STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
WAI YUEN	:	DETERMINATION DTA NO. 850761
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.	:	

Petitioner, Wai Yuen, 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 Barbara J. Russo, Administrative Law Judge, on January 8, 2026, at 10:30 a.m., with the final brief to be submitted by May 6, 2026, 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 entitlement to an exclusion for certain unrecovered investments in a pension or annuity for tax year 2020.

FINDINGS OF FACT

1. On or about May 15, 2021, petitioner, Wai Yuen, electronically filed with the Division of Taxation (Division) form IT-201, New York State resident income tax return, for tax year 2020 (2020 return). Petitioner reported federal and New York adjusted gross income of

$108,204.00 and itemized deductions of $46,763.00, resulting in taxable income of $60,441.00 and New York State and City tax of $5,487.00. Petitioner reported total payments of $10,026.00 and requested a refund of $4,539.00.

2. Attached to petitioner's 2020 return was form IT-196, New York resident, nonresident and part-year resident itemized deductions. On form IT-196, petitioner claimed total itemized deductions of $56,808.00, consisting of taxes paid of $18,143.00, gifts to charity of $5,200.00 and a miscellaneous deduction on line 35 for certain unrecovered investments in a pension of $33,465.00. From the total itemized deductions, petitioner subtracted $10,045.00 for state, local and foreign income tax adjustments, resulting in reported itemized deductions of $46,763.00.

3. Based on petitioner's 2020 return, the Division issued a refund in the amount of $4,539.00 to her for tax year 2020.

4. Petitioner's 2020 return was selected for a desk audit by the Division after the issuance of the requested refund. On July 1, 2021, the Division issued to petitioner a statement of proposed audit change for the tax year 2020 (statement). The statement explained, in relevant part:

> "Your 2020 New York State Income Tax Return has been selected for review by Desk Audit.
>
> This notice is based solely on information reported on your return and not on an audit inquiry letter. Reviewing the information available, we were unable to verify the amounts reported as: "CERTAIN UNRECOVERED INVESTMENTS IN A PENSION" on Form IT-196 line 35.
>
> Certain Unrecovered Investments in a Pension can only be claimed on a decedents [sic] FINAL tax return. If the annuity is for the joint lives of a retiree and a designated beneficiary, the deduction would apply to the final return of the last to die. Our review of your return does not show that this tax return filing is on the behalf of a decedent. (Someone who had died) [sic]
>
> Therefore, we have disallowed the Miscellaneous Deduction amount claimed. Your Itemized Deductions have been changed to the Standard amount allowed for

> your Filing Status and your return recalculated, which resulted in a [sic] in an underpayment of tax.
>
> Interest is due for late payment or underpayment of tax. Interest is required under the New York State Tax Law, it is not discretionary. The Commissioner of Taxation and Finance does not have the authority to waive Interest and it is imposed regardless of the reason for the delay in making payment.
>
> If you DISAGREE with our determination and wish to dispute the amount calculated on this notice, you MUST provide a copy of the Annuity, [sic] documentation to show the decedent['s] date of death and the amount of unrecovered investment."

5. The statement reflected the recomputation of petitioner's 2020 New York State tax liability by adjusting the standard or itemized deduction to $13,298.00, resulting in taxable income of $93,906.00 and tax due of $3,260.80, plus interest.

6. On August 17, 2021, the Division issued to petitioner a notice of deficiency, bearing assessment identification number L-053715509 (notice), asserting tax due of $3,260.80, plus interest and zero penalty, for the tax year 2020.

7. Petitioner filed a request for conciliation conference with the Division's Bureau of Conciliation and Mediation Services (BCMS) protesting the notice. By conciliation order, dated September 29, 2023, CMS number 000333319 (conciliation order), BCMS recomputed the statutory notice by reducing the tax due to $2,586.20, plus interest and zero penalty. Petitioner, thereafter, filed a timely petition with the Division of Tax Appeals on December 28, 2023.

8. At the hearing, the Division presented the testimony of Leo Butera, Tax Technician 3. Mr. Butera testified that the Division disallowed petitioner's claimed deduction for certain unrecovered investments in a pension because she did not qualify for the deduction. Mr. Butera explained that the deduction is for a taxpayer who contributes to a pension or annuity and dies prior to recovering the investment. The deduction can then be claimed on the decedent's final return for the money that was invested into a pension or annuity that was not received. Mr.

Butera testified that, in this case, petitioner improperly claimed the deduction on her own 2020 return. Mr. Butera further testified that during the audit petitioner submitted some statements from her retirement account and utility bills, but they had no bearing on the deduction.

9. During the hearing, petitioner introduced, among other items, additional statements from her retirement account, a death certificate for her mother, Li L. Chang, showing a date of death of May 14, 2023, and receipts for funeral services, a casket and other expenses in relation to her mother's passing in 2023. Petitioner testified that she does not have a high income and experienced critical family conditions. She argued that she is the sole breadwinner and, due to expenses, she cannot afford to contribute to her retirement account. She further argued that the system is unfair to the lower middle class.

CONCLUSIONS OF LAW

A. It is initially noted that determinations made in a notice of deficiency are presumed correct, and the burden of proof is upon petitioners to establish, by clear and convincing evidence, that those determinations are erroneous (***see 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 burden does not rest with the Division to demonstrate the propriety of the deficiency (***see Matter of Scarpulla v State Tax Commn.***, 120 AD2d 842, 843 [3d Dept 1986]). A taxpayer who fails to present any evidence to show that the notice is incorrect surrenders to this presumption (***id.***). Petitioner has the burden to show entitlement to the deductions claimed on her return and to substantiate the amount 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]). Further, the Tax Law requires that taxpayers maintain adequate

records to substantiate their deductions for the years in issue (***see*** Tax Law § 658 [a]; 20 NYCRR 158.1 [a]).

B. The adjusted gross income of a New York resident is federal adjusted gross income, with certain modifications not applicable in this case (***see*** Tax Law § 612 [a]). Section 62 (a) (1) of the Internal Revenue Code (IRC) defines adjusted gross income as an individual's gross income minus certain deductions. Gross income includes any amount received as an annuity, subject to certain exceptions (***see*** IRC [26 USC] § 72). Among the listed exceptions for annuity payments, the IRC allows for a deduction on a decedent's final return where annuity payments cease before the entire investment is recovered by reason of death of an annuitant (***see*** IRC [26 USC] § 72 [b] [3] [A]). Such deduction is allowed if:

> "(i) after the annuity starting date, payments as an annuity under the contract cease by reason of the death of an annuitant, and
>
> (ii) as of the date of such cessation, there is unrecovered investment in the contract, the amount of such unrecovered investment (in excess of any amount specified in subsection (e) (5) which was not included in gross income) shall be allowed as a *deduction to the annuitant for his last taxable year"* (IRC [26 USC] § 72 [b] [3] [A] [i] and [ii], emphasis added).

In this case, petitioner claimed a miscellaneous deduction for certain unrecovered investments in a pension on her 2020 return. Because petitioner was not a decedent and the amount claimed was not a deduction for the annuitant on a final return, the Division denied the deduction. The record is clear that petitioner was not a decedent and the 2020 return was not her final return. As such, petitioner is not entitled to the deduction on this basis.

A deduction is, however, allowed to persons other than the decedent if the annuity contract provides for payments meeting the requirements of IRC (26 USC) § 72 (c) (2) (B) and (C) (***see*** IRC [26 USC] § 72 [b] [3] [B]). The requirements contained in IRC (26 USC) § 72 (c) (2) (B) and (C), in turn, are as follows:

> "(B) the contract provides for payments to be made to a beneficiary (or to the estate of an annuitant) on or after the death of the annuitant or annuitants; and
>
> (C) such payments are in the nature of a refund of the consideration paid."

Petitioner has failed to provide any evidence to show that the deduction claimed by her was a payment made to her as a beneficiary of an annuitant and that such payments were in the nature of a refund of consideration paid. The retirement statements introduced by petitioner do not show that an annuity contract provided for payments to be made to her as a beneficiary after the date of death of an annuitant and do not show any payments in the nature of a refund of consideration paid by a decedent. As such, petitioner has not met her burden of proving that she is entitled to a deduction for unrecovered investment in a pension.

C. Petitioner argues that the tax and interest should be waived due to reasonable cause, contending that she has financial hardships from medical expenses, funeral obligations and necessary living costs. However, the records that petitioner introduced regarding the passing of her mother in 2023 and expenses incurred therefrom have no relevance to the deduction she claimed on her 2020 return. While sympathetic to petitioner's circumstances with the loss of her mother and her struggles with the affordability crisis, there is simply no basis in fact or law which would support a conclusion different from that reached herein (***see Matter of Dworkin Constr. Co***., Tax Appeals Tribunal, August 4, 1988 ["[m]ere economic difficulties are not an excuse for the failure to pay taxes]). Petitioner cites Tax Law § 171 (Fifteenth) and 20 NYCRR 2392.1 in support of her argument that the assessed tax and interest should be waived due to financial hardship and reasonable cause. Tax Law § 171 (Fifteenth) grants authority to the Commissioner of Taxation to compromise tax, interest and penalties under certain circumstances if the taxpayer has been discharged in bankruptcy, submits proofs that he or she is insolvent or that collection in full would cause economic hardship. However, such authority granted to the

Commissioner of Taxation pursuant to Tax Law § 171 (Fifteenth) for offers in compromise does not extend to the Division of Tax Appeals and this forum has no jurisdiction to compromise tax, interest or penalties on such basis (***see Matter of Williams***, Tax Appeals Tribunal, September 1, 1994 [Tax Appeals Tribunal "lacks statutory authority to accept or even consider" an offer in compromise]). Additionally, contrary to petitioner's argument, the provisions of 20 NYCRR 2392.1 pertain to the abatement of *penalties* where a taxpayer shows that a failure to file a return or pay tax due was due to reasonable cause and not willful neglect. In this case, no penalties were assessed. There is no provision for the waiver of tax due.

Turning to the matter of interest, Tax Law § 684 (a) provides, in pertinent part, as follows:

> "If any amount of income tax is not paid on or before the last date prescribed in this article for payment, interest on such amount . . . shall be paid for the period from such last date to the date paid, whether or not any extension of time for payment was granted."

Tax Law § 3008 (a) provides for the abatement of interest attributable to certain unreasonable errors or delays by the Division. The application of the statute is limited to unreasonable errors or delays by Division employees in performing "ministerial or managerial" acts, and only if no significant aspect of the unreasonable error or delay can be attributed to the taxpayer involved (***see*** Tax Law § 3008 [a] [1] [A] and [2]). In this case, petitioner has presented no evidence or argument that the interest accrued was due to unreasonable errors or delays caused by the Division.

By requesting that interest be abated, petitioner, in essence, seeks an interest-free loan from New York State. As noted by the Tribunal ***in Matter of Rizzo*** (Tax Appeals Tribunal, May 13, 1993):

"Failure to remit tax gives the taxpayer the use of funds which do not belong to

> him or her, and deprives the State of funds which belong to it. Interest is imposed on outstanding amounts of tax due to compensate the State for its inability to use the funds and to encourage timely remittance of tax due . . . It is not proper to describe interest as substantial prejudice, as it is applied to all taxpayers who fail to remit . . . tax due in a timely manner. Rather, a more accurate interpretation would be to say that interest represents the cost to the taxpayer for the use of the funds . . .”

As such, petitioner has not proven that interest should be abated.

D. The petition of Wai Yuen is denied and the notice of deficiency, dated August 17, 2021, as modified by the conciliation order, is sustained.

DATED: Albany, New York
November 5, 2026

/s/ Barbara J. Russo
ADMINISTRATIVE LAW JUDGE