

STATE OF NEW YORK

DIVISION OF TAX APPEALS

---

In the Matter of the Petition	:	
of	:	
<b>ADRIENNE ADAMKIEWICZ</b>	:	DETERMINATION
for Redetermination of a Deficiency or for Refund of Personal Income Tax under Article 22 of the Tax Law for the Year 2016.	:	DTA NO. 830694

---

Petitioner, Adrienne Adamkiewicz, filed a petition for redetermination of a deficiency or for refund of personal income tax under article 22 of the Tax Law for the year 2016.

The Division of Taxation, by its representative, Amanda Hiller, Esq. (Colleen M. McMahon, Esq., of counsel), brought a motion, dated October 17, 2022, seeking an order granting summary determination in the above-referenced matter pursuant to section 3000.9 (b) of the Rules of Practice and Procedure of the Tax Appeals Tribunal. Petitioner, appearing pro se, did not respond to the Division of Taxation's motion. The 90-day period for issuance of this determination commenced on November 16, 2022. Based upon the motion papers, the affidavits and documents submitted therewith, and all pleadings and documents submitted in connection with this matter, Barbara J. Russo, Administrative Law Judge, renders the following determination.

***ISSUE***

Whether the Division of Taxation's disallowance of petitioner's claim for credit or refund of personal income tax for the year 2016, upon the basis that the claim was filed after the expiration of the period of limitations, was proper and should be sustained.

***FINDINGS OF FACT***

1. On April 10, 2017, petitioner, Adrienne Adamkiewicz, electronically filed a New York State resident income tax return (form IT-201) for the year 2016.<sup>1</sup> This return reported total New York tax due in the amount of \$3,364.00. Petitioner simultaneously remitted payment of the reported amount due with her 2016 return on April 10, 2017.

2. On July 13, 2020, the Division of Taxation (Division) received an amended resident income tax return for tax year 2016 from petitioner requesting a refund in the amount of \$1,940.00.<sup>2</sup> The 2016 amended return was signed and dated July 9, 2020, and bears a postmark of “Jul 2020.”

3. On August 20, 2020, the Division issued a reply to petitioner’s inquiry for tax year 2016, stating that the refund requested could not be allowed.

4. The Division issued an account adjustment notice, dated October 9, 2020, denying petitioner’s refund request for tax year 2016. The account adjustment notice stated, in part:

“We denied your claim for refund or credit because it was filed too late. The tax law allows a refund or credit if the taxpayer makes the claim within three tax years from the time the return was required to be filed or within two years from the time the tax was paid, whichever is later.”

5. The Division issued a notice of disallowance, dated March 24, 2021, disallowing petitioner’s refund request for the year 2016.

6. Petitioner filed a petition challenging the Division’s notice of disallowance and stating as follows:

“We filed an amended 2016 NYS tax return to include our mortgage statement that

---

<sup>1</sup> Petitioner filed a joint return with Michael Adamkiewicz for the year 2016. The petition filed herein lists Adrienne Adamkiewicz only.

<sup>2</sup> The 2016 amended return was filed jointly by petitioner and Michael Adamkiewicz.

was erroneously excluded from our original tax return. We have 2 mortgages and our main loan document wasn't included, only the second mortgage statement. It was only realized after a new tax preparer at my accountant's office picked it up after reviewing my file to prepare the current taxes.

Due to the coronavirus pandemic, we had to file everything virtually and my tax accountant's office had numerous Covid cases which set them behind in preparing the returns. I attached a page from the NYS tax website that states that the date to file returns was extended to July 15, 2020 which is why my accountant prepared the amended return.

I sincerely apologize if this was not the case. We also filed an amended return with the IRS for 2016. I am asking to please reconsider the decision to decline this amended return. The additional return was approximately \$1,940 and as this may not seem to be much, it would make a very big difference to my family that was financially affected by this pandemic."

Attached to the petition was a portion of a printout from an unverified source, stating:

"The April 15, 2020, due date has been extended to July 15, 2020, for New York State personal income tax and corporation tax returns originally due on April 15, 2020. If you are unable to file your 2019 return by July 15, 2020, you can request an automatic extension to file your return. Your return will be due on October 15, 2020 (September 30, 2020, for fiduciary returns), if the extension request is filed by July 15, 2020, and you properly estimate and pay your 2019 tax liability with your extension request. See N-20-2, Announcement Regarding Relief from Certain Filing and Payment Deadlines due to the Novel Coronavirus, COVID-19."

7. The Division filed a motion for summary determination, dated October 17, 2022. In support of the motion, the Division provided the affirmation of the Division's attorney, Colleen McMahan, dated October 17, 2022, and exhibits attached thereto, and the affidavit of Robin McNamara, dated October 13, 2022, and exhibits attached thereto.

8. Ms. McNamara is a Taxpayer Services Specialist II in the Division's Individual Liability Resolution Center (ILRC). She has held her current position for four years and has worked for the Division for eight years. Ms. McNamara's responsibilities include supervising resolvers who handle protests of personal income tax returns and overseeing ILRC cases before

the Bureau of Conciliation and Mediation Services. In performance of her responsibilities, Ms. McNamara reviewed the information in the Division's systems including correspondence, case contacts, filing history and other documents for petitioner, including her New York State personal income tax returns for the year 2016. Ms. McNamara affirms that petitioner electronically filed a New York State resident income tax return for the year 2016 on April 10, 2017, reported tax due of \$3,364.00 and paid such amount simultaneously with her return. Ms. McNamara further affirms that the Division received an amended return for tax year 2016 from petitioner on July 13, 2020. A copy of the amended 2016 return attached to Ms. McNamara's affidavit is signed and dated by petitioner on July 9, 2020. A copy of the envelope in which the amended return was mailed bears a postmark of "Jul 2020." Ms. McNamara affirms that the Division issued form DTF-161 to petitioner on August 20, 2020, denying the refund request, and subsequently issued an account adjustment notice for 2016, dated October 9, 2020, and a notice of disallowance, dated March 24, 2021, both denying petitioner's refund request for 2016. Ms. McNamara affirms that petitioner's refund request for tax year 2016 was filed more than three years after her original 2016 resident income tax return was due to be filed.

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

A. A motion for summary determination "shall be granted if, upon all the papers and proof submitted, the administrative law judge finds that it has been established sufficiently that no material and triable issue of fact is presented" (20 NYCRR 3000.9 [b] [1]). Section 3000.9 (c) of the Tax Appeals Tribunal's Rules of Practice and Procedure provides that a motion for summary determination is subject to the same provisions as a motion for summary judgment pursuant to CPLR 3212. "The proponent of a summary judgment motion must make a prima

facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case” (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985], citing *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). As summary judgment is the procedural equivalent of a trial, it should be denied if there is any doubt as to the existence of a triable issue or where the material issue of fact is “arguable” (*Glick & Dolleck, Inc. v Tri-Pac Export Corp.*, 22 NY2d 439, 441 [1968]; *Museums at Stony Brook v Vil. of Patchogue Fire Dept.*, 146 AD2d 572, 573 [2d Dept 1989]). “If material facts are in dispute, or if contrary inferences may be drawn reasonably from undisputed facts,” then a full trial is warranted and the case should not be decided on a motion (*Gerard v Inglese*, 11 AD2d 381, 382 [2d Dept 1960]). “To defeat a motion for summary judgment, the opponent must . . . produce ‘evidentiary proof in admissible form sufficient to require a trial of material questions of fact on which he rests his claim’” (*Whelan v GTE Sylvania*, 182 AD2d 446, 449 [1st Dept 1992], citing *Zuckerman*).

Petitioner did not respond to the Division’s motion. Accordingly, petitioner is deemed to have conceded that no question of fact requiring a hearing exists (*see Kuehne & Nagel v Baiden*, 36 NY2d 539 [1975]; *John William Costello Assocs. v Standard Metals Corp.*, 99 AD2d 227 [1st Dept 1984], *appeal dismissed* 62 NY2d 942 [1984]). Petitioner has presented no evidence to contest the facts alleged in the affirmation of Ms. McMahon or the affidavit of Ms. McNamara; consequently, those facts are deemed admitted (*Kuehne & Nagel v Baiden*, at 544; *Whelan v GTE Sylvania*).

B. Tax Law § 687 (a) provides, in relevant part, as follows:

“General – Claim for credit or refund of an overpayment of income tax shall be filed by the taxpayer within (i) three years from the time the return was filed, (ii)

two years from the time the tax was paid . . . whichever of such periods expires the latest, or if no return was filed, within two years from the time the tax was paid. If the claim is filed within the three-year period, the amount of the credit or refund shall not exceed the portion of the tax paid within the three years immediately preceding the filing of the claim plus the period of any extension of time for filing the return . . . . If the claim is not filed within the three year period, but is filed within the two year period, the amount of the credit or refund shall not exceed the portion of the tax paid during the two years immediately preceding the filing of the claim . . . .”

C. Petitioner electronically filed a 2016 personal income tax return and remitted payment on April 10, 2017, or eight days before the April 18, 2017 statutorily prescribed due date for filing such return, without regard to any extension of such filing due date as may be obtained. As such, petitioner’s return was deemed to have been filed, and payment was deemed to have been made, on April 18, 2017 (*see* Tax Law § 687 [h], [i]). In order to be entitled to a refund for 2016, petitioner was required to have filed a claim therefor within three years of the date on which the 2016 return was due to have been filed, i.e., by April 18, 2020, and the amount of any such refund would be limited to the portion of the tax paid within such three -year period, plus any extension of time for the filing of the return (*see* Tax Law § 687 [a]).

D. Petitioner claimed a refund by filing an amended return for the year 2016, dated as signed on July 9, 2020, and received by the Division on July 13, 2020. Furthermore, the postmark read “July 2020.” As such, petitioner’s amended 2016 return was not filed within three years from the due date for the filing of such return, absent any extensions of such filing due date. Petitioner has presented no evidence and made no argument that an extension of the 2016 filing deadline was requested or granted. Likewise, no portion of petitioner’s tax payments for 2016 was made within the three years immediately preceding the refund claim set forth on the amended return for 2016. Consequently, the Division properly disallowed

petitioner's claim for refund as untimely (*see* Tax Law § 687 [a], [e], [i]; *see also* **Matter of Oliver Petrovich**, Tax Appeals Tribunal, January 20, 2000).

E. While petitioner has not responded to the Division's motion, the petition asserts that petitioner's efforts to timely file for a refund were hindered by the COVID pandemic and further contends that on the Division's website, Notice N-20-2 extended the date to file returns to July 15, 2020. As such, the petition requests that the Division reconsider its disallowance of the refund request in the amended return.

The notice referenced by the petitioner, Notice N-20-2, Announcement Regarding Relief from Certain Filing and Payment Deadlines due to the Novel Coronavirus, COVID-19, dated March 2020, specifically applies to personal income tax returns and corporation tax returns that were originally due on April 15, 2020, and does not apply to refund requests for prior years. As such, there is no provision for late filed refund requests for the tax year at issue.

As a forum of limited jurisdiction, the Division of Tax Appeals has no flexibility with regard to the Tax Law's statutory limitations period for filing refund requests (*see* Tax Law § 2008; **Matter of Kroll Bond Rating Agency, Inc.**, Tax Appeals Tribunal, October 1, 2018) and accordingly, the Division's disallowance of petitioner's late-filed refund request must be sustained.

F. The Division's motion for summary determination is hereby granted, the petition of Adrienne Adamkiewicz is denied and the notice of disallowance dated March 24, 2021, is sustained.

DATED: Albany, New York  
February 09, 2023

/s/ Barbara J. Russo  
ADMINISTRATIVE LAW JUDGE