

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition	:	
of	:	
<b>NELLO BALAN</b>	:	DETERMINATION
	:	DTA NO. 826224
for Revision of Determinations or for Refund of Sales	:	
and Use Taxes under Articles 28 and 29 of the Tax Law	:	
for the Periods June 1, 2001 through August 31, 2002;	:	
December 1, 2006 through February 28, 2007; June 1,	:	
2007 through February 29, 2008; and December 1, 2008	:	
through August 31, 2009.	:	

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Petitioner, Nello Balan, filed a petition for revision of determinations or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the periods June 1, 2001 through August 31, 2002; December 1, 2006 through February 28, 2007; June 1, 2007 through February 29, 2008; and December 1, 2008 through August 31, 2009.

On May 30, 2014, the Division of Tax Appeals issued to petitioner a Notice of Intent to Dismiss Petition pursuant to 20 NYCRR 3000.9(a)(4) on the grounds that the petition did not appear to be timely with respect to the 15 statutory notices being petitioned. By Order of the undersigned on December 18, 2014, the Notice of Intent to Dismiss was rescinded as to 11 of the notices, and the remaining four notices were dismissed. On August 11, 2015, petitioner and the Division of Taxation filed a Stipulation for Discontinuance of Proceeding with respect to the eleven notices.

Based upon the Order issued on the motion for summary determination, the Stipulation for Discontinuance of Proceeding and all the pleadings and documents submitted herein, Kevin R. Law, Administrative Law Judge, renders the following determination.

**ISSUE**

Whether the Order issued in this matter on December 18, 2014, in conjunction with a Stipulation for Discontinuance of Proceeding filed on August 11, 2015, closes this matter in the Division of Tax Appeals such that this determination constitutes a final determination pursuant to Tax Law § 3030(c)(5)©.

**FINDINGS OF FACT**

1. On April 4, 2014 petitioner Nello Balan filed a petition with the Division of Tax Appeals protesting the following notices of determination and notices of estimated determination:

Notice #	Period Ending	Notice date
L-032425365	2/28/07	8/24/09
L-032425364	8/31/07	8/24/09
L-032425363	11/30/07	8/24/09
L-034985393	2/28/09	11/08/10
L-034985392	5/31/09	11/08/10
L-034985391	8/31/09	11/08/10
L-031117485	2/28/07	12/01/08
L-030698080	11/30/07	9/29/08
L-030698078	2/29/08	9/29/08
L-033143491	8/31/09	1/04/10
L-022525966	8/31/01	6/23/03
L-022525965	11/30/01	6/23/03
L-022525962	2/28/02	6/23/03
L-022525964	5/31/02	6/23/03
L-022525963	8/31/02	6/23/03

2. On May 30, 2014, Daniel J. Ranalli, Supervising Administrative Law Judge of the Division of Tax Appeals, issued to petitioner a Notice of Intent to Dismiss Petition. The Notice of Intent to Dismiss Petition indicated that the subject petition was filed in protest of notices of determination and notices of estimated determination issued to petitioner more than 90 days prior to the petition being filed in this matter.

3. By Order dated December 18, 2014 the petition was dismissed as to notices of determination L-031117485, L-030698080, L-030698078 and L-033143491, and the notice of intent to dismiss petition was rescinded as to the remaining 11 notices.

4. A hearing as to the eleven remaining notices was commenced on August 5, 2015. At the commencement of the hearing the parties advised the Division of Tax Appeals that a settlement had been reached on the remaining eleven notices.

5. An executed Stipulation for Discontinuance of Proceeding was filed with the Division of Tax Appeals on August 11, 2015.

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

A. The Order dismissing the petition as to notices of determination L-031117485, L-030698080, L-030698078 and L-033143491, dated December 18, 2014, is now final and petitioner may take an exception within the time permitted by statute (Tax Law § 2006[7]; 20 NYCRR 3000.17[a]).

B. It is determined that the Order and the Stipulation for Discontinuance of Proceeding read together, constitute the final determination pursuant to Tax Law § 3030(c)(5)(C) with respect to the 11 remaining notices.

C. The parties' execution of the Stipulation for Discontinuance of Proceeding with respect

to the 11 notices was done with prejudice, rendering these notices fixed and final and discontinuing the matter before the Division of Tax Appeals (*see Matter of Felix Industries*, Tax Appeals Tribunal, July 22, 1993).

D. The petition of Nello Balan is denied and the four notices of determination are sustained. Any exception may be taken only with respect to notices of determination L-031117485, L-030698080, L-030698078 and L-033143491.

DATED: Albany, New York  
October 29, 2015

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/s/ Kevin R. Law  
ADMINISTRATIVE LAW JUDGE