STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition of **YOEL & SARA GOLDENBERG** 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 Tax Year 2016.	:	DETERMINATION DTA NO. 850090

Petitioners, Yoel and Sara Goldenberg, filed a petition 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 year 2016.

The Division of Taxation, by its representative, Amanda Hiller, Esq. (Michelle W. Milavec, Esq., of counsel), filed a motion on October 10, 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. Petitioners, appearing by Ketcham PLLC (Brian Ketcham, Esq., of counsel), replied to the motion on November 10, 2023, which date commenced the 90-day period for issuance of this determination.

Based upon the Division of Taxation's motion papers, petitioners' reply to the motion, 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. Petitioners, Yoel and Sara Goldenberg, filed a 2016 New York State resident income tax return (form IT-201) on July 15, 2020, (2016 income tax return) and requested a refund in the amount of $115,750.00, representing New York State and City refundable credits, including the Empire State child credit, New York City school tax credit, and a Qualified Empire Zone Enterprise (QEZE) credit for real property taxes.

2. The Division of Taxation (Division) has no record of petitioners filing an application for automatic six-month extension of time to file for individuals, form IT-370, for tax year 2016.

3. On February 27, 2019, the Division issued an account adjustment notice to petitioners disallowing their claimed refund of $115,750.00 for tax year 2016 in full.

4. On March 1, 2021, the Division issued a notice of disallowance to petitioners, disallowing petitioners' claimed refund of $115,750.00, for tax year 2016.

5. Petitioners requested a conciliation conference before the Bureau of Conciliation and Mediation Services (BCMS), which was conducted by teleconference on November 19, 2021. By conciliation order dated March 4, 2022 (CMS No. 000328331), the conferee sustained the notice of disallowance dated March 1, 2021.

6. Following issuance of the conciliation order, petitioners filed a timely petition with the Division of Tax Appeals on March 23, 2022, protesting the conciliation order issued on March 4, 2022.

7. On October 10, 2023, the Division filed a notice of motion for summary determination, accompanied by the affirmation of Michele W. Milavec, Esq., the Division's representative. In support of its motion, the Division submitted the affidavit of its employee, Samantha Hepp, a Taxpayer Services Specialist 2 in the Individual Liability Resolution Center of the Division. Ms. Hepp has been employed by the Division since 2007 and has held her current position since April 2023. Her job duties include managing staff devoted to resolving protests of personal income tax returns and advocating on behalf of the Division at BCMS conferences. In performing her job duties, Ms. Hepp reviewed the Division's correspondence, case contacts, filing history and other documents regarding petitioners' 2016 personal income tax return and refund claim as kept in the regular course of business.

8. Ms. Hepp avers that petitioners first filed a refund claim for tax year 2016 with the filing of their personal income tax return, form IT-201, on July 15, 2020. According to Ms. Hepp, the Division has no record of petitioners filing a request for extension to file, form IT-370, for tax year 2016. Ms. Hepp explains that, pursuant to Tax Law § 687 (a), any refund is limited to the amount of taxes paid within the three-year period immediately preceding the filing of the refund claim, plus the period for any extension of time to file the return. Furthermore, the amounts that petitioners requested as a refund consisted solely of refundable credits, which, in the absence of any extension of time to file, are deemed to have been paid as of April 18, 2017, pursuant to Tax Law § 687 (i).

9. Based on her review of the Division's records and her personal knowledge of the Division's policies and procedures, Ms. Hepp concluded that petitioners were not entitled to their claimed refund for tax year 2016 because the amount of any such refund was subject to the limitation set forth in Tax Law § 687 (a). Similarly, Ms. Hepp concluded that the Division's

records did not indicate that any monies had been illegally or erroneously collected from or paid by petitioners and, thus, the special refund authority set forth in Tax Law § 697 (d) would be inapplicable to this matter.

10. In their response in opposition to the Division's motion, petitioners state that there are critical facts in dispute that counterindicate granting summary determination. Specifically, petitioners assert that they were led to believe that they had been granted an extension of time to file their 2016 personal income tax through an exchange of emails between petitioners' accountant and an employee of the Division.

11. In support of their opposition, petitioners submitted the affidavit of petitioner Yoel Goldenberg. Therein, Mr. Goldenberg recounted that on March 23, 2020, petitioners' accountant, Robert Moster, asked for an extension to file petitioners' 2016 tax return via an email to a Division employee, Kristen Belli, on account of Mr. Moster's office closing due to COVID-19. Ms. Belli replied via email that she understood and would need an update in 60 days, or around May 26, 2020. Attached to Mr. Goldenberg's affidavit is a 2-page printout of an email string involving Mr. Moster, Ms. Belli, and a person named Jack Goldenberg. Based on that email communication, Mr. Goldenberg avers that both petitioners believed that they had been granted an extension of time to file their 2016 income tax return.

12. Mr. Goldenberg states that petitioners' belief that New York State had extended deadlines for tax filings from April 15, 2020, to July 15, 2020, was reinforced by Mr. Goldenberg's review of New York Executive Order No. 202.12 and *Announcement Regarding Relief from Certain Filing and Payment Deadlines due to the Novel Coronavirus, COVID-19*, Notice N-20-2. Mr. Goldenberg avers that, based on the March 23, 2023 email communication with the Division employee, petitioners understood that the deadline for filing their 2016 income

tax return had been extended to July 20, 2020, and that they would be entitled to the QEZE credit and refund claimed in their 2016 return. Mr. Goldenberg offers no explanation for the discrepancy between the dates given in Ms. Belli's email (May 26, 2020), the extended due date given in the Division notice (July 15, 2020), and the date that petitioners ultimately believed to be the extended filing deadline for their 2016 income tax return (July 20, 2020).

SUMMARY OF THE PARTIES' POSITIONS

13. The Division argues that the petitioners' refund claim is limited by Tax Law § 687 (a), which limits the amount of any refund allowed to the amount of taxes paid within the three years preceding the filing of a refund claim, plus the period of any extension of time for filing the return. Pursuant to Tax Law § 687 (i), the amounts withheld from petitioners' wages and any credits are deemed to have been paid on the fifteenth day of the fourth month following the close of the taxable year. Because petitioners did not file an application for an automatic six-month extension of time to file, the Division contends that petitioner's refund is limited to tax paid within the 3 years preceding July 15, 2020, i.e. between July 15, 2017 and July 15, 2020. As petitioners did not file their 2016 New York personal income tax return until July 15, 2020, any refund claim contained therein was limited to the amount of tax paid within the preceding three-year period, as provided by Tax Law § 687 (a). Consequently, according to the Division, petitioners' refund claim for 2016 was properly denied.

The Division also argues that petitioners are not entitled to the special refund authority provided under Tax Law § 697 (d). First, the Division notes that such authority is strictly discretionary. Second, the Division observes that in order to qualify for such relief, it must be determined whether money paid by petitioners was paid under a mistake of fact or a mistake of law. The Division contends that rather than petitioners having a different understanding of the

facts than as they stood, petitioners actually misunderstood what the legal consequences following from the facts would be. As such, according to the Division, petitioners are not entitled to special refund authority relief.

14. Petitioners argue that the Division's motion should be denied. At the outset, petitioners do not dispute the limitations period set out in Tax Law § 687 (a), nor do they dispute that their 2016 personal income tax return was first filed on July 15, 2020. However, petitioners claim their reliance on the email from the Division employee in response to their accountant's request for an extension to file, especially in light of Executive Order 202.12 and Department of Taxation and Finance (DTF) notice N-20-2, was reasonable. Petitioners argue that equitable estoppel should function to toll the applicable statute of limitations because petitioners justifiably relied on the Division's employee's statements to their detriment. Petitioners contend that the email from the Division's employee "amounted to a guarantee that the [p]etitioners could file their [2016] tax return on or before July 15, 2020, and therefore timely claim the QEZE credit in this case."

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) 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 Village of Patchogue Fire Dept.***, 146 AD2d 572 [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).

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. Tax Law § 687 (a) also 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.

B. 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.

C. Petitioners do not dispute that they did not file a request for an automatic extension to file their 2016 New York State personal income tax return or that they first filed that return on July 15, 2020. Rather, they contend that, in order to avoid a manifest injustice, the

circumstances here demand that the Division be estopped from disallowing their refund claim for timeliness, in light of their accountant's communication with the Division regarding an extension of time to file petitioners' 2016 tax return.

D. "Estoppel is an equitable doctrine invoked to avoid injustice in particular cases" (***Matter of Ryan***, 133 AD3d 929 [3d Dept 2015], quoting ***Heckler v Community Health Servs.***, 467 US 51, 59 [1984]). Estoppel will not be imposed against the government absent unusual circumstances that would result in manifest injustice to a private party, especially in tax cases (***id. at 60***; ***Matter of Salh v Tax Appeals Trib.***, 99 AD3d 1124, 1126 [3d Dept 2012], ***lv denied*** 20 NY3d 863 [2013], quoting ***Matter of Winners Garage, Inc. v Tax Appeals Trib.***, 89 AD3d 1166, 1168-1169 [3d Dept 2011]; **lv denied** 18 NY3d 807 [2012] ***see also Matter of Suburban Restoration Co. v Tax Appeals Trib.***, 299 AD2d 751, 753 [3d Dept 2002]).

E. The Tax Appeals Tribunal has held that, in order to impose an estoppel on a governmental actor, it must be established that: 1) there was a misrepresentation made by the government to a party and the government had reason to believe that the party would rely upon the misrepresentation; 2) the party's reliance on the government's misrepresentation was reasonable; and 3) prior to the party discovering the truth, the party acted to its detriment based upon the misrepresentation (***Matter of Ryan***; ***see also Heckler v Community Health Servs.***, 467 US at 59-61).

F. It is clear that petitioners' claim that estoppel should be imposed on the Division is incorrect. First, the email communication between petitioners' accountant and the Division employee does not indicate a misrepresentation of fact or law. In it, Ms. Belli acknowledges Mr. Moster's intention of requesting an extension of time to file petitioners' 2016 tax return. Ms. Belli did not state a date by which petitioners' tax return would be due, and she asks for an

update in 60 days. There is no clear grant of additional time to file the 2016 return contained anywhere in Ms. Belli's response. The Division would not have reason to believe that its employee's informal acknowledgment of a representative's stated intention of seeking an extension to file a return would result in a belief that such an extension had been granted.

G. Second, petitioners' stated reliance on the email communication with the Division is not reasonable. Petitioners' representative, an accountant, should have been aware that extensions to file a tax return require filing a form, in this case form IT-370, to receive an automatic extension of time to file. Considering the email communication in light of Executive Order 202.12 and DTF Notice N-20-2 does not make petitioners' reliance any more reasonable. Governor Cuomo's Executive Order 202.12 granted the Tax Commissioner the authority to disregard a period greater than 90 days, but less than 100 days, when determining whether income tax returns, income tax payments, and certain other filings were timely made (***see*** Tax Law § 171 [Twenty-eighth]). However, the directive given in that executive order is not so expansive as to lead petitioners to reasonably believe that all tax filing deadlines had been tolled, especially when considered together with the Division's notice regarding what tax filing dates had actually been extended. DTF Notice N-20-2 specifically extended the due date for New York State personal income tax and corporation tax returns *originally due* on April 15, 2020. The New York State personal income tax return here at issue was originally due on April 18, 2017, and thus not subject to the 3-month extension granted in DTF Notice N-20-2 (***see generally*** Tax Law § 651 [a] [providing the time for filing of income tax returns as the fifteenth day of the fourth month following the close of the taxable year]).

H. Petitioners' argument that they are entitled to relief under the special refund authority pursuant to Tax Law § 697 (d) is also without merit. First, as pointed out by the Division, such

authority is permissive and not mandatory (***id;*** s***ee also Matter of Fiduciary Trust Co. of N.Y. v State Tax Commn***, 120 AD2d 848, 850 [3d Dept 1986]). Second, in order to be applicable, it must be determined whether money was paid under a mistake of fact or a mistake of law (***id; Matter of Wallace***, Tax Appeals Tribunal, October 11, 2001). In ***Matter of Wallace***, the Tax Appeals Tribunal stated that a mistake of fact was "an understanding of the facts in a manner different [than] they actually are" (***id.***). In contrast, a mistake of law was defined as an "acquaintance with the existence or nonexistence of facts, but ignorance of the legal consequences following from the facts" (***id.***). Here, petitioners clearly were operating under a mistake of law in that they were acquainted with the facts (i.e., that they had not yet filed their 2016 income tax return) but were unaware of the legal consequences following from the facts (i.e., that the limitation period for claiming a refund for tax year 2016 was unaffected by the filing deadline extensions for 2020). As petitioners have not demonstrated that they were suffering from a mistake of fact as much as a mistake of law, they have failed to demonstrate applicability of the special refund authority relief under Tax Law § 697 (d) to their claim.

I. Based upon the foregoing, the Division of Taxation's motion for summary determination is granted, the petition of Yoel and Sara Goldenberg is denied and the conciliation order, dated March 4, 2022, is sustained.

DATED: Albany New York
February 1, 2024

/s/ Alejandro Taylor
ADMINISTRATIVE LAW JUDGE