STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
MYRA MAYO	:	DETERMINATION DTA NOS. 828862 AND 828863
for Redetermination of Deficiencies or for Refunds 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 Years 2013, 2014 and 2015.	:	

Petitioner, Myra Mayo, filed petitions for redetermination of deficiencies or for refunds 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 years 2013, 2014 and 2015.

A hearing was held before Nicholas A. Behuniak, Administrative Law Judge, in New York, New York, on November 15 and 16, 2022, with the final brief to be submitted by April 28, 2023, 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. (Michele W. Milavec, Esq., of counsel).

ISSUES

I. Whether petitioner has adequately established her entitlement to claimed business losses for tax years 2013, 2014 and 2015.

II. Whether petitioner has sustained her burden of proving that the penalties asserted by the Division of Taxation should be abated.

FINDINGS OF FACT

Pursuant to 20 NYCRR 3000.15 (d) (6), the Division of Taxation (Division) submitted 28 proposed findings of fact. The Division's proposed findings of fact are supported by the record and have been substantially incorporated herein with modifications where appropriate.

Petitioner, Myra Mayo, submitted unnumbered proposed findings of fact in a narrative format. Given the manner in which such proposed findings of fact were presented, it is not possible to make a ruling on such (***see*** State Administrative Procedure Act § 307 [1]); however, the relevant and appropriately supported portions of petitioner's proposed findings of fact have been incorporated herein. In addition, petitioner submitted additional proposed findings of fact in her reply brief. Such additional facts were each written in a narrative format and are rejected as argumentative, conclusory, irrelevant and/or not supported by the record; however, the relevant and appropriately supported portions of petitioner's proposed findings of fact have been incorporated herein.

1. Petitioner filed New York State resident income tax returns, form IT-201, as a resident of New York State and New York City for tax years 2013, 2014 and 2015. Petitioner filed such returns as head of household and claimed two dependents. The returns reflected that both claimed dependents had the last name of "Bass."

2. Petitioner's 2013 form IT-201 reported: (i) wage income of $71,185.00; (ii) a federal schedule C business loss of $52,507.00; (iii) a New York State household credit of $90.00; (iv) a New York City household credit of $45.00; (v) an Empire State child credit of $660.00; (vi) a New York State earned income credit of $1,449.00; (vii) a New York City earned income credit of $257.00; (viii) a New York City school tax credit of $63.00; and (ix) combined New York

State/City withholding totaling $5,619.00, which resulted in a requested refund of an overpayment in the amount of $7,791.00.

3. Petitioner affirmatively requested the claimed 2013 overpayment of $7,791.00 be refunded to her by direct deposit to her personal checking account rather than by debit card or paper check.

4. Attached to petitioner's 2013 form IT-201 was petitioner's 2013 U.S. individual income tax return, form 1040, that included a schedule C, profit or loss from business statement, which reported losses for petitioner as the sole proprietor of a "[p]hotography products and services" business. The reported loss of $52,507.00 consisted of $24,093.00 in gross receipts or sales, and the following expenses: (i) legal and professional services in the amount of $53,500.00; (ii) rent or lease for vehicles, machinery and equipment in the amount of $2,600.00; and (iii) other expenses in the total amount of $20,500.00, that petitioner described as $12,000.00 for selling, general and administrative expenses and $8,500.00 in photography expenses.

5. The Division initially selected petitioner's 2013 form IT-201 for a processing review and sent an account adjustment notice, form DTF-160, on November 10, 2014, adjusting petitioner's requested refund of $7,791.00 to $7,777.00 because the Division asserted petitioner incorrectly computed her New York State tax.

6. The Division then selected petitioner's 2013 form IT-201 for a desk audit review and sent an audit inquiry letter, form DTF-973.66 for audit case ID number X-485258192 on December 29, 2014, that indicated that the Division needed more information concerning petitioner's 2013 form IT-201. The form DTF-973.66 requested petitioner provide documentation to support the claimed schedule C business loss including the documents that

were used to calculate the income and expenses reported on the return and detailed supporting documentation such as sales slips, invoices, bank statements, or receipts.

7. On February 21, 2015, petitioner responded to the Division's form DTF-973.66 regarding her 2013 form IT-201 by correspondence that consisted of a letter dated February 20, 2015, that begins "Dear Secret Tax Agent:" and included an invoice to the Division but did not include any of the requested documentation. Petitioner's correspondence affirmatively informed the Division that she would not supply the requested supporting documentation relevant to her reported gross receipts and business expenses because she did not ". . . have the time, the health, the financial resources or proven lawful obligation to participate in any more of your harassment and rights violations under the guise of some 'audits'" and because the "Division's request for PRIVATE documentation of PRIVATE affairs of a PRIVATE Citizen is unconstitutional." Petitioner further demanded the Division pay "$100,000 US for the PRIVATE 2013 documents and records," and asserted that she can ". . . deny sharing my PRIVATE documentation or any copies of it with anyone as it relates to PRIVATE matters and PRIVACY of a CITIZEN WITH RIGHTS is protected by our great Constitution," but "if [the Division] still wishes to obtain copies of PRIVATELY owned documents and records for year 2013 … pay the [$100,000.00] amount to Myra Mayo in cash."

8. The Division reviewed petitioner's correspondence in response to form DTF-973.66 and found that it did not sufficiently substantiate her claimed 2013 schedule C business loss.

9. On May 5, 2015, the Division issued a form DTF-160 for tax year 2013 related to audit case ID number X-485258192. Form DTF-160 informed petitioner that the Division adjusted her 2013 personal income tax return to disallow the claimed business loss because the documentation provided to support her business income and expenses claimed on schedule C

was insufficient and a review of her filing history indicated she did not operate the claimed business activity to make a profit. The notice informed petitioner that she was allowed a refund of $1,083.85, as a result of the recalculation of her taxable income due to the disallowance of the schedule C business loss.

10. By correspondence dated June 4, 2015, and stamped received by the Division on June 8, 2015, petitioner responded to the Division's form DTF-160, dated May 5, 2015, for tax year 2013 but still did not include any of the requested documentation. Petitioner's correspondence again informed the Division that she would not supply the requested supporting documentation relevant to her reported gross receipts and business expenses and stated, "I told you before already — I don't have time for any of your 'audits.'" The letter went on to state: "[y]ou want my records? Then pay for them. I already sent you the invoice," and "[y]ou don't have any right to audit me at this time."

11. The Division reviewed petitioner's correspondence in response to the Division's May 5, 2015 form DTF-160 and found that it did not sufficiently substantiate her claimed 2013 schedule C business loss.

12. On July 6, 2015, as no additional documentation was provided by petitioner, the Division issued a notice of disallowance which informed petitioner that the outstanding amount of her 2013 requested refund, $6,714.00,[1] was denied because she failed to provide substantiation to support her reported schedule C business activity and that it did not appear she was engaged in an activity for profit.

13. Petitioner requested a conciliation conference with the Division's Bureau of Conciliation and Mediation Services (BCMS) for the July 6, 2015 notice of disallowance. By

[1] $7,777.00 (***see*** finding of fact 5) - $1,083.85 (***see*** finding of fact 9) = $6,693.15; the Division does not attempt to explain this discrepancy. The difference is deemed immaterial.

conciliation order dated June 1, 2018 (CMS No. 000275847), the notice of disallowance, dated July 6, 2015, was sustained.

14. On August 24, 2018, petitioner filed a petition challenging CMS No. 000275847 with the Division of Tax Appeals.

15. Petitioner's 2014 form IT-201 reported: (i) wage income of $74,694.00; (ii) a federal schedule C business loss of $55,310.00; (iii) a New York State household credit of $90.00; (iv) a New York City household credit of $45.00; (v) an Empire State child credit of $660.00; (vi) a New York State earned income credit of $1,450.00; (vii) a New York City earned income credit of $257.00; (viii) a New York City school tax credit of $63.00; and (ix) combined New York State/City withholding totaling $5,620.00, which resulted in a requested refund of overpayment in the amount of $7,741.00.

16. Petitioner affirmatively requested the 2014 overpayment of $7,741.00 be refunded by direct deposit to her personal checking account rather than by debit card or paper check.

17. Attached to petitioner's 2014 form IT-201 was petitioner's 2014 form 1040 that included a schedule C, profit or loss from business statement, which reported losses for petitioner as the sole proprietor of a photography products and services business. The reported loss of $55,310.00 consisted of $27,440.00 of gross receipts or sales, and the following expenses: (i) legal and professional services in the amount of $60,650.00; (ii) rent or lease for vehicles, machinery and equipment in the amount of $1,200.00; and (iii) other expenses in the total amount of $20,900.00, that petitioner described as $18,000.00 for selling, general and administrative expenses and $2,900.00 in photography expense.

18. The Division selected petitioner's 2014 form IT-201 for review and sent a statement of proposed audit changes, form DTF-960-E with assessment ID number L-046166960 on March

30, 2017, that requested petitioner provide documentation to support the claimed schedule C business loss including the documents that were used to calculate the income and expenses reported on the return and detailed documentation such as sales slips, invoices, bank statements, or receipts.

19. Petitioner's 2015 form IT-201 reported: (i) wage income of $77,761.00; (ii) a federal schedule C business loss of $57,900.00; (iii) a New York State household credit of $90.00; (iv) a New York City household credit of $45.00; (v) an Empire State child credit of $660.00; (vi) a New York State earned income credit of $1,453.00; (vii) a New York City earned income credit of $257.00; (viii) a New York City school tax credit of $63.00; and (ix) combined New York State/City withholding totaling $5,786.00, which resulted in a requested refund of overpayment in the amount of $7,887.00.

20. Petitioner affirmatively requested the 2015 claimed overpayment of $7,887.00 be refunded by direct deposit to her personal checking account rather than by debit card or paper check.

21. Attached to petitioner's 2015 form IT-201 was petitioner's 2015 form 1040 that included a schedule C, profit or loss from business statement, which reported losses for petitioner as the sole proprietor of a photography products and services business. The reported loss of $57,740.00 consisted of $29,450.00 of gross receipts or sales, and the following expenses: (i) legal and professional services in the amount of $69,050.00; (ii) rent or lease for vehicles, machinery and equipment in the amount of $1,100.00; and (iii) other expenses in the total amount of $17,200.00, that petitioner described as $13,800.00 for selling, general and administrative expenses and $3,400.00 in photography expense.

22. The Division selected petitioner's 2015 IT-201 for review and sent a form DTF-960 E with assessment ID number L-046166961 on March 30, 2017, that requested petitioner provide documentation to support the claimed schedule C business loss including the documents that were used to calculate the income and expenses reported on the return and detailed supporting documentation such as sales slips, invoices, bank statements, or receipts.

23. On April 24, 2017, petitioner responded to the Division's forms DTF-960-E for tax years 2014 and 2015 by correspondence that consisted of a letter dated April 24, 2017, that is entitled "FIRST RESPONSE," and begins "Dear Lying Fraudulent Criminals of [the Division]:" and references "Bogus assessment IDs are L-046166960-4 and L-046166961-3," along with an invoice for the Division for 2014 and 2015, but did not include any of the requested documentation. Petitioner's correspondence affirmatively informed the Division that she would not supply the requested supporting documentation relevant to her reported gross receipts and business expenses for tax years 2014 and 2015 and that the Division should "[g]o bother some grandma who forgot to check off some box on your overly complicated forms, that's all you [sic] good for," and alleges the Division is ". . . unfair criminals, not auditors, and as such I don't have to comply with any demands of yours." Petitioner further insisted the Division pay $1,000,000.00 to her to provide any documentation for tax years 2014 and 2015.

24. The Division reviewed petitioner's correspondence in response to forms DTF-960-E for tax years 2014 and 2015 and found that it did not sufficiently substantiate her claimed 2014 and 2015 schedule C business losses.

25. On September 11, 2017, the Division issued notice of deficiency, number L-046166960, that recomputed petitioner's tax liability for tax year 2014 and assessed additional tax due in the amount of $6,993.00 plus interest and penalties for negligence pursuant to Tax

Law § 685 (b) (1) and § 685 (b) (2) and substantial understatement of tax liability pursuant to Tax Law § 685 (p).

26. On September 11, 2017, the Division issued notice of deficiency, number L-046166961, that recomputed petitioner's tax liability for tax year 2015 and assessed additional tax due in the amount of $7,264.00 plus interest and penalties for negligence pursuant to Tax Law § 685 (b) (1) and (2) and substantial understatement of tax liability pursuant to Tax Law § 685 (p).

27. Petitioner requested a conciliation conference with BCMS for notices of deficiency numbers L-046166960 and L-046166961. By order dated June 15, 2018 (CMS No. 000300633), BCMS sustained notices of deficiency numbers L-046166960 and L-046166961.

28. On August 24, 2018, petitioner filed a petition challenging CMS No. 000300633 with the Division of Tax Appeals.

29. While the Division's audits/reviews of petitioner's 2013 through 2015 returns were underway, petitioner was actively litigating her 2009, 2010 and 2011 tax liabilities with the State. The earlier years' tax liabilities petitioner was litigating were as follows:

Year	Tax	Interest	Penalty	Balance Due
2009	$6,200.28	$1,543.58	$1,490.30	$9,234.16
2010	$7,510.95	$1,276.57	$1,408.22	$10,195.74
2011	$6,238.35	$425.30	$623.80	$7,287.45

30. On November 3, 2022, petitioner sent the Division supporting documentation for the first time, purporting to be substantiation of petitioner's business income and expenses for tax years 2013 through 2015 including: an agreement dated September 12, 2011, between Alex Bass and petitioner (independent sales contractor agreement) whereby Mr. Bass of Bass & Co.[2] would

[2] Alex Bass is apparently the sole owner of Bass & Co. The record references Mr. Bass and Bass & Co. interchangeably. This determination will refer to Alex Bass and/or Bass & Co. as "Mr. Bass."

act as an independent sales contractor of photographs taken or owned by petitioner; a contract agreement dated February 15, 2013, between Mr. Bass and petitioner (tax assistance agreement) whereby Mr. Bass would act as a consultant to petitioner for: "[the Division's] assessments, tax bills for years 2009 and 2010 as well as other related matter;" summary documents purporting to be monthly sales reports for tax year 2013, 2014 and 2015; payment vouchers purporting to show cash payments from Mr. Bass to petitioner; and sets of summary invoices from Mr. Bass to petitioner along with spreadsheets, receipts written in Thai for cash payments between petitioner and Mr. Bass, and partial personal calendars for Mr. Bass for 2013, 2014 and 2015.

31. The independent sales contractor agreement has a term of 10 years and provides that Mr. Bass was solely responsible for successfully completing all sales, marketing and advertising work, as needed, determined in Mr. Bass' discretion. Under the agreement, Mr. Bass was authorized to "handle sales revenues for each year," and was "also responsible for sales revenue audits."

32. As part of petitioner's submission of the independent sales contractor agreement was a "monthly sales report" for 2013 (2013 sales report) prepared by Mr. Bass. The 2013 sales report consisted of a page which indicated each of the 12 months of the year, 12 separate dollar amounts representing the total sales for each month, a year-to-date total sales column for each month[3] and the indication that the products sold for each month were "Photographic Prints."[4]

33. Attached to the 2013 sales report were six pages of "support." The support pages were prepared by Mr. Bass. The first support page was a payment voucher filled out by Mr.

[3] The year-to-date sales amounts reflect the total of petitioner's sales for each month of the year added together (e.g., if total monthly sales for January were $10.00 and total monthly sales for February were $12.00, then February's year-to-date sales would be $22.00).

[4] The description "Photographic Prints" was consistently used for all sales.

Bass that reflected a dollar amount that purported to be the total amount of petitioner's sales for January 2013. The second support page was a payment voucher filled out by Mr. Bass that reflected a dollar amount that was purported to be the total amount of petitioner's sales for February 2013. The third support page was a payment voucher filled out by Mr. Bass that reflected a dollar amount that was purported to be the total amount of petitioner's sales for March 2013. The fourth support page was a payment voucher filled out by Mr. Bass that reflected three dollar amounts that were purported to be the total amount of petitioner's sales for April, May and June 2013, respectively. The fifth support page was a payment voucher filled out by Mr. Bass that reflected three dollar amounts that were purported to be the total amount of petitioner's sales for July, August and September 2013, respectively. The sixth support page was a payment voucher filled out by Mr. Bass that reflected three dollar amounts that were purported to be the total amount of petitioner's sales for October, November and December 2013, respectively. Petitioner submitted similar monthly sales reports and support for 2014 and 2015.

34. Petitioner submitted into the record four billing invoices for 2013. The separate billing invoices were dated January 1, 2013, April 7, 2013, May 5, 2013, and June 5, 2013. All of the billing invoices were prepared by Mr. Bass. The January 1, 2013 billing invoice indicated a charge of $12,000.00 for a salesperson charge of $1,000.00 per month for all of 2013; a charge of $550.00 for professional accounting services for 2013; a charge of $2,600.00 for the rental of photography equipment for 2013; and a charge of $8,500.00 for 204, 20 x 24 "premium quality glossy photographs" at $25.00 each, and 850, 8 x 10 "premium quality glossy photographs" at $4.00 each. The April 7, 2013 billing invoice included one charge for $18,225.00 which was for "research, study, analysis, consultation reports, projects & other services" in connection with the tax controversies for 2009 through 2011; the amount was supported by a statement that purported

to reflect the hours worked on each of approximately 25 days by Mr. Bass multiplied by the hourly charge of $75.00. The May 5, 2013 billing invoice had one charge for $18,225.00 which was for "research, study, analysis, consultation reports, projects & other services" in connection with the tax controversies for 2009 through 2011; the amount was supported by a statement that purported to reflect the hours worked on each of approximately 30 days by Mr. Bass multiplied by the hourly charge of $75.00. The June 5, 2013 billing invoice had one charge for $18,750.00 which was for "research, study, analysis, consultation reports, projects & other services" in connection with the tax controversies for 2009 through 2011; the amount was supported by a statement that purported to reflect the hours worked on each of approximately 31 days by Mr. Bass multiplied by the hourly charge of $75.00. Submitted with the 2013 billing invoices were copies of nine receipts filled out by hand by Mr. Bass allegedly recognizing cash payments made by petitioner to Mr. Bass during 2013. Also submitted with the 2013 billing invoices was a copy of a small journal filled out by Mr. Bass indicating how many hours he worked on certain days during 2013 for petitioner. Petitioner submitted similar billing invoices and support for 2014 and 2015, although the dollar amounts for each year were slightly different. Petitioner had no material additional costs for her business for 2013, 2014 or 2015 other than those invoiced by Mr. Bass.

35. The tax assistance agreement provided that Mr. Bass was to act as a consultant to petitioner and that he was to work on the New York State tax assessments for 2009 and 2010. The agreement indicates that Mr. Bass would be compensated $75.00/hour. The agreement noted that Mr. Bass possesses "expertise in areas of finance, accounting, management, audit, tax and possesses [sic] MBA degree with major in Financial Management and minor in International Business with over a decade of such experience." The tax assistance agreement provided that

Mr. Bass could charge an additional fee of up to 25% against any annual amount due from petitioner that was not paid by the end of the billing year. The tax assistance agreement also expressly thanked Mr. Bass for his assistance because others, such as certified public accountants and lawyers, would not provide the assistance sought by petitioner or under the payment terms Mr. Bass was offering. During the hearing, Mr. Bass testified to the same.

36. Included in the documentation provided by petitioner on November 3, 2022 were various miscellaneous items such as: emails written by or sent to Mr. Bass; documents related to Mr. Bass' education; documents related to travel by Mr. Bass; web pages printed from the internet; various sets of photographs including approximately 10 photos taken by petitioner; certain medical records belonging to petitioner; and documents related to petitioner's prior tax years including 2009, 2010 and 2011.

37. As support for the work performed by Mr. Bass for petitioner, Mr. Bass represented that he read several books in order to provide such support. A partial list of books that Mr. Bass represents to have read as part of his work for petitioner include:[5] Win Your Case – Gerry Spence; Paralegal Today 5th Edition – Miller, Urisko; How to Argue and Win Every Time – Gerry Spence; 2013 California Bar Exam Total Preparation Book; The Tax & Legal Playbook – Kohler; Fruit of the Poison Tree, Melvin Stamper; Law for Dummies – 2nd Edition – Ventura; Paralegal Career for Dummies – Hatch & Hatch; Black's Law Dictionary: 1st edition, 3rd edition; revised 4th edition; 5th edition; 6th edition; 9th edition; 10th edition – West Publishing ; Torts Personal Injury Litigation – Statsky; Winning at Trial – D. Shane Read; Wiley CPA Excel Exam Review Study Guide 2014 – Wiley; Understanding Torts – Lexus Nexus; IRS, Taxes and the Beast – Daniel J. Pilla; How to Get Tax Amnesty – Daniel J. Pilla; The Fraud of Money and

[5] The publication titles and authors are as represented by Mr. Bass.

Banking – Jose M. Paulino; and, New Views of the Constitution of the United States – John Taylor.

38. The Division reviewed the documentation provided by petitioner and found that it did not sufficiently substantiate her claimed 2013, 2014 and 2015 schedule C business profits or losses.

39. At the hearing held on November 15, 2022 and continued on November 16, 2022, petitioner presented Mr. Bass as a witness where he testified at great length for over two days. Petitioner also submitted a 20-page affidavit from Mr. Bass into the record. Petitioner also testified at the hearing primarily by reading a prepared statement into the record. Mr. Bass' testimony took over 120 transcript pages; petitioner's testimony took approximately 32 transcript pages. During petitioner's testimony, Mr. Bass attempted to provide petitioner notes and guidance to assist her with her responses to questions asked by the Division on cross-examination. Mr. Bass' direct testimony was lengthy and largely unaided as compared to petitioner's prepared direct testimony which was primarily read from a statement. Mr. Bass' testimony discussed in detail the business operations of petitioner.

40. Mr. Bass testified that the manner in which he kept petitioner's business books and records was how such records are normally maintained in Thailand. Mr. Bass testified that before petitioner started her business, the Division should have contacted her to explain how records should be kept.

41. Petitioner's business only sells photos in Thailand. Mr. Bass goes to Thailand approximately two times each year and can spend up to a month on each visit. Mr. Bass also sells his own photographs in Thailand. Petitioner has never gone to Thailand for the business.

42. Petitioner testified that she does not operate in the "granular" data of her business, but rather just the "big picture" aspects of the business. Petitioner does not appear to have examined any of the particular sales receipts or invoices for the sales or expenses associated with her business other than Mr. Bass' own invoices and receipts. Mr. Bass determines the price at which petitioner's photos are sold, although Mr. Bass testified that he consults with petitioner regarding any decision that he makes on pricing.

43. Petitioner testified that she worked a minimum of 15 to 20 hours a week on her photography business.

44. Petitioner started the subject business in 2005. According to petitioner, the business has never been profitable; however, in 2013, 2014 and 2015, the business would have earned a profit except for the fact that the business had to incur costs associated with challenging the Division's tax assessments for 2009, 2010 and 2011.

45. During the hearing, when asked by the Division's representative: "[h]ow would you describe your relationship then with [petitioner]?" Mr. Bass responded: "Oh, that's – come on. You know, that's private. That's confidential. That's very – [Mr. Bass addressing petitioner] are you going to object or what?"

46. In addition to petitioner's photography business, during the years at issue, petitioner also had a full-time executive management job. Mr. Bass testified that petitioner had excellent management skills and would be a chief operating officer soon.

47. Mr. Bass testified that he rents petitioner most of her photography gear (e.g., cameras, etc.). Mr. Bass testified that he is more of an expert than petitioner with respect to camera equipment. In his testimony, Mr. Bass also critiqued petitioner's photography skills but noted that she was improving in his opinion.

48. The Division offered the testimony of Kathleen Loos who was the assistant manager of the Division's audit group 1. The Division's audits of petitioner's 2013, 2014 and 2015 form IT-201s were conducted by audit group 1 and Ms. Loos was familiar with those audits.

SUMMARY OF THE PARTIES' POSITIONS

49. Petitioner asserts that she operated her business for a profit and that the records provided are sufficient evidence establishing her income and expenses at issue. Petitioner also argues that the Division acted in a criminal manner by auditing petitioner's returns while petitioner was still litigating earlier audits by the Division. Petitioner argues that the Division did not conduct a proper audit because the Division did not ask to review petitioner's records sufficiently and politely enough in advance of asserting problems with petitioner's returns.

50. The Division asserts that petitioner did not conduct her business for a profit and also that the supporting documentation is insufficient to establish petitioner's income and expenses.

CONCLUSIONS OF LAW

A. A presumption of correctness attaches to a properly issued notice of deficiency and petitioner bears the burden of proving, by clear and convincing evidence, that the deficiency is erroneous (***see Matter of Mayo***, Tax Appeals Tribunal, March 9, 2017, ***confirmed*** 172 AD3d 1554 [3d Dept 2019], ***lv denied*** 34 NY3d 1140 [2020], ***rearg denied*** 35 NY3d 1005 [2020]; ***see Matter of Gilmartin v Tax Appeals Trib.***, 31 AD3d 1008 [3d Dept 2006]; Tax Law § 689 [e]; 20 NYCRR 3000.15 [d] [5]; ***see also Matter of Leogrande v Tax Appeals Trib.***, 187 AD2d 768, 769 [3d Dept 1992], ***lv denied*** 81 NY2d 704 [1993] [petitioner "failed to sustain his burden by clear and convincing evidence that the deficiency assessment and the method used was erroneous"]).

The adjusted gross income of a New York resident is their federal adjusted gross income, with certain modifications not applicable in this case (Tax Law § 612 [a]; ***see Matter of Rizzo***, Tax Appeals Tribunal, June 3, 1993, ***confirmed*** 210 AD2d 748 [3d Dept 1994]). Because the starting point for determining New York personal income tax liability is the taxpayer's federal adjusted gross income, federal law is determinative of the substantive questions presented in this matter (***id.***). Section 62 (a) (1) of the Internal Revenue Code (IRC) defines the adjusted gross income as an individual's gross income minus certain deductions. Among the deductions permitted are expenses that are "ordinary and necessary" for the production of income in carrying on a trade or business (IRC [26 USC] § 162 [a]). An ordinary expense is one that is common and acceptable (***Welch v Helvering***, 290 US 111, 114 [1933]). A necessary expense is considered to be one that is appropriate and helpful in conducting a trade or business (***Heineman v Commr***, 82 TC 538, 543 [1984]). Deductions are also allowed pursuant to IRC § 212 for expenses incurred "for the management, conservation, or maintenance of property held for the production of income." The test as to whether property is held for the "production of income" within the meaning of IRC § 212 is whether the taxpayer's primary, good faith purpose and intention in engaging in the activity was to make a profit (***Zell v Commr***, 763 F2d 1139, 1142 n2 [10th Cir 1985]; ***Snyder v United States***, 674 F2d 1359, 1364 [10th Cir 1982]; ***Lowry v United States***, 384 F Supp 257, 261 [1974]). A taxpayer must engage in the activity "continuously and regularly, and the taxpayer's *primary* purpose must be profit (emphasis added)" (***Wilmot v Commr***, TC Memo 211-293 [2011], citing ***Commr v Groetzinger***, 480 U.S. 23 [1987]). No deductions are allowed for "personal, living, or family expenses" (IRC [26 USC] § 262 [a]).

In order to maintain the deductions for the business expenses, petitioner has the double burden of (1) demonstrating entitlement to the deductions and (2) substantiating the amounts of

the deductions (***see*** Tax Law §§ 658 [a]; 689 [e]; 20 NYCRR 158.1; ***Matter of Macaluso***, Tax Appeals Tribunal, September 22, 1997, ***confirmed*** 259 AD2d 795 [3d Dept 1999]).

At issue in this case is whether petitioner has proven she personally carried out the business at issue, whether such was done with the primary intension of making a profit, and whether she has demonstrated entitlement to expense deductions and sufficiently substantiated such deductions.

B. Because Mr. Bass (i) is the sole salesman, accountant/bookkeeper, manager, auditor, business advisor, and equipment supplier for petitioner's business, (ii) had a pecuniary interest in the business as he was selling his own product in what appeared to be part and parcel of petitioner's operations and also charging petitioner significant sums for other work, and (iii) also appears to have a personal relationship with petitioner (***see*** findings of fact 1 and 45), the transactions at issue between Mr. Bass and petitioner warrant special heightened scrutiny (***see Mazzei v Commr***, 150 TC 138 (2018); ***Kimm v Commr***, TC Memo 2003-215 (2003); ***Javorski v Commr***, TC Sum Op. 2010-136 (2010); ***Hulter v Commr***, 91 TC 371 [1988]; ***Wofford v Commr***, 50 TC Memo 1139 [1985]).

C. In ***Matter of Mayo***, the Tax Appeals Tribunal held:

> "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 Division is not required to request and examine a taxpayer's books and records before issuing a notice of deficiency (***see Matter of Ragozin***, Tax Appeals Tribunal, July 22, 1993; ***see also Matter of Giuliano v Chu***, 135 AD2d 893, 895 [1987]). Nor is the Division required to issue a statement of proposed audit changes before issuing such a notice (***see Matter of Houser***, Tax Appeals Tribunal, May 5, 1988). The Division is required, however, to have a rational basis for the deficiency asserted in such a notice (***see e.g. Matter of Estate of Gucci***, Tax Appeals Tribunal, July 10, 1997 citing ***Matter of Atlantic & Hudson Ltd. Partnership***, Tax Appeals Tribunal, January 30, 1992)" (***Matter of Mayo***).

Here, the Division examined petitioner's returns for the years at issue and observed what it considered to be significant losses claimed with respect to petitioner's schedule C business for each of those years. This prompted the Division to propose a reduction to the requested refund and assert deficiencies based on the disallowance of such losses and to advise petitioner to substantiate such losses in order to refute the proposed deficiencies. Petitioner was required to maintain records of her items of income and expense pursuant to Tax Law § 658 (a) and 20 NYCRR 158.1 (a) (***see Matter of Mayo***). Petitioner did not send any substantial supporting documentation in response to the forms DTF-973.66, DTF-160 or DTF-960-E and as such the response was deemed insufficient by the Division. Under such circumstances, the issued notice of disallowance and notices of deficiencies herein had a rational basis.

D. As noted, to be entitled to a deduction for substantiated ordinary and necessary expenses, petitioner must show that she engaged in the business activities with an actual and honest objective of making a profit. If an activity is "not engaged in for profit," deductions are allowable only to the extent of income from such activity (IRC [26 USC] § 183 [b] [2]; ***Matter of Temple***, Tax Appeals Tribunal, July 8, 2004). Resolution of the issue of whether petitioner's activities were engaged in for profit is properly determined based on a review of all of the surrounding facts and circumstances and in consideration of the nine factors set forth in Treas Reg (26 CFR) § 1.183-2 (b) (***see Hoag v Commr***, TC Memo 1993-348 [1993]). In resolving the factual question, greater weight is given to the objective facts than to the taxpayer's statements of intention (***id.***).

The nine factors listed in the regulations to help determine whether a taxpayer has engaged in an activity for profit are as follows: (1) the manner in which the taxpayer carries on the activity; (2) the expertise of the taxpayer or his advisors; (3) the time and effort expended by

the taxpayer in carrying on the activity; (4) expectation that assets used in the activity may appreciate in value; (5) the success of the taxpayer in carrying on other similar or dissimilar activities; (6) the taxpayer's history of income or losses with respect to the activity; (7) the amount of occasional profits, if any, that are earned; (8) the financial status of the taxpayer; and (9) elements of personal pleasure or recreation (Treas Reg [26 CFR] § 1.183-2 [b]). The factors listed above are intended as guidelines and are nonexclusive. Accordingly, no single factor or combination of factors is conclusive in indicating a profit objective (***see Ranciato v Commr***, 52 F3d 23 [2d Cir 1995]). Additionally, as stated by the court in ***Metz v Commr***:

> "[w]hile we organize our analysis by the nine factors listed in the regulation [citation omitted] we don't use a reasonable-person standard or substitute our own business judgment for what the [taxpayers] could have done better. Our focus is instead on the [taxpayers'] subjective intent and we use the factors to establish that intent" (***Metz v Commr***, TC Memo 2015-54 [2015], citing ***Wolf v Commr***, 4 F3d 709 [9th Cir 1993]).

E. After carefully considering the entire record, it is concluded that petitioner has not met her burden of proof to establish that the activities related to her reported schedule C business during the years in question were carried on with an actual and honest objective of primarily making a profit.

The first factor considers whether the taxpayer engaged in the activity in a businesslike manner (Treas Reg [26 CFR] § 1.183-2 [b] [1]). In determining whether the taxpayer conducted the activity in a businesslike manner, the courts have considered whether accurate books were kept, whether the activity was conducted in a manner similar to other comparable businesses and whether changes were attempted in order to make a profit (***Dodge v Commr***, TC Memo 1998-89 [1998], ***affd*** 188 F3d 507 [6th Cir 1999]). Businesslike conduct is characterized by carefully and thoroughly investigating the profitability of a proposed venture, monitoring the venture's progress, and attending to problems that arise over time (***see Ronnen v Commr***, 90 T.C. 74, 93

(1988); ***Taube v Commr***, 88 TC 464, 481–82 (1987). An important indication of whether an activity is being performed in a businesslike manner is whether the taxpayer implements methods for controlling losses, including efforts to reduce expenses and generate income (***see Foster v Commr***, TC Memo 2012-207 [2012]; ***Dodge v Commr***, TC Memo 1998-89 [1998], ***affd*** 188 F3d 507 (6th Cir. 1999).

In this case, the Division requested detailed books and records from petitioner several years before the hearing. However, it was not until November 3, 2022, just days before the November 15-16, 2022 hearing, that petitioner provided any books and records for her business. Moreover, all the records provided were only from one source, Mr. Bass. There was no corroborating objective evidence provided to establish the accuracy of such records. In fact, allegedly all the supporting sales invoices were lost by Mr. Bass. The term "businesslike manner" contemplates more than simply keeping records for tax purposes and requires taxpayers to have a "means of periodically determining profitability and analyzing expenses" (***see Burger v Commr***, TC Memo 1985-523 [1985], ***affd*** 809 F2d 355 (7th Cir. 1987). The source and timing of the production of documentation in this case supports the conclusion that the records were prepared for the hearing rather than in the normal course of business.

Furthermore, there is no evidence that petitioner had a specific business plan or any compelling evidence that she used her records to make business decisions or improve operations (***see Wilmot v Commr***, 102 TC Memo 599 [2011]; ***Golanty v Commr***, 72 TC 411 [1979], 647 F2d 170 (9th Cir 1981). As such, the first factor further weighs against petitioner.

Moreover, it is petitioner who desires to claim losses from the business on her return. It is fundamental that the business at issue be her business in order for her to be able to claim the schedule C losses. Here, it appears the business at issue is Mr. Bass' business and not

petitioner's. At the hearing, Mr. Bass spoke for an extended period of time about the intricacies and nuances of the business operations. He travels to Thailand each year for extended periods of time in order to run the business; petitioner does not travel for the business. He is the sole salesman, accountant/bookkeeper, manager, business advisor, auditor, and equipment supplier for the business; petitioner does not engage in any of these activities and does not seriously question Mr. Bass' work in this regard. Mr. Bass also has a background and training in photography and sells his own work. During his testimony, Mr. Bass discussed in detail how the business worked. In contrast, petitioner's testimony mostly consisted of reading from a prepared statement and not describing the business operations in any detail. Even when she was testifying outside the parameters of her prepared statement, Mr. Bass attempted to influence what she said. Her testimony was not about the operations of the business, and she readily conceded that she was not involved with the details of the business as that was completely left to Mr. Bass. She testified that she did not question or audit the business income or expense information provided by Mr. Bass. These considerations do not support the claim that petitioner was the one engaged in the business at issue. Taken by itself, this conclusion weights heavily on the entire analysis for this case.

The second factor, the expertise of the taxpayer and her advisors, weighs in favor of petitioner. The record includes a few of petitioner's photographs and they appear well taken and appealing. Petitioner's advisor, Mr. Bass, had training and expertise in photography and photography equipment and was himself a professional photographer who also sold his work.

For the third factor, the time and effort expended by the taxpayer in carrying on the activity, petitioner testified that she worked a minimum of 15 to 20 hours a week on the business in addition to the full-time management position she had. Without challenging petitioner's

representations with regard to the hours she worked on the business it is clear that any time petitioner spent was taking photographs. Although such activity is in pursuit of an objective of the business, by itself, it is insufficient to effectively run the business. The outsourcing of all other business related responsibilities to Mr. Bass fails to establish that it was in fact petitioner's own business. Accordingly, the third factor weighs against petitioner.

A profit motive may exist if the taxpayer expects that assets used in the activity will appreciate in value, such that even if current income is insufficient to realize a profit, the activity will generate an overall profit when the assets are sold (***see*** Treas Reg [26 CFR] § 1.183–2 [b] [4]). There is no evidence in the record with regard to the fourth factor, the expectation that assets used in the activity may appreciate in value, or the fifth factor, the success of the taxpayer in carrying on other similar or dissimilar activities. Accordingly, these two factors are weighted neutrally.

The sixth factor, the taxpayer's history of income or losses with respect to the activity, weighs against petitioner. Petitioner has sustained a series of losses since the business first started in 2005 and has never had a profit. Such losses cannot be characterized as startup losses given the significant number of years for which the losses have persisted. Courts have recognized that a series of losses which extend beyond the startup period may display a lack of a profit motive (***Annuzzi v Commr***, TC Memo 2014-233 [2014]; Treas Reg [26 CFR] § 1.183-2 [b] [6]).

In this case, petitioner argues that the business would have operated at a profit in 2013, 2014 and 2015 except for the fact that petitioner was required to incur significant expenses in professional fees litigating the State tax assessments from 2009, 2010 and 2011. Petitioner reported business expenses for legal and professional services in 2013 in the amount of

$53,500.00, in 2014 in the amount of $60,650.00, and in 2015 in the amount of $69,050.00, while at the same time, reflecting total gross receipts of $24,093.00 in 2013, $27,440.00 in 2014 and $29,450.00 in 2015.

The earlier years tax liabilities petitioner was litigating were as follows:

Year	Tax	Interest	Penalty	Balance Due
2009	$6,200.28	$1,543.58	$1,490.30	$ 9,234.16
2010	$7,510.95	$1,276.57	$1,408.22	$10,195.74
2011	$6,238.35	$425.30	$623.80	$ 7,287.45

The expenditure of funds to challenge tax assessments are clearly appropriate business expenses. However, in this case, it is noted that the litigation expenses far exceeded the tax liabilities at issue. This fact raises the question of whether the high amount of such expenses was in fact legitimate. Again, it is noted that the litigation expenses are all from one source, Mr. Bass, whose independence from petitioner and the business is questionable. The long length of petitioner's briefs in this case are indicative that work was being done on the tax matters. However, the work is more in line with an entry level or almost a training engagement rather than a professional acting within the scope of an individual's expertise. Even the books Mr. Bass read as part of his representation (***see*** finding of fact 37) are more indicative of someone early on in the learning curve of litigating tax matters. The significant amount of the expenses is excessive in light of the services provided and justified.

A significant reduction or elimination of the litigation fees would result in profitability of petitioner starting in 2013 based upon the income reported. However, the undersigned's confidence in the both the expense items and income amounts is lacking. Petitioner offers no corroborating objective evidence for any of the receipts Mr. Bass advances. Even without any heightened scrutiny, such an approach is not compelling and the numbers at issue are far too susceptible to manipulation. The undersigned is not confident that if the litigation fees were not

reflected on the subject returns or were significantly reduced, the receipts would remain as high as they were reported during the years at issue. Petitioner has always reported business losses since 2005. For purposes of the analysis of the sixth factor, because of the many years of reported losses, the factor weighs against petitioner.

The seventh factor, the amount of occasional profits, weighs against petitioner. The earning of substantial profits, even if the profits are sporadic, generally indicates a profit motive if the taxpayer's investment or losses are relatively small (***see Wilmot v Commr***, 102 TC Memo 599 [2011]; Treas Reg [26 CFR] § 1.183–2 [b] [7]). The mere opportunity to earn a substantial profit may also indicate a profit motive (***id.***). In contrast, an occasional small profit generally indicates a lack of profit motive if the taxpayer's investment or losses are relatively large (***id.***). In the case at hand, the business has been unprofitable since 2005; even if petitioner had earned profits in 2013 through 2015 without the litigation expenses incurred, such limited profit would not overcome the reality of the years and years of sustained losses.

The eighth factor, the financial status of the taxpayer, weighs against petitioner. The Treasury Regulations provide that an indication of a profit motive may be discerned when a taxpayer does not have substantial income or capital from sources unrelated to the activity (Treas Reg [26 CFR] § 1.183-2 [b] [8]). In this matter, petitioner has substantial income from her full-time wage and salary employment unrelated to her schedule C business and used her claimed business losses to claim a deduction against that substantial income.

Finally, the ninth factor, elements of personal pleasure or recreation, weighs against petitioner. Petitioner's work for the business did not focus on any business aspects of the business other than taking photographs; such indicates that the taking of photographs had a significant aspect of personal pleasure associated with it (***see Windisch v Commr***, 72 TC Memo

361 [1996]). The carrying on of the business for years at a loss is also indicative of a party enjoying the underlying product or service conducted (***see Wilmot v Commr***, TC Memo 2011-293 [2011]).

An analysis of the factors outlined above weighs heavily against petitioner. In sum, petitioner has failed to meet her burden of proof to show that she intended to actually operate and did so to primarily make a profit from the schedule C business identified on her return. As such, the Division properly denied the deduction for the claimed business losses.

F. While it has been determined that petitioner has failed to show the requisite profit motive for the activities related to the schedule C business, for purposes of a complete discussion of all the issues, the requirement of proving gross receipts and substantiating business expenses will also be discussed. Assuming, arguendo, that petitioner met her burden of proving that her business was engaged in for profit, petitioner has the further burden of proving entitlement to the claimed deductions in excess of revenue and substantiation of the business losses, including the business purpose and amount of each of the claimed expenses.

The starting point for determining a profit or loss from a schedule C business is gross receipts. From that amount, allowable expenses are subtracted to determine the net profit or loss. In this case, petitioner has presented insufficient corroborating evidence supporting both the income and expense numbers. As noted above, all of petitioner's support for income and expenses come from one source, Mr. Bass. Because of Mr. Bass' unique positions with both the business and petitioner, and the fact that no corroborating objective evidence was provided to support any of the receipts or expenses, petitioner fails to meet her burden of proof in establishing the accuracy of the income and expense items at issue.

As noted above, petitioner's litigation expenses were not proven as reasonable. Likewise for the supplies, equipment, and other miscellaneous charges there are no third-party receipts. For the rent charges there was no lease agreement or proof of payment offered to support the charge.

Accordingly, it is determined that petitioner has not met her burden of proving the amount of any of the claimed expenses.

G. Petitioner makes the same arguments as she made in her tax litigation for the earlier years. Petitioner asserts that the Division failed to follow the required audit procedure and that the notices of deficiency herein must be canceled. More specifically, petitioner argues that the Division's use of the forms DTF-973.66 and DTF-960-E to contact her regarding her liability for the years at issue were improper because those forms purport to be tax bills, and thereby indicate that the Division had already concluded that petitioner owed additional tax, penalties and interest. Since, allegedly at the time the forms DTF-973.66 and DTF-960-E were issued, petitioner had not been given an opportunity to respond to the Division's assertion of liability, petitioner argues that the process employed by the Division violated her due process rights.

Petitioner also alleges bad faith, corruption and conspiracy on the part of all individuals involved in this matter with an intent to deprive her of her rights. Petitioner contends that forms DTF-973.66 and DTF-960-E were used as a means to force her into paying the asserted deficiencies and to discourage her from exercising her protest rights.

Additionally, petitioner demands that the Division of Tax Appeals not disclose the determination in this matter to the public.

The manner in which the Division proceeded in this matter did not violate petitioner's rights to due process. The hallmarks of due process are notice and an opportunity to be heard

(***see Matter of Mayo,*** citing ***Matter of Balkin,*** Tax Appeals Tribunal, February 10, 2016). The forms DTF-973.66, DTF-160 and DTF-960-E that were mailed to petitioner expressly gave her an opportunity to respond with evidence of her income and expenses. Petitioner exercised her protest rights following the issuance of the notice of disallowance and notices of deficiencies by filing a petition for a hearing in the Division of Tax Appeals. The hearing was an opportunity for petitioner to submit evidence in support of her protest. Thus, it is clear that petitioner received the due process to which she was entitled in the present matter (***see Matter of Mayo***).

Contrary to petitioner's contention, Tax Law § 681 (a) does not require the Division to commence an income tax audit with an inquiry letter. The Division is not required to request and examine a taxpayer's books and records before issuing a notice of deficiency (***id.***). Additionally, and as also noted previously, the Division is not required to issue a statement of proposed audit changes before issuing a notice of deficiency (***id.***). Accordingly, there is plainly no requirement in the Tax Law that a taxpayer have 30 days to respond to a statement of proposed audit changes.

Petitioner's assertion that the Division's actions in the present matter are inconsistent with Tax Law §§ 3003 and 3004 is unsupported by the language of those provisions. Tax Law § 3003 requires the Division to describe the basis for an asserted deficiency of tax (***id.***). The forms DTF-973.66, DTF-160, DTF-960-E, notice of disallowance and notices of deficiency in the present matter complied with this requirement (***id.***). Tax Law § 3004 requires that the Division describe the rights of taxpayers and the obligations of the Division and to advise taxpayers of such rights and obligations (***id.***). Here, the forms DTF-973.66, DTF-960-E, notice of disallowance and notices of deficiency clearly state what petitioner should have done if she disagreed with the proposed audit changes, the adjustment to refund claim or the assessments. The requirements of this section were thus satisfied in the present matter (***id.***).

H. Petitioner advances that the Division should be estopped from pursuing an audit while a taxpayer is concurrently litigating earlier State tax controversies. Petitioner provides no authority for this limitation and thus the argument is rejected. Furthermore, in general, Tax Law § 683 provides the Division with only three years after a return is filed or after the last day a return is due to assess additional tax (***see Matter of Gorski***, Tax Appeals Tribunal, November 17, 2022). Thus, it appears the Division is statutorily compelled to pursue the review of tax returns in a timely fashion.

I. The Division imposed penalties pursuant to Tax Law §§ 685 (b) (1), (2) and 685 (p).[6] Pursuant to Tax Law § 689 (e), petitioner has the burden of proof to show that the deficiencies herein did not result from negligence or an intentional disregard of the Tax Law (***see*** Tax Law §§ 685 [b] [1] and [2]) or that the substantial understatement of tax was due to reasonable cause and not willful neglect (***see*** 20 NYCRR 2392.1 [g] [1]).

The Division sent petitioner forms DTF-960-E on March 30, 2017, requesting supporting documentation for the income and expenses reflected on her 2014 and 2015 schedules C. Petitioner did not respond to the Division until April 24, 2017, referring to the proposed deficiencies as "bogus" assessments. Petitioner's correspondence affirmatively informed the Division that she would not supply the requested supporting documentation relevant to her reported gross receipts and business expenses for tax years 2014 or 2015 and asserted the Division's employees are ". . . unfair criminals, not auditors, and as such I don't have to comply with any demands of yours." Petitioner further insisted the Division pay substantial amounts of money to her as compensation to provide the requested supporting documents. Petitioner's response did not include any of the requested documentation.

[6] The Division reduced petitioner's tax year 2013 refund requested and did not assert penalties for that year.

A hearing for the matter was conducted in Brooklyn, New York, on November 15 and 16, 2022. Twelve days before the hearing, on November 3, 2022, petitioner sent the Division hundreds of pages of documentation for the first time, purporting such to be the substantiation of business income and expenses for tax years 2013 through 2015. As noted above, it is in part troubling that petitioner waited so long to provide any records to the Division even though such was requested from her years earlier. Moreover, as also discussed above, all the receipts, invoices and other records petitioner provided as support were drafted solely by Mr. Bass, and Mr. Bass performed all of the underlying business operations of the subject business; so much so that the business at issue appears to be Mr. Bass' business rather than petitioner's. Petitioner never provided any receipts, invoices, or other support from any of the third parties the business allegedly interacted with. Mr. Bass has an MBA and business background, and petitioner has a high-level management position outside of any work she performs with the subject business. They are parties one would certainly expect to maintain the underlying support for a business' books and records.

In previous litigation, petitioner refused to provide the Division any records (***see Matter of Mayo***). The records petitioner provided in this case do not verify the business operations with any degree of confidence since they do not offer any corroborating objective evidence of the transactions at issue. Mr. Bass provided detailed supporting documentation for the litigation support charges he personally billed petitioner, so it appears he and petitioner were aware of the obvious utility of buttressing financial information reflected on a business' books and records with underlying support. The record as a whole supports the penalties imposed pursuant to Tax Law § 685 (b) (1) and (2) (***see Matter of Eisner***, Tax Appeals Tribunal, March 22, 1990 [the Tax Appeals Tribunal noted that the "petitioner was negligent in maintaining records and, therefore,

the negligence penalty was properly imposed."]; ***Riggins v Commr***, TC Memo 2017-106 [2017], ***affd*** 748 Fed Appx 970 [11th Cir 2018]; ***Baker v Commr***, TC Memo 2008–247 [2008]; ***Feinberg v Commr***, TC Memo 2017-211 [2017], ***affd on other grounds***, 916 F3d 1330 [10th Cir 2019] ["The substantiation rules require a taxpayer to maintain sufficient reliable records to allow the Commissioner to verify the taxpayer's income and expenditures"]).

Ultimately, petitioner has failed to meet her burden of proof to show that the deficiencies asserted herein did not result from negligence or an intentional disregard of the Tax Law or that the substantial understatement of tax was due to reasonable cause and not willful neglect.

J. There is no evidence in the record to support petitioner's contention that the Division employees involved in this matter acted in bad faith by conspiring to deprive petitioner of her protest rights or to coerce her into paying the asserted liabilities.

K. Petitioner's request to remove the determination in this matter from the Division of Tax Appeals' website runs contrary to the Division of Tax Appeal's statutory duty to publish and make available to the public all determinations and decisions (***see Matter of Mayo***; ***see also*** Tax Law § 2006 [9]).

L. Petitioner also protests that the original auditor was not present at the hearing. However, it is well established that, absent the issuance of a subpoena (none was issued in this case), the Division is not obligated to have the original auditor present at the hearing (***see Matter of Anray Serv.***, Tax Appeals Tribunal, December 1, 1988). Furthermore, it is noted that the Division did provide a witness at the hearing to explain the audit.

M. Petitioner demands that the Division should pay for her business record keeping costs. Petitioner cites to the United States Constitution's prohibition against slavery for support. However, the requirements that taxpayers shall prepare and file their tax returns does not amount

to involuntary servitude prohibited by the Thirteenth Amendment of the US Constitution (***see Matter of Kourakos***, Tax Appeals Tribunal, August 14, 1981). The requirement that taxpayers have to provide appropriate support for the tax returns they file is part of the burden of filing the returns themselves. Petitioner's argument is unavailing.

N. The petitions of Myra Mayo are denied, and the notice of disallowance, dated July 6, 2015, and notices of deficiency number L-046166960, dated September 11, 2017, and number L-046166961, dated September 11, 2017, are sustained.

DATED: Albany, New York
October 26, 2023

/s/ Nicholas A. Behuniak
ADMINISTRATIVE LAW JUDGE