STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition :

of :

SCOTT GOLDSTEIN AND LAUREN GABOR :

for Redetermination of a Deficiency or for Refund of : Personal Income Tax under Article 22 of the Tax Law for the Years 1996 through 2002 and 2004. :

ORDER & OPINION
DTA Nos. 823702 and 823710

In the Matter of the Petition :

of :

ARNOLD AND ARLENE GOLDSTEIN :

for Redetermination of a Deficiency or for Refund of : Personal Income Tax under Article 22 of the Tax Law for the Years 1994 through 1999 and 2004. :

Petitioners, Scott Goldstein and Lauren Gabor, and Arnold and Arlene Goldstein, filed an exception to the determination of the Administrative Law Judge issued on June 14, 2012. Petitioners appeared by Samson Management, LLC (Ray Cruz, Esq., CPA, of counsel). The Division of Taxation appeared by Amanda Hiller, Esq. (Robert Tompkins, Esq., of counsel).

Petitioners filed a brief in support of their exception. The Division of Taxation filed a letter brief in lieu of a formal brief in opposition. Petitioners filed a reply brief. Oral argument, at petitioners' request, was denied.

The Tax Appeals Tribunal issued a decision in this matter on May 9, 2013.

Petitioners filed a motion for reargument dated May 17, 2013, accompanied by an affirmation in support of the motion. The Division of Taxation filed a letter brief in lieu of a formal brief in opposition, dated June 6, 2013.

ORDER & OPINION

This Tribunal possesses limited power to grant leave to reargue previously decided matters (***Matter of Schulkin***, Tax Appeals Tribunal, November 20, 1997; 20 NYCRR 3000.16).

A motion for reargument may be granted only upon a party's showing "'that the court overlooked or misapprehended the facts or the law or for some reason mistakenly arrived at its earlier decision'" (***William P. Pahl Equip. Corp. v Kassis***, 182 AD2d 22, 27 [1992], ***quoting Schneider v Solowey***, 141 AD2d 813 [1988]). "Reargument is not designed to afford the unsuccessful party successive opportunities to reargue issues previously decided" (***id.***). Further, "[r]eargument does not provide a party 'an opportunity to advance arguments different from those tendered on the original application'" (***Rubinstein v Goldman***, 225 AD2d 328 [1996], ***lv denied*** 88 NY2d 815 [1996], ***citing Foley v Roche***, 68 AD2d 558, 568 [1979], ***lv denied*** 56 NY2d 507 [1982]). Bearing these standards in mind, we turn to the instant matter.

In their exception to this Tribunal, petitioners argued that the Division adopted an erroneous interpretation of Tax Law former § 688 and that they were entitled to interest on overpayments prior to filing an amended return. Petitioners' arguments were identical to those rejected by the Appellate Division in ***Matter of Michael A. Goldstein No. 1 Trust v Tax Appeals Trib. of the State of N.Y.*** (101 AD3d 1496 [2012]). Accordingly, we denied petitioners' exception on those grounds.

In the instant motion, petitioners do not submit that this Tribunal erroneously rejected the arguments raised in their exception due to an overlooked fact or misapplied principle of law.

Rather, they submit that "additional facts" exist that merit granting leave to reargue. Our review of the moving papers reveals no such assertion of additional facts, but rather a new a legal argument.

Petitioners argue that the decision was based upon incorrect interpretations of the Tax Law. While this is, fundamentally, the same issue decided in the decision, petitioners seek reargument in order to offer a new theory. Abandoning the arguments raised in their initial application, petitioners now contend that the Division erroneously interpreted Tax Law former § 688 as barring pre-filing interest because, allegedly, the law does not require federal changes to be reported on amended returns. Petitioners offered no rationale for the omission of this argument from their exception.

The Division contends that the motion should be rejected because it lacks merit. In so doing, it notes that petitioners did, in fact, file amended returns, rendering petitioners' argument moot in this particular instance. Moreover, the Division also notes that, in order to report a federal change, taxpayers must comply with the procedure established by the Commissioner of Taxation. This procedure requires that federal changes be reported on amended returns. The Division also contends that petitioners' argument mirrors the interpretation challenges previously rejected by the Appellate Division.

We find no basis to grant petitioner's motion. A motion for reargument is "designed to afford a party an opportunity to establish that the court overlooked or misapprehended the relevant facts, or misapplied any controlling principle of law" (***Foley v Roche***, 68 AD2d 558, 567 [1979], ***lv denied*** 56 NY2d 507 [1982], ***supra***). In the instant motion, petitioners fail to allege any overlooked fact or misapplied principle of law leading to an erroneous decision. Rather, they ignore the foregoing standard, and seek to relitigate the same issue based upon a

new legal theory. The purpose of reargument is not to provide a party with the opportunity to present "a different legal argument merely because he was unsuccessful upon the original application" (***Id at 568***; ***see e.g. Matter of Brooklyn Welding Corp. v Chin***, 236 AD2d 392 [1997]). Accordingly, we reject this motion for reargument because petitioners failed to establish that the decision overlooked a material fact or misapplied a controlling legal principle.

Accordingly, it is ORDERED that the motion for reargument by petitioners, Scott Goldstein and Lauren Gabor, and Arnold and Arlene Goldstein, is hereby denied.

DATED: Albany, New York
August 22, 2013

/s/ James H. Tully, Jr.
James H. Tully, Jr.
President

/s/ Charles H. Nesbitt
Charles H. Nesbitt
Commissioner

/s/ Roberta Moseley Nero
Roberta Moseley Nero
Commissioner