STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition of **ZACHARY MCKENNA** for Redetermination of a Deficiency or for Refund of New York State Personal Income Tax Under Article 22 of the Tax Law for the Year 2016.	: : : : : :	DETERMINATION DTA NO. 850249

Petitioner, Zachary McKenna, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under article 22 of the Tax Law for the year 2016.

The Division of Taxation, by its representative, Amanda Hiller, Esq. (Daniel Schneider, Esq., of counsel), brought a motion on January 4, 2024, seeking summary determination in the above-captioned matter pursuant to section 3000.9 of the Rules of Practice and Procedure of the Tax Appeals Tribunal (Rules). Petitioner, appearing pro se, did not file a response by February 5, 2024, which date commenced the 90-day period for the issuance of this determination.

Based upon the motion papers and all pleadings and documents submitted in connection with this matter, Kevin R. Law, Administrative Law Judge, renders the following determination.

ISSUE

Whether the Division of Taxation's denial of petitioner’s claim for 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 July 15, 2020, petitioner, Zachary McKenna, filed a 2016 New York State resident income tax return on which he reported $15,901.00 of New York adjusted gross income and a New York State tax of $76.00. After claiming tax withheld from wages of $348.00 and claiming a New York State earned income credit of $937.00, petitioner claimed a refund of $1,209.00.

2. On August 25, 2020, the Division of Taxation (Division) issued an account adjustment notice to petitioner denying his claim for refund for the 2016 tax year on the basis that it was untimely filed.

3. On March 1, 2021, the Division issued a notice of disallowance to petitioner.

4. On August 24, 2022, petitioner filed a petition in protest of the notice of disallowance. In his petition, petitioner alleges that the Division erroneously failed to toll the statute of limitations for filing his claim for refund because of the COVID-19 pandemic.

5. In conjunction with filing its motion for summary determination, the Division searched its records and found no record of petitioner having filed his 2016 return prior to July 15, 2020, nor did it find any record to indicate that petitioner filed an extension to file his 2016 return.

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 Rules 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 v Tri-Pac Export Corp.***, 22 NY2d 439, 441 [1968]; ***Museums at Stony Brook v Village 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 also 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 v City of New York***, 49 NY2d at 562).

Petitioner did not respond to the Division's motion. Accordingly, he is deemed to have conceded that no question of fact requiring a hearing exists (***see Kuehne & Nagel v Baiden***, 36 NY2d 539, 544 [1975]; ***John William Costello Assocs. v Standard Metals Corp.***, 99 AD2d 227, 229 [1st Dept 1984], ***appeal dismissed*** 62 NY2d 942 [1984]). Petitioner has presented no evidence to contest the facts alleged in the Division's motion papers. Therefore, those facts are deemed admitted (***see Whelan v GTE Sylvania***, 182 AD2d at 449, citing ***Kuehne & Nagel v Baiden***, 36 NY2d at 544).

B. Tax Law § 687 (a) provides that a claim for refund of an overpayment of personal income tax must be filed by the taxpayer within three years from the time the return was filed or within two years from the time the tax was paid, whichever period expires the latest. In this

case, because petitioner's claim for refund was filed on the same date as his return, it was timely pursuant to Tax Law § 687 (a) and falls within the three-year period. Nonetheless, Tax Law § 687 (a) limits the amount of the refund to the amount of taxes paid within the three years immediately preceding the filing of the refund claim plus the period for any extension of time for filing the return. The amount that petitioner sought as an overpayment was based on excess withholding, which is deemed to have been paid on April 15 of the following year, i.e., the due date for the filing of the return (***see*** Tax Law § 687 [i]), and the New York State earned income credit. Because petitioner did not have an extension of time to file his 2016 return, his refund is limited to tax paid within three years preceding July 15, 2020, i.e., July 15, 2017. Therefore, his claim for refund is limited to $0.00.

C. Although petitioner did not respond to the Division's motion, the petition filed in this matter alleges that the Division erroneously failed to toll the statute of limitations for filing his refund claim because of the COVID-19 pandemic. Although not specifically articulated, it is assumed that petitioner relies upon Executive Order 202.12, allowing the Division to extend certain filing dates in response to the COVID-19 pandemic. In accordance with this executive order, the Division extended the April 15, 2020, due date to July 15, 2020, for New York State personal income tax and corporation tax returns originally due on April 15, 2020, and for all related tax payments, including estimated tax payments, that were due on April 15, 2020 (***see*** NY State Dept of Taxation & Fin Notice N-20-2 [March 2020]). This notice 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. Based upon the foregoing, petitioner's refund claim was properly denied.

D. The Division of Taxation's motion for summary determination is granted, the petition of Zachary McKenna is denied, and the notice of disallowance, dated March 1, 2021, is sustained.

DATED: Albany, New York
April 25, 2024

/s/ Kevin R. Law
ADMINISTRATIVE LAW JUDGE