

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition	:	
	:	
of	:	
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<b>BRENDA WILLIAMS</b>	:	<b>DETERMINATION</b>
	:	<b>DTA NO. 830688</b>
for Redetermination of a Deficiency or for Refund of New York State and City Personal Income Tax under Article 22 of the Tax Law and the Administrative Code of the City of New York for the Year 2013.	:	

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Petitioner, Brenda Williams, filed a petition for redetermination of a deficiency or for refund of New York State and City personal income tax under article 22 of the Tax Law and the Administrative Code of the City of New York for the year 2013.

The Division of Taxation, by its representative, Amanda Hiller, Esq. (Colleen McMahon, Esq., of counsel), filed a motion, on November 15, 2022, for summary determination in the above-referenced matter pursuant to section 3000.9 (b) of the Tax Appeals Tribunal’s Rules of Practice and Procedure. Petitioner, appearing pro se, did not reply to the motion by December 15, 2022, which date commenced the 90-day period for issuance of this determination.

Based upon the Division of Taxation’s motion, and all pleadings and documents submitted in connection with this matter, Donna M. Gardiner, 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 2013, 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. Petitioner, Brenda Williams, filed her 2013 New York State resident income tax return (return), form IT-201, on February 6, 2014. On line 80 of her return, petitioner reported total tax due in the amount of \$3,925.00, which amount was not paid when the return was filed.

2. On June 6, 2014, the Division of Taxation (Division) issued a notice and demand, assessment number L-041381477, to petitioner for the amount of tax due as reported on her return and it imposed interest and penalty for a total amount due of \$4,004.52.

3. Subsequently, petitioner entered into an installment payment agreement with the Division to pay the outstanding tax liability. Petitioner began making payments on February 26, 2015 and continued doing so until the liability was fully satisfied on December 5, 2016.

4. On December 3, 2020, petitioner filed an amended New York State resident income tax return, form IT-201X, for the tax year 2013, requesting a refund of \$4,905.00.

5. On December 18, 2020, the Division issued to petitioner an account adjustment notice that denied the refund claimed in her amended return as untimely filed pursuant to Tax Law § 687 (a).

6. On December 22, 2020, the Division issued a notice of adjusted assessment (notice) that reiterated that petitioner's claim for refund was denied.

7. Petitioner filed a request for conciliation conference with the Bureau of Conciliation and Mediation Services (BCMS) in protest of the notice. A conciliation order, CMS No. 328609, dated August 20, 2021, was issued to petitioner that sustained the denial of the refund claim.

8. On October 1, 2021, petitioner filed a timely petition with the Division of Tax Appeals in protest of the conciliation order.

9. The Division filed a motion for summary determination on November 15, 2022. Accompanying the motion was an affirmation of Colleen McMahon, Esq., dated November 10, 2022, and the affidavit of Robin McNamara, dated November 8, 2022, with attached exhibits.

10. 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 BCMS.

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 both her return and amended return for the tax year 2013. Ms. McNamara affirms that the Division received a return from petitioner for tax year 2013 on February 6, 2014, reporting tax due in the amount of \$3,925.00. Thereafter, she affirms that a notice and demand was issued to petitioner and that petitioner entered into an installment payment agreement for the tax liability for 2013 as set forth in the notice and demand. Ms. McNamara affirms that the terms of the installment payment agreement were fully satisfied by December 5, 2016. Ms. McNamara further affirms that the Division received an amended return for tax year 2013 from petitioner on December 3, 2020. Ms. McNamara states that an account adjustment notice – personal income tax was issued to petitioner on December 22, 2020, denying the refund claim asserted in the amended return based on the fact that the statute of limitations for filing a claim for refund had expired. Ms. McNamara affirms that she conducted a review of the Division's official records and that no amended return was filed by petitioner for tax year

2013 prior to December 5, 2018, a date two years from petitioner's payment of her 2013 income tax liability.

### **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 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 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*).

B. 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. Therefore, those facts are deemed admitted (*Kuehne & Nagel v Baiden*, at 544; *Whelan v GTE Sylvania*).

C. Tax Law § 687 (a) provides that a claim for refund of an overpayment of 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.

Petitioner filed her return for 2013 on February 6, 2014, earlier than the April 15, 2014 statutorily prescribed due date for filing such return. As such, petitioner's return is deemed to have been filed on April 15, 2014 (*see* Tax Law § 687 [h], [i]). However, she did not pay the tax liability until December 5, 2016. Pursuant to § 687 (a), the period that expires the latest in which to file a claim for refund would be two years from the time the tax was paid.

D. Petitioner paid her 2013 tax liability on December 5, 2016 and two years from that date is December 5, 2018. However, she did not file her amended return until December 3, 2020, a date that fell well outside the statutory time frame for filing a claim for refund. Therefore, the Division properly denied her refund claim (*see* Tax Law § 687 [a]; [e]).

E. Accordingly, the Division of Taxation's motion for summary determination is granted, the petition of Brenda Williams is denied, and the account adjustment notice, dated December 22, 2020, is sustained.

DATED: Albany, New York  
March 09, 2023

/s/ Donna M. Gardiner  
ADMINISTRATIVE LAW JUDGE