

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
GENA V. MARCELLE	:	DETERMINATION
for Redetermination of a Deficiency or for Refund of	:	DTA NO. 831238
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 2017.	:	

Petitioner, Gena V. Marcelle, 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 2017.

A formal hearing by videoconference was held before Anita K. Luckina, Administrative Law Judge, on December 16, 2025, with all briefs to be submitted by March 27, 2026, which date commenced the six-month period for the issuance of this determination. Petitioner appeared pro se. The Division of Taxation appeared by Amanda Hiller, Esq. (Christopher O'Brien, Esq., of counsel).

ISSUE

Whether the Division of Taxation properly disallowed petitioner's refund claim for the year 2017.

FINDINGS OF FACT

1. On May 4, 2018, petitioner, Gena V. Marcelle, electronically filed with the Division of Taxation (Division) form IT-201, New York State resident income tax return, reporting head

of household filing status and listing a residential address in Rosedale, New York, for tax year 2017 (2017 return). Petitioner claimed one dependent.

2. On the 2017 return, petitioner reported: (i) wage income of \$38,990.00; (ii) a federal schedule C business loss of \$22,318.00; (iii) an itemized deduction of \$14,614.00; (iv) a New York State household credit of \$75.00; (v) a New York City household credit of \$50.00; (vi) an Empire State child credit of \$330.00; (vii) a New York State/New York City child and dependent care credit of \$374.00; (viii) a New York State earned income credit of \$1,020.00; (ix) a New York City school tax credit (fixed amount) of \$63.00; (x) a New York City earned income credit of \$170.00; and (xi) New York State and New York City tax withholding of \$2,883.00. Petitioner reported an overpayment of \$4,840.00 and requested that \$4,715.00 be refunded and that \$125.00 be deposited to a New York State 529 account.

3. Included with the 2017 return were the following: (i) form IT-201-D, resident itemized deduction schedule; (ii) form IT-213, claim for Empire State child credit; (iii) form IT-215, claim for earned income credit; and federal form W-2, wage and tax statement.

4. The Division selected petitioner's 2017 return for a desk audit review and assigned the review audit case ID number X-187195150.

5. On May 25, 2018, the Division sent petitioner a request for information letter (RFI) asking for more information because the Division could not verify some of the information on petitioner's 2017 return. The RFI was sent to petitioner at the residential address listed on her 2017 return. Enclosed with the RFI was a form DTF-973.66-ATT, questionnaire for schedule C business loss, and a form DTF-973.61, response to inquiry. The RFI provides, in relevant part, the following:

“Section 1 – Required information about your business income or loss

If you were self-employed during the tax year listed above, you need to prove your income.

- Send us your **Schedule C, Profit or Loss From Business**, from your federal income tax return for the tax year listed above.
- **In addition**, you must send us **all** of the following:
 - Detailed documentation, such as sales slips, invoices, bank statements, or receipts, supporting your business income and expenses. Use the actual documents from the time you earned the money or incurred the expenses – **estimates are not good enough.**
 - Copies of the summary documents that you used to calculate the income and expenses that you reported on your tax return. **These documents must cover the entire year.**
 - Copies of any license, registration, or certification that you need for your business (taxicab, cosmetology, health or food service, etc.)
 - the enclosed **questionnaire** (be sure to complete all questions).

* * *

Section 2 – Required information about itemized deductions

If you claimed any of the itemized deductions listed below, please send us:

- a copy of Schedule A from your federal income tax return for the tax year above
- copies of all the documents described below that apply to the deductions that you claimed

If you cannot send us proof of your itemized deductions, you can still take the **standard deduction**. Just write standard deduction on the enclosed *Response to Audit Inquiry* document and return it to us together with the documents supporting your claims to the business income or loss in Section 1.

Taxes

– Real property taxes:

- statement from your lender indicating the amount of real property taxes paid on your behalf
- if you paid the real property taxes yourself, the tax bills and canceled checks

– Sales tax:

- an explanation of how you calculated your general sales tax deduction, including work sheets and receipts for all purchases

Interest

- statement from your lender indicating the amount of interest and points that you paid
- if the mortgage was issued to you and someone other than your spouse, or if you

and your spouse did not file a joint return, canceled checks showing the payments that **you** made

- if you paid mortgage interest to an individual, provide a statement showing the name and address of the individual holding the mortgage
- canceled checks or online confirmation showing the payments that you made
- if necessary, include an **amortization table** that shows what part of your payments were for deductible interest

Gifts to charity

For cash contributions:

- canceled checks, credit card, or bank statements containing the name of the charity, the date of the contribution, and the amount of the contribution
- a written statement containing your name and address from the **qualified** charity that includes the name of the charity and the amount and date of the contribution

For contributions other than cash:

- any federal Form 8283 that you may have filed with the IRS
- receipts containing your name and address, and the name and address of the qualified charity or organization
- a detailed description of the donated items acknowledged by the charitable organization, including their fair market value at the time of the donation

Section 3 – Child and dependent care credit

If you claimed the above credit on form IT-216, send us the following:

Proof of payment

Send us proof of how much of your own money you spent on daycare or childcare for the tax year listed above. We must be able to verify the proof you send us.

Do not send us proof related to:

- money you received from a public agency, private agency, or family member that you used to pay for this care, or
- monies paid by someone else directly to the care provider.

* * *

Required information about your children and dependents

For **every** child or dependent that you are claiming this credit for on your return, we need **all** of the following items:

- A copy of the child's birth certificate
- If you are not listed on the child's birth certificate, include documentation showing your relationship to the child or dependent. For example, if you are claiming a credit for your grandchild, send us:
 - the child or dependent's birth certificate, and
 - the birth certificate for the child or dependent's parent, which lists you as a parent.
- If you are claiming a foster child, include a copy of the decree or other court

- order naming you as the foster parent.
- Proof of where the child or dependent lived. If you are claiming the credit for a child, send us a letter from the child’s doctor or school showing the child’s name, date of birth, address, and name of the child’s custodial parent for the tax year above.
 - If you changed your address during the tax year listed above, give us the address of each place you lived during the year.

* * *

It is important that you respond.

If we do not hear from you within 60 days, or if the information you submit does not support your claims:

- We will disallow or adjust the itemized deductions and/or business income/loss that you have claimed.
- We will recompute your return using the information you submitted or the appropriate standard deduction.
- If we recompute your return, you may receive a lower refund, or you may **owe tax**.
- If you owe tax, we will send you a bill.”

6. Petitioner did not respond to the RFI.

7. On January 10, 2019, the Division issued to petitioner a notice of disallowance for audit case ID number X-187195150 denying in full petitioner’s refund claim in the amount of \$4,715.00 for tax year 2017 (notice). The notice was sent to petitioner at a post office box address in Valley Stream, New York. The notice provides that the Division disallowed the claim for refund because “[y]ou did not respond to our audit inquiry letter for the tax year shown above.”

8. On September 20, 2022, petitioner filed a petition with the Division of Tax Appeals protesting the notice.¹ The petition includes the same post office box address listed on the notice.

¹ On June 23, 2023, the supervising administrative law judge issued to the parties a notice of intent to dismiss petition (NOID) because the petition appeared to be filed late. On July 6, 2023, the Division responded that it had insufficient documentation to submit on the timely filing issue. On July 11, 2023, the NOID was rescinded.

9. At the hearing, Donald Bussey, a Tax Technician 3 in the Division's income tax desk audit bureau (also, the advocate), testified for the Division. Mr. Bussey testified that his "day-to-day duties are to review information from the taxpayers to verify figures on their tax returns." He stated that he became involved in this matter when the Division was "seeking an advocate for this hearing" and that he familiarized himself with the matter by reviewing the Division's business and tax records.

Mr. Bussey testified generally that he reviewed petitioner's 2017 return and federal form schedule C, profit or loss from business (federal schedule C), for the hearing, and that these items "would have been reviewed by a technician if there had been a reply that was received." Mr. Bussey testified that he "look[ed] at the itemized deductions claimed on the income tax return, as well as some of the refundable credit[s]."

Mr. Bussey testified about the "normal" outcome of the Division's review process as follows:

"Q. Okay. So, did there come a time, then, when the technician initially would have processed this in such a way as to deny part or all of a refund sought?

A. Yes. That's the normal outcome of a review.

Q. Okay. In this case, what did the tax department do?

A. In this case, the tax department did nothing.

Q. Okay.

A. We issued a disallowance letter, but there was no refund or bill issue[d].

Q. Okay. Now, in preparing for this, did you determine that there is an adjustment necessary?

A. Yes, there is.

Q. Okay. Could you explain what the basis of that is to everybody, in non-accounting terms specifically.

A. Yes. As we just touched on, the normal review process results in two different outcomes. One is a reduced refund or a bill for additional taxes.

When I started to prepare for this case, I started taking notes to try to verify what had happened, and I couldn't find any notice related to either a bill or a refund.

So, I went back into the return and found out there had been a system issue where it did not complete the way it should have.

Q. Okay. Hold on. Would -- a Notice of Disallowance wouldn't be one of those things?

A. A Notice of Disallowance would follow an adjusted refund.

Q. Okay.

A. In other words, what would happen is when we recalculated the return and made the adjustments we thought were necessary, the outcome would either be an adjusted refund or a bill.

If it was an adjusted refund, after that adjusted refund was issued, a Notice of a [sic] Disallowance would follow after about 45 days to allow the taxpayer formal rights to protest that.

Q. Okay. And as you were processing this or getting ready for this, you noticed that the adjusted refund document was not issued first, correct?

A. Correct. There was never an adjusted refund issued by the Department.

Q. Okay. Would that result in -- my understanding is that the claim -- let me just refer back -- is seeking a refund of \$4,715, correct?

A. Yes. Correct.

Q. Okay. But in doing your review, did you determine that the zero amount provided or granted, actually, because of the failure to adjust the refund, would actually result in a refund?

A. That is correct, yes.

Q. Okay. So, would that \$4,715 be the amount she was due and owed?

A. That is the amount she was claiming.

Q. Okay.

A. Based on the adjustments that were made, the amount that would be refunded to her was \$1,973.

Q. Okay. And plus interest as well?

A. Plus accrued interest, correct.”

10. Mr. Bussey testified that petitioner provided no substantiation entitling her to any more than \$1,973.00.

11. Mr. Bussey did not explain why the technician that performed the desk audit of petitioner could not testify.

12. Mr. Bussey did not explain the system issue that would cause a notice of disallowance to be issued outside the normal process.

13. Mr. Bussey did not explain the adjustments that were made that resulted in the Division’s proposed \$1,973.00 adjusted refund.

14. At the hearing, the Division submitted documents in support of its position, including petitioner’s 2017 return and attachments, petitioner’s federal schedule C and the RFI.²

15. The Division did not submit an adjusted notice of disallowance, or other supporting documentation, detailing the adjustments to the 2017 return that resulted in the proposed \$1,973.00 adjusted refund.

16. Petitioner testified at the hearing. Ms. Marcelle testified that in 2017 she purchased a home and decided to start a home business, and that she filed her taxes as such for tax year 2017. Ms. Marcelle testified that she was and still is living with her son at that home. Ms. Marcelle explained that her business was a t-shirt printing company, and she also did some embroidering. Ms. Marcelle acknowledged that in 2017 the business was in a start-up phase and that she had no

² At the hearing, petitioner objected to the introduction of the RFI, claiming that she never received it. Notwithstanding, petitioner acknowledged that it was included in the documents provided to her by the Division as part of the prehearing document exchange. The RFI was accepted into the record.

sales. Ms. Marcelle explained that the expenses for the business were paid for from her income from her full-time job. She testified that many of her records were destroyed by a roof leak, and that she had photographs of that damage and a claim “against the mortgage company that sold me the house.” She testified that she had receipts for equipment purchases, including a printing press, and materials purchases for business-related home renovations. Ms. Marcelle stated that she could possibly retrieve some expense purchase records from her Amazon account. Ms. Marcelle also stated she currently had no records for childcare expenses because her son was transitioning into school that year and was in daycare for only a few months.

17. Petitioner did not submit any documents at the hearing.³

CONCLUSIONS OF LAW

A. A presumption of correctness attaches to a notice issued by the Division (*see* Tax Law § 689 [e]; *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 Tavalacci 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 id.*, citing *Matter of O’Reilly*, Tax Appeals Tribunal, May 17, 2004; *Matter of Tavalacci v State Tax Commn.*, 77 AD2d at 760; Tax Law § 689 [e]). In *Matter of Atlantic & Hudson Ltd. Partnership* (Tax Appeals Tribunal, January 30, 1992), the Tax Appeals Tribunal stated:

“Although a determination of tax must have a rational basis in order to be sustained upon review, the presumption of correctness raised by the issuance of the assessment, in itself, provides the rational basis, so long as no evidence is introduced challenging the assessment. Evidence that both rebuts the

³ The record was held open until January 16, 2026, to allow petitioner to submit documentation. Petitioner submitted documents on January 24, 2026, after the record closed, and those documents were not considered in rendering this determination.

presumption of correctness and indicates the irrationality of the audit may appear: on the face of the audit as described by the Division through testimony or documentation; from factors underlying the audit which are developed by the petitioner at hearing; or in the inability of the Division to identify the bases of the audit methodology in response to questions posed at the hearing” (citations omitted).

It is well established in New York law that a notice that has no rational basis must be set aside (see *Matter of Donahue v Chu*, 104 AD2d 523, 526 [3d Dept 1984]; *Matter of Rosenthal v State Tax Commn.*, 102 AD2d 325, 328 [3d Dept 1984]; *Matter of Welch v State Tax Commn.*, 89 AD2d 683, 684 [3d Dept 1982]).

Here, petitioner’s testimony alone is likely insufficient to establish clear entitlement to any of the credits, expenses and deductions claimed on her 2017 return. Regardless, the facts in evidence rebut the presumption of correctness that is attached to the issuance of the 2017 notice.

B. By its own admission, the Division improperly denied petitioner’s refund in its entirety. The explanation offered by the advocate—not the technician who performed the desk audit of petitioner’s 2017 return—was that there was a “system issue” and that an adjusted refund should have been issued before the notice was issued. The advocate never explained the system issue or its impact on the audit process here. And while a system issue may be the explanation for the error, it is an insufficient reason to disregard that the notice improperly denied petitioner’s refund.

Further, the improper denial of petitioner’s entire refund underscores that the notice failed to identify the adjustments that were made to her 2017 return. The notice advises petitioner only that the Division entirely disallowed her refund claim because “[y]ou did not respond to our audit inquiry letter for the tax year shown above.” That is, the notice references the RFI by way of explanation for denying petitioner’s refund. Assuming no system issue, such that the RFI was in fact mailed to petitioner at her mailing address on record (petitioner stated

that she never saw the RFI before the prehearing document exchange), it is the only communication from the Division in the record that could possibly provide petitioner with any insight into the adjustments to her 2017 return. And that document is insufficient for that purpose here. While the RFI clearly requests information related to the income tax return items identified therein (*see* finding of fact 5), there is no absolute connection between those items and the information requested and the adjustments made to petitioner's 2017 return. The RFI itself does not identify specific potential adjustments to petitioner's return. It simply advised petitioner generally that adjustments may be made depending on whether and how petitioner responds.

C. Moreover, the advocate did not testify with any specificity as to the technician's initial determinations or the final adjustments resulting in the proposed adjusted refund amount. He testified generally that, in preparation for the hearing, he looked at petitioner's 2017 return, including the itemized deductions and some of the refundable credits. In so doing, he discovered the system issue and that an adjusted refund was never issued to petitioner. The advocate testified that petitioner was due an adjusted refund in the amount of \$1,973.00, but he never explained why. That is, there is still nothing in the record identifying the adjustments made by the Division and the resulting impact on the recomputation of petitioner's 2017 return.⁴ This lack of explanation for the proposed refund amount is particularly disconcerting given that the Division already improperly denied petitioner's entire refund in the first instance. Clearly, mistakes happen. And yet the Division, in its attempt to rehabilitate the notice issued in error, offered nothing to substantiate that its proposed adjusted refund was even correct.

⁴ The undersigned made several attempts to recompute petitioner's relatively straightforward 2017 return using variations of adjustments that the Division could reasonably have made and could not compute a refund of \$1,973.00

D. In sum, the Division issued to petitioner a notice improperly denying petitioner's refund in its entirety. That notice did not provide petitioner actual notice of the adjustments made to her 2017 return and any reference therein to the RFI was insufficient for that purpose here. Further, the Division subsequently admitted that petitioner was due an adjusted refund in the proposed amount of \$1,973.00, but offered no explanation as to how this amount was determined. It is unknown what adjustments were originally intended, and it remains unknown what adjustments were finally and properly made.

Thus, while it is generally true that the burden of proof is on petitioner (*see* Tax Law §§ 658 [a], 689 [e]), the facts here establish that the notice was improper: it has no rational basis and it cannot be sustained.

E. The petition of Gena V. Marcelle is granted and the notice of disallowance, dated January 10, 2019, is cancelled.

DATED: Albany, New York
September 24, 2026

/s/ Anita K. Luckina
ADMINISTRATIVE LAW JUDGE