

STATE OF NEW YORK  
TAX APPEALS TRIBUNAL

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In the Matter of the Petitions	:	
of	:	
<b>123 LINDEN, LLC</b>	:	ORDER
	:	DTA NOS. 830249 AND
for Revision of a Determination or for Refunds of	:	830866
Sales and Use Taxes under Articles 28 and 29 of the	:	
Tax Law for the Period June 1, 2017 through	:	
December 13, 2020.	:	

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The Division of Taxation seeks reargument before this Tribunal and reversal of this Tribunal's decision in the *Matter of 123 Linden, LLC* (Tax Appeals Tribunal, March 20, 2025).

The Division of Taxation (Division) appearing by Amanda Hiller, Esq. (Eric Gee, Esq., of counsel) filed a notice of motion for reargument, an affirmation and a supporting memorandum of law. Petitioner appearing by H. Friedman & Associates, CPA (Herschel Friedman, CPA) filed a letter brief in opposition.

After reviewing the entire record in this matter, the Tax Appeals Tribunal renders the following order.

***ORDER***

On March 20, 2025, this Tribunal issued its decision in *Matter of 123 Linden, LLC* (Tax Appeals Tribunal, March 20, 2025) upholding the issuance by an Administrative Law Judge of subpoenas duces tecum for three Division employees requiring their appearance and the production of certain documents for in-camera inspection, which information would include third-party tax information contained in petitioner's audit file. The Division presents no new issues and asserts only that this Tribunal has misapprehended its legal authority in compelling

the testimony of three Division employees and in ordering the production of third-party tax information pursuant to Tax Law § 1146.

Specifically, the Division maintains that the three subpoenas duces tecum issued and the production of third-party tax information sought for production will result in the disclosure of tax return and associated information which is strictly prohibited, subject only to specifically enumerated exceptions, and that ordering the subpoenas and production of third-party tax information falls outside those exceptions. The Division's interpretation of the applicable tax law is incorrect.

This Tribunal has only limited authority to reconsider previously issued decisions since “[t]he rule which forbids the reopening of a matter once judicially determined by a competent jurisdiction, applies as well to the decisions of special and subordinate tribunals as to decisions of courts exercising general judicial powers. Security of person and property requires that determinations in the field of administrative law should be given as much finality as is reasonably possible” (*Matter of Evans v Monaghan*, 306 NY 312, 323 [1954]; *Matter of Jenkins Covington*, Tax Appeals Tribunal, November 21, 1991, *affd* 195 AD2d 625 [3d Dept 1993], *lv denied* 82 NY2d 664 [1994]; *see also* 20 NYCRR 3000.16 [c]; *Matter of Trieu*, Tax Appeals Tribunal, June 2, 1994, *confirmed* 222 AD2d 743 [3d Dept 1995], *appeal dismissed* 87 NY2d 1054 [1996], *lv denied* 88 NY2d 809 [1996], *rearg denied* 88 NY2d 1065 [1996]; *Matter of Bayerische Beamtenkrankenkasse AG*, Tax Appeals Tribunal, September 25, 2018, citing *Matter of Fisher*, Tax Appeals Tribunal, July 19, 1990; *Matter of Capitol Coin*, Tax Appeals Tribunal, August 23, 1989; *Matter of Goldome Capital Inv.*, Tax Appeals Tribunal, November 3, 1988).

In *Matter of Bayerische Beamtenkrankenkasse AG*, this Tribunal explained that 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, 561 [1st Dept 1979]; *see also Siegel*, New York Practice § 254 at 495 [6th ed 2024]). A motion to reargue is not intended to “afford the unsuccessful party successive opportunities to reargue issues previously decided or to present arguments different from those originally asserted” (*William P. Pahl Equip. Corp. v Kassis*, 182 AD2d 22, 27 [1st Dept 1992], *lv dismissed in part, lv denied in part* 80 NY2d 1005 [1992], *rearg denied* 81 NY2d 782 [1993]).

What the Division seeks to reargue is the conclusion of this Tribunal that the tax laws protecting the privacy of tax information do not preclude an administrative law judge from exercising the authority to compel the testimony of Division employees or conduct an in-camera review of third-party tax records in order to determine their relevance. We find that there is no new issue presented warranting reargument and that there has been no misapplication of pertinent law.

The Administrative Law Judge correctly determined that Tax Law § 2006 (10) authorizes the Tax Appeals Tribunal, and those it may designate and authorize to act, to issue subpoenas requiring the attendance of witnesses and/or documentary evidence (i.e., the production of books, papers and documents) (*see also* 20 NYCRR 3000.15 [c] [2]; 20 NYCRR 3000.7 [a]). Tax Law § 1146 (a) further provides that a commissioner may require such production, stating:

... “The officers charged with the custody of such returns and reports shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, *except on behalf of the commissioner* in an action or proceeding under the provisions of the tax law or in any other action or proceeding involving the collection of a tax due under this chapter to which the state or the commissioner is a party or a claimant, or on behalf of any party to any action, proceeding or hearing under the provisions of this article when the returns, reports or facts shown thereby are directly involved in such action, proceeding or hearing, in any of which

events the court, *or in the case of a hearing, the commissioner may require the production of, and may admit into evidence, so much of said returns, reports or of the facts shown thereby, as are pertinent to the action, proceeding or hearing and no more. .*.” [emphasis added].

To the extent the Division is taking a limited view of the definition of “commissioner,” Tax Law § 2026 clearly establishes that for the purposes of the administrative hearing process, the Commissioners of the Tax Appeals Tribunal are encompassed within that definition, providing:

“Whenever the terms ‘state tax commission,’ ‘state tax commissioners’ or ‘tax commissioner’ occur in this chapter or in any law *where reference is made to such commission, commissioner or commissioners in relation to the administration of the administrative hearing process*, as such process is described in this article, *such terms shall be deemed to refer to the division of tax appeals or the tax appeals tribunal* and in all other instances shall be deemed to refer to the division of taxation or the commissioner of taxation and finance [emphasis added].”

Thus, the Division misapprehends the requirement of the tax law and structure of this Tribunal and its authority. Tax Law § 2002 states, “There shall be in the department of taxation and finance a separate and independent division of tax appeals to be operated and administered by a tax appeals tribunal. The powers, functions, duties and obligations of the division shall be separate from and independent of the authority of the commissioner of taxation and finance.” By these clear terms, this Tribunal has the authority to “require the production of, and may admit into evidence, so much of said returns, reports or of the facts shown thereby, as are pertinent to the action, proceeding or hearing . . .” (Tax Law § 1146 [a]).

The Administrative Law Judges of the Division of Tax Appeals have historically permitted in-camera inspection of material and documentation when “it is difficult to determine if [the] government’s assertion of privilege is warranted without forcing disclosure of the very thing sought to be withheld” (*see Matter of Moody’s Corp. & Subsidiaries*, Tax Appeals Tribunal, March 22, 2019, citing *Cirale v 80 Pine St. Corp.*, 35 NY2d 113, 119 [1974]). Such a

situation presented itself to the Administrative Law Judge who properly, and within the authority provided by tax law, ordered the production of such tax information for in-camera review.

Accordingly, it is ORDERED, ADJUDGED and DECREED that the motion for reargument filed by the Division of Taxation is denied.

DATED: Albany, New York  
October 30, 2025

/s/ Jonathan S. Kaiman  
Jonathan S. Kaiman  
President

/s/ Cynthia M. Monaco  
Cynthia M. Monaco  
Commissioner

/s/ Kevin A. Cahill  
Kevin A. Cahill  
Commissioner