

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition	:	
of	:	
<b>CALVIN I. THOMAS</b>	:	<b>DETERMINATION</b>
for Redetermination of a Deficiency or for Refund of	:	<b>DTA NO. 850654</b>
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 2020.	:	

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Petitioner, Calvin I. Thomas, 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 2020.

A formal hearing by videoconference was held before Nicholas A. Behuniak, Administrative Law Judge, on July 11, 2025, with all briefs due by December 5, 2025, 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. (Christopher O'Brien, Esq., of counsel).

***ISSUE***

Whether petitioner has established that the Division of Taxation improperly included unemployment compensation in his New York State adjusted gross income for tax year 2020.

***FINDINGS OF FACT***

1. On February 17, 2021, petitioner, Calvin I. Thomas, electronically filed form IT-201, New York State resident income tax return, for tax year 2020 (2020 return), upon which he

reported wage income of \$74,198.00, and taxable pension and annuities of \$5,000.00. Petitioner did not report any unemployment compensation on line 14 of the 2020 return.

2. On December 16, 2021, the Division issued to petitioner a statement of proposed audit change, bearing assessment identification number L-054915492, for tax year 2020 proposing additional tax due in the amount of \$1,696.00, plus interest (statement). The statement explained, in relevant part, that:

“There is a discrepancy between our records and the amount of Unemployment Compensation you reported on your New York State 2020 Income Tax return. As a result, we changed your federal adjusted gross income to include the Unemployment Compensation you received from New York State. We used the amount that the New York State Department of Labor reported to us on Form 1099-G.

The total amount of Unemployment Compensation you received is taxable to New York State under New York State Tax Law. While you may be eligible to exclude a portion of your Unemployment Compensation on your federal tax return, there is no exclusion for New York State.

If you do not agree with the amount of Unemployment Compensation reported to us, you should get a copy of your 1099-G. Go to the New York State Department of Labor’s 1099-G website at [web address]. Follow the instructions on that page to get a copy of your 1099-G.

That website also has a section labeled ‘Disagree with your 1099-G information?’ From that section, you can get a form to fill out and send to the Department of Labor explaining why you think the 1099-G is not correct. If you get a corrected 1099-G from the Department of Labor, send us a copy of the corrected Form 1099-G.

If you believe you may be the victim of Unemployment Compensation fraud or identity theft, contact the Department of Labor at [web address], and then send us a copy of the corrected Form 1099-G.”

The statement recomputed petitioner’s 2020 New York State and City tax liability by including \$22,668.00 of unemployment compensation in petitioner’s income, resulting in additional tax due of \$1,696.00.

3. On February 1, 2022, the Division issued a notice of deficiency, notice number L-054915492 (notice) to petitioner, asserting tax and interest consistent with the statement. No penalties were imposed.

4. Petitioner filed a request for conciliation conference (request) with the Division's Bureau of Conciliation and Mediation Services (BCMS) in protest of the notice.

5. On September 8, 2023, BCMS issued a conciliation default order, CMS No. 000340319, to petitioner. The conciliation default order stated, in part, that a conciliation conference was scheduled for August 9, 2023 and further that:

“Notice of the Conciliation Conference was mailed on July 03, 2023. The requester failed to appear personally, or by representative, at the Conciliation Conference. A Default has been duly noted.”

The conciliation default order sustained the notice and dismissed petitioner's request.

6. On September 21, 2023, petitioner filed a timely petition with the Division of Tax Appeals protesting the conciliation default order.

7. At the hearing in this matter, petitioner testified that he did not recall receiving any unemployment benefits during 2020. Petitioner did not submit any documents into evidence at the hearing.

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

A. When the Division issues a notice of deficiency to a taxpayer, a presumption of correctness attaches to the notice, and the burden of proof is on the taxpayer to demonstrate, by clear and convincing evidence, that the deficiency assessment is erroneous (*see Matter of Suburban Restoration Co. v Tax Appeals Trib.*, 299 AD2d 751, 752 [3d Dept 2002]; *Matter of Leogrande v Tax Appeals Trib.*, 187 AD2d 768, 769 [3d Dept 1992], *lv denied* 81 NY2d 704 [1993]; *see also* Tax Law § 689 [e]). The Division does not bear the burden of demonstrating

the propriety of the deficiency (*see Matter of Scarpulla v State Tax Commn.*, 120 AD2d 842, 843 [3d Dept 1986]).

The Division's source for the dollar amount of unemployment compensation that petitioner received in 2020 came directly from the New York State Department of Labor (NYSDOL) and was reported on form 1099-G. Other than petitioner's unsubstantiated claims, petitioner presented no evidence that he did not receive unemployment compensation in 2020, nor did he challenge the information provided by the NYSDOL in the appropriate manner (*see* finding of fact 2). As such, petitioner has not met his burden of establishing that the notice was incorrect (*see* Tax Law § 689 [e]; *see also* 20 NYCRR 3000.15 [d] [5]).

B. The petition of Calvin I. Thomas is denied and the notice of deficiency, dated February 1, 2022, is sustained.

DATED: Albany, New York  
June 4, 2026

/s/ Nicholas A. Behuniak  
ADMINISTRATIVE LAW JUDGE