STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petitions of **RAVI BHASIN** for Redetermination of a Deficiency or for Refund of New York State and New York City Personal Income Tax under Article 22 of the Tax Law and the Administrative Code of the City of New York for the Tax Years 2014 and 2015.	DETERMINATION DTA NO. 850072

Petitioner, Ravi Bhasin, filed petitions for redetermination of a deficiency or for refund of New York State and New York City personal income tax under article 22 of the Tax Law and the Administrative Code of the City of New York for the years 2014 and 2015.

The Division of Taxation, by its representative, Amanda Hiller, Esq. (Peter B. Ostwald, Esq., of counsel), filed a motion on October 19, 2023, for summary determination in this matter pursuant to sections 3000.5 and 3000.9 (b) of the Tax Appeals Tribunal's Rules of Practice and Procedure. Petitioner appeared pro se. Petitioner did not respond to the motion by November 20, 2023, which date commenced the 90-day period for issuance of this determination.

Based upon the Division of Taxation's motion papers and all pleadings and documents submitted in connection with this matter, Alejandro Taylor, Administrative Law Judge, renders the following determination.

ISSUE

Whether the Division of Taxation has established that no material facts exist such that summary determination may be granted in its favor.

FINDINGS OF FACT

1. Petitioner, Ravi Bhasin, filed a 2015 New York State amended resident income tax return (form IT-201-X) on June 15, 2019, and requested a refund of $1,963.00. Petitioner also filed a 2014 New York State amended resident income tax return (form IT-201-X) on May 6, 2020, and requested a refund in the amount of $2,039.00. There is no evidence of original 2014 or 2015 New York State personal income tax returns having been filed before petitioner's filing of the amended 2014 and 2015 returns on May 6, 2020, and June 15, 2019, respectively.

2. Petitioner did not file an application for automatic six-month extension of time to file (form IT-370) for either the year 2014 or the year 2015.

3. The Division of Taxation (Division) issued account adjustment notices dated July 2, 2019, and May 29, 2020, for years 2015 and 2014, respectively, that denied the claimed refunds for tax years 2014 and 2015 in full as untimely pursuant to Tax Law § 687 (a).

4. Petitioner requested a conciliation conference before the Bureau of Conciliation and Mediation Services (BCMS), which was held on November 4, 2021. By conciliation orders issued on December 10, 2021 (CMS Nos. 000333099 and 000319727), the conciliation conferee denied petitioner's request and sustained the refund denials for tax years 2014 and 2015.

5. On March 5, 2022, petitioner filed petitions with the Division of Tax Appeals in protest of the conciliation orders that denied his refund claims for the years 2014 and 2015. The Division of Tax Appeals consolidated the two petitions into the instant matter under DTA number 850072. The Division filed its answer to the petitions on June 1, 2022, denying all allegations of fact and requesting that the refund denials be sustained for the years 2014 and 2015.

SUMMARY OF THE PARTIES' POSITIONS

6. Petitioner states that he only filed the amended income tax returns for the years 2014 and 2015 to correct a clerical error regarding his birthdate as reported on his returns. He contends that he was told by his accountant that he had five years to file amended returns and that he filed his amended returns within that time frame. Petitioner asks for equitable relief from the limitations period for claiming a refund considering the inconsequential amendment to his tax returns to correct his date of birth as originally reported.

7. The Division argues that petitioner's refund claims were effectively limited to zero pursuant to Tax Law § 687 (a), which provides that any allowable refund is limited to the amount of tax paid in the three-year period preceding the refund claim. As petitioner did not file refund claims for these years until more than three years after the dates the taxes resulting in credits for 2014 and 2015 were deemed paid, petitioner's refund claims were limited to zero. The Division also contends that petitioner would not qualify for relief under the special refund authority provided by Tax Law § 697 (d), as monies have not been erroneously paid by or illegally collected from petitioner due to a mistake of fact. Lastly, the Division argues that petitioner's reliance on the advice of his accountant does not, by itself, constitute reasonable cause. The Division asserts that the refund claims in this matter were properly denied and asks that summary determination be granted in its favor.

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" and the moving party is entitled to a favorable determination as a matter of law (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 v Tri-Pac Export Corp.***, 22 NY2d 439, 441 [1968]; ***Museums at Stony Brook v Vil. 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 v City of New York***, 49 NY2d at 562).

B. Tax Law § 687 (a) provides that the limitations period for claiming a credit or refund of personal income tax is three years from the date the return was filed or two years from the date the tax was paid, whichever is later. Furthermore, if the refund claim falls within the three-year period, Tax Law § 687 (a) limits the amount of the refund allowed to the amount of taxes paid within the three-year period preceding the filing of the refund claim plus the period for any extension of time for filing the return.

C. Under Tax Law § 687 (i), any tax paid by a taxpayer, income tax withheld from a taxpayer, and any amount paid by a taxpayer as estimated income tax for a taxable year is deemed to have been paid on the fifteenth day of the fourth month following the close of the taxable year with respect to which such amount constitutes a credit or payment. Thus, for the year 2014, any of petitioner's personal income tax withheld and estimated tax paid was deemed to have been paid on April 15, 2015, a date that falls more than three years before the date of filing of the 2014 amended return on May 6, 2020. With respect to the year 2015, petitioner's personal income tax withheld and estimated tax paid was deemed to have been paid on April 18, 2016, a date that falls more than three years before the June 15, 2019 filing date of petitioner's 2015 return.

D. In light of petitioner's statement that the amended returns were filed to correct a clerical error, it is not entirely clear whether petitioner's refund claims were untimely due to amended returns having been filed too late, or if such refund claims were timely but effectively limited to zero due to the amended returns having been filed more than three years after the tax payments were deemed made. However, it is unnecessary to reach the merits of petitioner's challenges to the refund denials because petitioner did not respond to the Division's motion. In such a case, petitioner 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***, 99 AD2d 227, 229 [1st Dept 1984], ***lv dismissed*** 62 NY2d 942 [1984]). Further, petitioner has presented no evidence to contest the facts alleged in the Division's motion papers, and thus those facts are deemed admitted (***Kuehne & Nagel v Baiden*** at 544; ***Whelan v GTE Sylvania***, 182 AD2d at 449).

E. Based upon the foregoing, the Division of Taxation's motion for summary determination is granted, the petitions of Ravi Bhasin are denied and the conciliation orders (CMS Nos. 000333099 and 000319727) dated December 10, 2021, are sustained.

DATED: Albany, New York
February 15, 2024

/s/ Alejandro Taylor
ADMINISTRATIVE LAW JUDGE