that would result in the issuance of notices and demands in the first instance (***see*** Tax Law § 681 [d]). It therefore must be determined whether the notices and demands were properly issued given the circumstances herein.

We next note that Tax Law § 681 [c] provides:

> "No assessment of a deficiency in tax and no levy or proceeding in court for its collection shall be made, begun or prosecuted, except as otherwise provided in section six hundred ninety-four, until a notice of deficiency has been mailed to the taxpayer, nor until the expiration of the time for filing a petition contesting such notice, nor, if a petition with respect to the taxable year has been filed with the tax commission, until the decision of the tax commission has become final."

The notices and demands issued affected petitioners' rights to protest and resulted in the Division having plenary authority to commence collection actions. We therefore find the matter of whether the notices and demands were properly issued to be a question which must be determined before a decision is made on the matter of the claim for refund.

Accordingly, we remand this matter to the Administrative Law Judge to determine whether, for tax years 2007, 2008 and 2011, the Division's issuance of the notices and demands was proper.

We will retain jurisdiction over this matter based upon petitioners' timely filed exception.

After the issuance of a supplemental determination by the Administrative Law Judge, petitioners may add to their existing exception and briefs within 30 days of the issuance of the supplemental determination, or upon an approved request for an extension of time filed within the 30-day period. The Division will be given an opportunity to respond to any additional material submitted by petitioners. If the Division wishes to except to any portion of the supplemental determination, the Division will be required to submit a timely exception to the supplemental determination.

Accordingly, it is ORDERED that the matter is remanded to the Administrative Law Judge for further proceedings consistent herewith.

DATED: Albany, New York
January 22, 2026

/s/ Jonathan S. Kaiman
Jonathan S. Kaiman
President

/s/ Cynthia M. Monaco
Cynthia M. Monaco
Commissioner

/s/ Kevin A. Cahill
Kevin A. Cahill
Commissioner