

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition :  
of :  
**CHERYL E. MAROZAS** : DETERMINATION  
for Redetermination of a Deficiency or for Refund : DTA NO. 828607  
of New York State Personal Income Tax under Article 22 :  
of the Tax Law for the Year 2012. :

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Petitioner, Cheryl E. Marozas, 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 2012.

On October 4, 2019 and October 11, 2019, respectively, petitioner, appearing pro se, and the Division of Taxation, appearing by Amanda Hiller, Esq. (Christopher O'Brien, Esq., of counsel), executed a waiver of hearing and submitted this matter for determination based upon documents and briefs to be filed by May 5, 2020, which date commenced the six-month period for issuance of this determination. After review of the evidence and arguments, Administrative Law Judge Dennis M. Galliher issues the following determination.

***ISSUE***

Whether a notice of deficiency issued by the Division of Taxation asserting additional personal income tax due for the year 2012, based upon petitioner's failure to have filed a New York State personal income tax return for that year and computed upon petitioner's 2012 federal tax information, was proper and should be sustained.

***FINDINGS OF FACT***

1. On April 17, 2017, the Division of Taxation (Division) issued to petitioner, Cheryl E. Marozas, a notice of deficiency (L-046086701) asserting additional personal income tax due for the year 2012 in the amount of \$3,219.00, plus interest and penalties. This notice is based upon the Division's assertion that petitioner, a domiciliary and resident of New York State, failed to file a New York State income tax return for 2012 and failed to report income subject to tax by New York State.

2. The foregoing notice was preceded by the Division's issuance to petitioner of a statement of proposed audit changes detailing the basis and calculation of the tax, interest and penalties asserted as due under the notice. That statement explained that since the Division had no record of petitioner having filed a return for 2012, it sought information from the Internal Revenue Service (IRS), pursuant to Internal Revenue Code (IRC) section 6103 (d), concerning petitioner's Federal filing for 2012. The information provided to the Division indicated that petitioner had income sufficient to require the filing of a New York State personal income tax return for 2012, and the Division utilized that information to compute petitioner's New York State income tax liability as a New York State resident.

3. The federal information obtained by the Division revealed that petitioner reported federal adjusted gross income (the starting point for the computation of New York State taxable income) in the amount of \$73,512.00. That amount was reduced by taxable social security received by petitioner in the amount of \$11,198.00, resulting in New York adjusted gross income of \$62,314.00, and was further reduced by allowance of the 2012 standard deduction amount of \$7,500.00, so as to arrive at New York taxable income of \$54,814.00.

4. The Division calculated tax due in the amount of \$3,219.00 on petitioner's New York

taxable income, and asserted such amount, together with penalties (Tax Law § 685 [a] [1]; [b] [1] and [2]), and interest (Tax Law § 684 [a]), as due pursuant to the notice of deficiency at issue herein.

5. In response to the foregoing asserted deficiency, petitioner states that she graduated from the Albany Memorial Nursing School in 1998, and that student loan debt she incurred in connection with her schooling was entirely cancelled upon the basis of her total and permanent disability.

6. The record on submission includes a copy of a United States Department of Education form entitled “Loan Discharge Application: Total and Permanent Disability” (form DMB No. 1845 0065), reflecting petitioner’s loan discharge request and including a physician’s certification of disability. This form is dated as signed by petitioner, and her physician, on September 16, 2005, is stamped as received on September 23, 2005, and is further stamped “Disability Approved” on October 11, 2005.

7. The record further includes a letter, dated May 10, 2016, under the (combined) letterhead of Neinet and the U.S. Department of Education.<sup>1</sup> This letter is addressed to petitioner, and lists several Stafford subsidized and unsubsidized student loans obtained by petitioner between August 1993 and October 1998. The letter does not list the dollar amounts of the loans, but confirms that on October 19, 2012, the loans were discharged due to petitioner’s total and permanent disability. The letter also states that “[a] post-discharge monitoring period was in effect for three years from the discharge day. You have fully met the requirements of the three-year post-discharge monitoring period and are no longer subjected to further monitoring.”

8. The petition states that petitioner has not worked since 2011, and details her current

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<sup>1</sup> Neinet is an entity that assists the U.S. Department of Education in administering the Total and Permanent Discharge process.

difficult financial circumstances. The petition provides no information as to petitioner's Federal income tax filing for 2012, the source or nature of the federal adjusted gross income reported thereon (\$73,512.00), or in light of that federal filing, any information or explanation concerning her failure to have filed a New York State return for 2012.

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

A. The record in this matter shows that petitioner was a resident of New York State, and per information obtained by the Division from the IRS, reported federal adjusted gross income for the year 2012 in the amount of \$73,512.00 (*see* findings of fact 2 and 3). As such, petitioner was required to file a New York State Resident Income Tax Return (form IT-201) for 2012 (*see* Tax Law § 651 [a] [1]), using her reported federal adjusted gross income as the statutory starting point for calculating New York State taxable income (*see* Tax Law § 612). The Division determined, upon audit review, that petitioner had not filed a New York State return for 2012, reporting the foregoing income as required.

B. Petitioner has not claimed that she filed a New York return for 2012, provided any evidence of such a filing, or any explanation as to why she filed a Federal return but not a New York State return. Under these circumstances, the Division properly concluded that petitioner owed additional tax, correctly calculated the same (*see* in findings of fact 3 and 4), and issued the notice of deficiency challenged herein.

C. Petitioner did not provide a copy of her Federal return for 2012, or detail the nature of the income reported thereon. However, petitioner did assert, and the record supports, that her student loan debt was discharged in 2012, and that the three-year post-discharge monitoring period has ended (*see* finding of fact 7). Petitioner did not specify the amount of student loan debt that was discharged in 2012 (e.g., by providing form 1099 C [Cancellation of Debt]).

D. As set forth above, the Division correctly concluded that tax was due, properly calculated the same, and issued its notice of determination. Petitioner, in turn, has failed to meet her burden of overcoming the notice, and the same is therefore sustained (*see Leogrande v Tax Appeals Tribunal*, 187 AD2d 768 [3D dept 1992], *appeal dismissed* 75 NY2d 946 [1993]). Furthermore, and assuming that the adjusted gross income reported on petitioner's Federal return represented the amount of student loan debt that was discharged, and that she is arguing the same is not, for some reason, subject to taxation by New York State, the result remains the same. That is, the discharge or cancellation of indebtedness, including student loan debt, is considered gross income under IRC (26 USC) § 61 (a) (12), unless excluded therefrom pursuant to IRC (26 USC) § 108 (f). During the year at issue, there was no provision excluding the discharge of student loan debt from gross income, even under circumstances where, as here, the discharge was based upon total and permanent disability.<sup>2</sup>

E. The petition of Cheryl E. Marozas is hereby denied and the Division's April 17, 2017 notice of deficiency is sustained.

DATED: Albany, New York  
November 5, 2020

/s/ Dennis M. Galliher  
ADMINISTRATIVE LAW JUDGE

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<sup>2</sup> Section 11031 (a) (5) of the Tax Cuts and Jobs Act of 2017 (*see* Public Law 115-97) amended IRC (26 USC) § 108 (f) to provide that the discharge of student loan debt on the basis of total and permanent disability was excludable from gross income (*see* IRC [26 USC] § 108 [f] [5] [A] [iii]). This amendment was not made retroactive, but rather was specifically applicable to student loan debt discharged, or with respect to which the post-discharge monitoring period ended, between January 1, 2018 and December 31, 2025.