STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
PAMELA SNYDER	:	DETERMINATION DTA NO. 831118
for Redetermination of a Deficiency or for Refund of New York State and New York City Personal Income Taxes under Article 22 of the Tax Law and the Administrative Code of the City of New York for the Year 2021.	:	

Petitioner, Pamela Snyder, filed a petition for redetermination of a deficiency or for refund of New York State and New York City personal income taxes under article 22 of the Tax Law and the Administrative Code of the City of New York for the year 2021.

A formal hearing by videoconference was held before Anita K. Luckina, Administrative Law Judge, on August 19, 2025, with all briefs to be submitted by December 30, 2025, which date commenced the six-month period for the issuance of this determination. Petitioner appeared by Ronald L. Pulito, CPA. The Division of Taxation appeared by Amanda Hiller, Esq. (Peter B. Ostwald, Esq., of counsel).

ISSUE

Whether petitioner established that the Division of Taxation improperly allocated all of petitioner's wages from her New York employer to New York for tax year 2021 pursuant to the convenience of the employer test.

FINDINGS OF FACT

1. On February 23, 2022, petitioner, Pamela Snyder, filed with the Division of Taxation (Division) form IT-203, New York State nonresident and part-year resident income tax return, for tax year 2021, that listed a Southampton, New York, address (2021 return).

2. On the 2021 return, petitioner reported: New York adjusted gross income (federal amount) of $556,618.00 and New York adjusted gross income (New York State amount) of $179,383.00; total New York State and New York City tax withholdings of $49,161.00; and total New York State tax due of $12,035.00. Petitioner claimed a refund of $37,126.00.

3. The Division selected petitioner's 2021 return for a desk audit review and assigned the review audit case ID number X190321953 (DLN PH2202327510).

4. On March 4, 2022, the Division sent petitioner a request for information letter (RFI) regarding petitioner's residency and income allocation, including a nonresident audit questionnaire (NA questionnaire) and an income allocation questionnaire (IA questionnaire). The RFI provides, in relevant part, the following:

> "We need to verify your residency status.
>
> If you either: (A) are domiciled in New York State; ***OR*** (B) maintained a permanent place of abode *AND* spent 184 days or more in New York State, you must file a resident tax return, Form IT-201, regardless of the location where you may have been working or telecommuting from during the year.
>
> We need to verify the amount of income you allocated to New York State, as reported in the *New York State amount* column of your return.
>
> If you are a nonresident or part-year resident whose assigned primary work location is in New York State, days you worked at a location outside New York State may be considered New York State work days. In particular, days you telecommuted from a location outside New York State are considered New York State work days unless your employer has established a bona fide employer office at your telecommuting location."

The RFI requested that petitioner complete and return, by April 4, 2022, the NA and IA questionnaires and provide documentation in support, particularly including: copies of new and ending lease agreements or home sale/purchase agreements; moving receipts or other documents supporting a move; a copy of federal form W-2, wage and tax statement, (W-2) for each employer; a complete description of wage income; and, if petitioner was claiming that she did not work in New York State during the tax year, a letter from her employer confirming her New York work days during the tax year.

5. On March 20, 2022, petitioner submitted documentation for review, including: the completed NA and IA questionnaires; a settlement statement for the purchase of real property in Tampa, Florida, listing petitioner as the buyer and a settlement date of March 12, 2021; a closing statement for real property in Southampton, New York, listing petitioner as the seller and a closing date of June 9, 2021; a loan payoff statement dated June 2, 2021, for real property in Southampton, New York; a bargain and sale deed dated June 3, 3021, conveying petitioner's interest in real property in Southampton, New York; form TP-584, New York State combined real estate transfer tax return, credit line mortgage certificate, and certification of exemption from the payment of estimated personal income tax, dated June 9, 2021, listing petitioner as the grantor of real property in Southampton, New York; petitioner's federal form W-2 from Standard & Poor's Financial Service for tax year 2021; and a March 1, 2021, employment verification letter from S&P Global People Services to Cross Country Mortgage, LLC (employment verification letter).

6. Petitioner's responses on the NA questionnaire indicated that petitioner was employed by "Standard & Poor's Financial Service" and lists "55 Water Street New York, NY 10041" as

her employer's address.[1] Petitioner's responses also indicated that she spent 90 working days in New York State and 50 nonworking days in New York State and that she "[m]oved to Tampa Florida, this is a permanent move" on May 12, 2021. Petitioner also responded that she maintained living quarters in Southampton, New York, for the period January 1, 2021 through May 12, 2021.

7. Petitioner's responses on the IA questionnaire indicated that she was employed by "STANDARD & POOR'S FINANCIAL SERVICE" and that her federal form W-2 compensation for the employment period was $570,083.08.

8. Petitioner completed the day count table as follows:

Total number of days in the employment period:	365
Total number of non-working days (weekends, holidays, sick leave, etc.):	141
Total number of working days:	224
Total number of days worked at home:	224

9. Petitioner completed the location of working days section as follows:

Address	Type of work location (office, home, client site, etc.)	Number of days worked at location	Nature of duties performed (in-person business meetings telecommuting, client visit, etc.)
[street address]	HOME	134	ZOOM CALLS
TAMPA, FL			
33606			
[street address]	HOME	90	ZOOM CALLS
SOUTHAMPTON, NY			
11968			

[1] The NA questionnaire that petitioner used to submit her responses appears to originate from a source other than the desk audit of petitioner's 2021 return as petitioner wrote over the prepopulated taxpayer name and audit period/number fields to include petitioner's name, the 2021 tax year and DLN PH2202327510 (***see*** finding of fact 3).

10. Petitioner's employment verification letter provided, in relevant part, as follows:

"To Whom It May Concern:

Please accept this memo as confirmation of [petitioner's] employment as a Full Time Employee (FTE) with S&P Global Ratings beginning 07/16/2018 to present day, completing 2.62 [y]ears of [s]ervice.

[Petitioner] is [a] 'Managing Director, Regional Head of Market Outreach (Americas)', and she is currently based out of our New York office, located at 55 Water Street.

We are aware of [petitioner's] plan to relocate to the state of Florida, for all or part of the year. [Petitioner's] relocation will not affect her ability to continue her current 'Work From Home' status in either New York or Florida, as an employee of S&P Global Ratings. As part of S&P Global's ongoing response to the outbreak of COVID-19, our employees are required to Work-From-Home [sic] until further notice."

11. On April 15, 2022, the Division issued to petitioner an account adjustment notice (notice). The notice states, in relevant part, as follows:

"**We adjusted the amounts reported on your tax return.**

***

Refund requested: $ 37,126.00
Refund allowed: $ 11,873.28

***

We reviewed the information you sent in response to our letter dated 3/4/2022. Your information does not establish your assigned primary work location outside of NY State or show you have met the factors to prove your employer had established a bona fide employer office at your telecommuting location. Therefore, you owe NY State income tax on income earned while telecommuting."

12. The notice indicates that the Division recomputed petitioner's 2021 return to include petitioner's federal form W-2 wages of $570,083.08, resulting in New York adjusted gross income (New York State amount) of $555,866.00 and taxable income of $545,116.00, total New York State tax due of $37,340.00 and total allocated New York State tax due of $37,287.72. The

Division credited petitioner's New York State and New York City tax withholdings of $49,161.00, resulting in an adjusted refund amount of $11,873.28.

13. On September 27, 2022, petitioner timely filed a petition with the Division of Tax Appeals protesting the notice and listing her address as an apartment address in New York, New York.

14. In support of its position, the Division submitted the affirmation of Peter B. Ostwald, Esq., a Senior Attorney with the Division's Office of Counsel, dated August 6, 2025. Mr. Ostwald avers that his responsibilities include reviewing matters before the Division of Tax Appeals in preparation for litigation and that "[he] reviewed information related to the Matter of Pamela Snyder ('Petitioner') including the petition, the audit file and any additional submissions by Petitioner." The Division submitted the audit file into the record. The audit file indicates that the auditor determined that "[PETITIONER] SUPPORTED [A] MOVE FROM NY TO FL" but "DID NOT SUPPORT [A] CHANGE IN PRIMARY WORK LOCATION."

15. Petitioner testified at the hearing that "S&P Global is a large financial data and rating agency holding company" that "provided credit ratings and research on companies" to investors. Further, "S&P had global reach, so it has offices and personnel on all continents, 42,000 employees." Petitioner stated that she was part of the rating segment and that she "headed up a team called 'Market Outreach'" to develop relationships with investors and educate them on S&P's ratings and research. Petitioner testified that in 2020, in response to COVID-19, "[her] company mandated that we work remotely" and that all 42,000 employees did so until 2022, when the company did a "soft" reopening. Petitioner testified that she moved to Florida in May of 2021 and that the employment verification letter (***see*** finding of fact 10) was intended to assure her mortgage company that she would be able to relocate to and work from Florida, that

doing so "wouldn't impact [her] ability to work." Petitioner asserted that her employer continued to pay her New York taxes because of a payroll error.

Petitioner testified that when her employer "shut down our offices . . . they helped us set up a home office." Specifically, employees took their computers from the office, and they were "given an allowance to buy cables, a secondary monitor, headphones, [and] an ergonomic chair." The allowance was initially $250.00 and increased to $500.00 in 2021. Petitioner testified that the company provided its employees with a dedicated cell phone and that her work phone was forwarded to her cell phone; the company did not maintain separate telephone lines and listings for remote offices. Petitioner testified that "we can do work anywhere with our computer." Petitioner testified that all business was done remotely, primarily by Zoom meetings and email, and that she was able to perform all her core duties remotely. Petitioner further testified that prior to working remotely, she would meet with clients in the office, but she did not meet with clients in her home.

Petitioner testified that her business card included her office number and cell phone number and the 55 Water Street, New York, New York, business address. Petitioner also testified that her employer did not reimburse expenses, such as real estate taxes, insurance or utilities, for her home office and did not provide a business insurance policy or a business insurance rider for her home office. Petitioner testified that she maintained a designated office space in her home for conducting her Zoom calls and performing research, but she did not claim a tax deduction for her home office expenses because the deduction would have been minimal. Further, petitioner's employer did not pay fair rental value for the home office or provide supplies. Finally, petitioner testified that her employer did not store inventory or records at her

home office (there was no tangible inventory or records) or provide signage or engage in advertising for her home office.

16. Petitioner also provided documents in support of her position, particularly including: a December 9, 2020, email from "SPGlobalUpdates@spglobal.com" regarding "[e]nhancing the WFH experience for our people" indicating that in 2021 existing employees would receive a "WFH [s]etup [o]ne-time [p]ayment (for non-IT equipment such as a desk or chair)" in the amount of $250.00 ($500.00 for new hires); and a March 25, 2022, email from petitioner's manager, Jonathan Manley, regarding "virtual office in Florida" confirming that he "was unaware that there was a requirement on the manager to amend the location records" when petitioner moved from New York to Florida.

17. Petitioner argues that the convenience of the employer test does not apply because she had no access to her New York office and no choice but to work from her home in Florida. Petitioner also argues that the days that she telecommuted from Florida are not New York work days because her employer established a bona fide office at her telecommuting location per the factors set forth by the Division in TSB-M-06(5)I, New York Tax Treatment of Nonresidents and Part-Year Residents[,] Application of the *Convenience of the Employer* Test to Telecommuters and Others, dated May 15, 2006 (TSB-M).

18. The Division argues that, notwithstanding the unprecedented effects of the COVID-19 pandemic in 2021, the convenience of the employer test remains the same, and petitioner failed to establish that she worked from her home in Florida for the convenience of her employer.

CONCLUSIONS OF LAW

A. 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, 769 [3d Dept 1992], ***lv denied*** 81 NY2d 704 [1993]; ***Matter of Tavolacci v State Tax Commn.***, 77 AD2d 759, 760 [3d Dept 1980]) and the burden rests on the taxpayer to demonstrate by clear and convincing evidence that the Division's determinations are erroneous (***see Matter of Greenfeld***, citing ***Matter of O'Reilly***, Tax Appeals Tribunal, May 17, 2004; ***Matter of Tavolacci v State Tax Commn.***, 77 AD2d at 760; Tax Law § 689 [e]).

B. New York may tax a nonresident only on income which is derived from or connected with New York sources (***see*** Tax Law §§ 601 [e] [1]; 631 [a] [1]; ***Matter of Zelinsky v Tax Appeals Trib.***, 1 NY3d 85, 89-90 [2003], ***cert denied*** 541 US 1009 [2004]). New York source income includes income attributable to a business, trade, profession or occupation carried on in this state (***see*** Tax Law § 631 [b] [1] [B]). When a nonresident works partly in New York and partly in another state, the New York source income must be determined by apportionment and allocation according to regulations of the Commissioner of Taxation and Finance (***see*** Tax Law § 631 [c]).

C. The salient regulations provide, in relevant part, as follows:

> "The New York adjusted gross income of a nonresident individual rendering personal services as an employee includes the compensation for personal services entering into his [f]ederal adjusted gross income, but only if, and to the extent that, his services were rendered within New York State . . . Where the personal services are performed within and without New York State, the portion of the compensation attributable to the services performed within New York State must be determined in accordance with sections 132.16 through 132.18 of this Part" (20 NYCRR 132.4 [b]).
>
> "If a nonresident employee (including corporate officers, but excluding employees provided for in section 132.17 of this Part) performs services for his employer both within and without New York State, his income derived from New

> York State sources includes that proportion of his total compensation for services rendered as an employee which the total number of working days employed within New York State bears to the total number of working days employed both within and without New York State . . . However, any allowance claimed for days worked outside of New York State *must be based upon the performance of services which of necessity, as distinguished from convenience,* obligate the employee to out-of-state duties in the service of the employer" (20 NYCRR 132.18 [a] [emphasis added]).

Regulation section 132.18 (a) has become known as the convenience of the employer test (***see Matter of Huckaby v New York State Div. of Tax Appeals***, 4 NY3d 427, 434-435 [2005], ***cert denied*** 546 US 976 [2005]; ***Zelinksy v Tax Appeals Trib.***, 1 NY3d at 90 n 3; ***Matter of Speno v Gallman***, 35 NY2d 256, 259 [1974]).

D. The convenience of the employer test would "more aptly be called the 'necessity of the employer' test" (***Zelinsky v Tax Appeals Trib.***, 1 NY3d at 90 n 3). This regulation provides that any allowance claimed for days worked outside New York State must be based on the performance of services that necessarily obligate the employee to out-of-state duties in the service of his employer (***see Zelinsky v Tax Appeals Trib.***, 1 NY3d at 90). "Further, it has been established that the necessity aspect is focused on whether the New York employer requires the employee to actually perform their services in a location other than New York because some unique aspect of the employment requires it" (***Matter of Myers***, Tax Appeals Tribunal, October 14, 2025 [citations omitted]). The Tax Appeals Tribunal has "rejected the taxpayer's assertion that the complete shutdown of their New York employer's premises due to the COVID-19 emergency and an executive order of the governor of New York State necessitated working from home" (***id.***, citing ***Matter of Zelinsky***, Tax Appeals Tribunal, May 15, 2025). "Instead, [the Tribunal] held that the employer permitting employees to work from home, [sic] does not constitute a necessity to have those job functions performed in those places" (***Matter of Myers***). As such, a nonresident that is employed in New York who works out-of-state when not required

to do so by their employer must treat those days as if they had been present in New York, resulting in New York source income (***Matter of Zelinsky*** [2025], citing ***Zelinsky v Tax Appeals Trib.***, 1 NY3d at 92). "The policy justification for the 'convenience of the employer' test lies in the fact that since a New York resident would not be entitled to special tax benefits for work done at home, neither should a nonresident who performs services or maintains an office in New York State" (***Speno v Gallman***, 35 NY2d at 259).

E. Petitioner maintains that the convenience of the employer test does not apply because her New York office was closed and she had to work from her home in Florida. However, the convenience of the employer test does apply where, as here, a nonresident employee performs services for a New York employer both within and without New York. In such a case, any allowance claimed by petitioner for days worked outside New York must be based on services performed for the employer's necessity—not petitioner's necessity. Petitioner was employed by a New York employer, assigned to a primary work location in New York and performed work for her employer in New York in 2021, until she relocated to Florida. Petitioner has not argued or established that her employer was under a legal mandate to close its New York office during the COVID-19 pandemic.[2] Petitioner testified only generally that her employer mandated that all 42,000 employees work remotely commencing in 2020 and continuing through 2021, culminating in a soft reopening in 2022. As such, while it may have been necessary for petitioner to temporarily make alternative working arrangements, the record is devoid of any evidence regarding her employer's necessity to temporarily close its offices, let alone its necessity that petitioner work from her home in Florida for any part of 2021. To the contrary, it

[2] Standard & Poor's Financial Service was likely not legally required to close its physical office during the COVID-19 pandemic because essential businesses, including services related to financial markets, were exempt from in-person restrictions (***see Matter of Myers*** [discussing pandemic-era in-person restrictions and financial service providers]).

did not seem to matter to petitioner's employer where she was working during 2021—petitioner could have worked in New York or Florida or both (***see*** finding of fact 10).

Petitioner was employed by a New York employer, assigned to a primary work location in New York and worked in New York until she chose to move to Florida in May 2021. Accordingly, the convenience of the employer test does apply. Further, petitioner's employer's decision to temporarily close its New York office during the COVID-19 pandemic alone does not satisfy the convenience of the employer test (***see Matter of Myers***; ***Matter of Zelinsky*** [2025]).

F. To that end, petitioner further maintains that she has satisfied the convenience of the employer test because she meets the requisite number of factors as set forth by the Division in its TSB-M to establish that her home office was a bona fide employer office.[3] The TSB-M provides guidance to nonresident and part-year resident employees, particularly telecommuters, that are assigned to a primary work location in New York and that work within and without New York. The TSB-M states that, it is the Division's position in such a case, that normal work days (i.e., days spent performing the usual duties of the job) spent at a home office outside New York will be treated as days worked outside New York if the employee's home office is a bona fide employer office based on the factors set forth therein. The Division determined that petitioner did not establish that her home office was a bona fide employer office. Consideration of the evidence in the record confirms the Division's determination.

G. Initially, because the convenience of the employer test looks at the employer's necessity—not the employee's—petitioner's largely uncorroborated testimony is inherently problematic. However, viewing petitioner's testimony in the most favorable light, her testimony

[3] Technical memoranda are informational statements; they do not have legal force or effect and are not binding (***see*** Tax Law 171 [subdivision first]; 20 NYCRR 2375.6).

establishes that: she was temporarily without office space because her employer temporarily closed its office in response to the COVID-19 pandemic; she performed most of her core duties at her home office; her duties did not include the sale of inventoriable products; she allocated designated work space for her home office, but she did not take the home office deduction; and she was not an officer.

Notably, petitioner did not assert that her home office was near specialized facilities or that her employer had some other bona fide business purpose to establish an office at petitioner's home in Florida, i.e., that there was some unique aspect of petitioner's employment that required her to work in Florida. Petitioner could work anywhere with her computer. Petitioner did not establish that working from her home in Florida was a condition of her employment from her employer's perspective. Again, to the contrary, the employer verification letter that petitioner provided indicated that it did not appear to matter to her employer whether she worked in New York or Florida.

Moreover, petitioner did not meet with clients at her home office, and her employer did not reimburse the expenses for her home office (other than the nominal stipend afforded all employees and seemingly unrelated to actual expenses) or pay fair rental value for the home office or provide supplies. Petitioner's employer did not maintain a separate telephone line and listing for her home office, list her home office address on business cards, store inventory or records at her home office, provide signage or engage in advertising for her home office or provide a business insurance policy or a business insurance rider for her home office.

Accordingly, petitioner has not established that her home office in Florida was a bona fide employer office. Petitioner's employer's decision to temporarily close its New York office due to the unprecedented circumstances may have created a need for petitioner to work outside

that office but it did not, itself, create in her employer a need for a bona fide employer office in petitioner's home in Florida (***Matter of Zelinsky*** [2025]). There is nothing in the record indicating that petitioner's employer mandated that she work from any specific location or that there was any demonstrated need on the part of the employer for petitioner to work from her home in Florida. This lack of demonstrated need is evidenced in large part here by all the things that petitioner's employer did not do that could have established a bona fide employer office at petitioner's home in Florida.

Thus, petitioner has failed to meet her burden to prove that in 2021 she worked from her home in Florida for the convenience of her employer.

H. The petition of Pamela Snyder is denied and the account adjustment notice, dated April 15, 2022, is sustained.

DATED: Albany, New York
June 25, 2026

/s/ Anita K. Luckina
ADMINISTRATIVE LAW JUDGE