STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition

of

MITCHELL C. COHEN AND SABRINA M. COHEN

for Redetermination of a Deficiency or for Refund of New York State Personal Income Tax under Article 22 of the Tax Law for the Year 2017.

DETERMINATION
DTA NO. 850384

Petitioners, Mitchell C. Cohen and Sabrina M. Cohen, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under article 22 of the Tax Law for the year 2017.

A formal hearing was held before Winifred M. Maloney, Administrative Law Judge, on September 23, 2025, with all briefs to be submitted by January 9, 2026, which date commenced the six-month period for the issuance of this determination. Petitioners appeared by Ronald P. Belanger, CPA. The Division of Taxation appeared by Amanda Hiller, Esq. (Daniel Olika, Esq., of counsel).

ISSUE

Whether petitioners established that the Division of Taxation improperly denied their claim for credit or refund of New York State personal income tax for tax year 2017.

FINDINGS OF FACT

Pursuant to section 3000.15 (d) (6) of the Rules of Practice and Procedure of the Tax Tribunal Appeals Tribunal and section 307 (1) of the State Administrative Procedure Act, the Division of Taxation (Division) submitted 9 proposed findings of fact. The Division's proposed findings of fact 7 through 9 are supported by the record and have been substantially incorporated herein. Proposed finding of fact 6 has been modified to more accurately reflect the record and, as modified, has been substantially incorporated herein. Proposed findings of fact 1 and 3 are rejected as not supported by the record. Proposed findings of 2, 4 and 5 are rejected as conclusory.

1. On August 3, 2021, petitioners, Mitchell C. Cohen and Sabrina M. Cohen, filed form IT-201, New York State resident income tax return, married filing jointly, for tax year 2017 (2017 return). Petitioners reported New York adjusted gross income of $504,615.00. After subtracting an itemized deduction of $19,741.00 and three dependent exemptions ($3,000.00), petitioners reported taxable income of $481,874.00 and total New York State taxes due of $33,008.00. After claiming a New York State child and dependent care credit of $90.00 and New York State tax withheld of $38,521.00, petitioners claimed a refund in the amount of $5,603.00 and directed it to be refunded by paper check.

2. On August 18, 2021, the Division issued to petitioners an account adjustment notice - personal income tax (account adjustment notice) denying petitioners' refund claim of $5,603.00 for tax year 2017.[1] The explanation section of the account adjustment notice stated, in part, the following:

> "We denied your claim for the refund or credit because it was filed too late. The tax law allows a refund or credit if the taxpayer makes the claim within three tax years from the time the return was required to be filed or within two years from the time the tax was paid, whichever is later."

[1] The account adjustment notice listed an original return due date of April 17, 2018, and a return file date of August 3, 2021.

3. On October 25, 2021, the Division issued to petitioners a notice of disallowance that denied the $5,603.00 refund claimed by petitioners for tax year 2017 as untimely filed, for the reasons provided in the account adjustment notice.

4. On January 28, 2022, petitioners requested a conciliation conference before the Division's Bureau of Conciliation and Mediation Services (BCMS), which was conducted by teleconference on October 20, 2022. By conciliation order, dated December 9, 2022 (CMS number 000336000), the conciliation conferee sustained the notice of disallowance.

5. On January 5, 2023, petitioners timely filed a petition with the Division of Tax Appeals in protest of the conciliation order. The Division timely filed its answer, dated March 8, 2023, and an amended answer, dated June 17, 2024.

6. At the hearing, the Division submitted the affidavit of Amy S. Poutre, a Taxpayer Services Specialist 2 in the Division's Individual Liability Resolution Center, sworn to on August 26, 2025. Ms. Poutre has been employed by the Division for 22 years. Ms. Poutre's duties as a Taxpayer Services Specialist 2 include "communicating with taxpayer(s) and/or their representative(s) by telephone or in writing regarding tax protests and inquiries." Ms. Poutre also appears as an advocate on behalf of the Division in small claims hearings before the Division of Tax Appeals and as a witness on behalf of the Division for hearings before the Division of Tax Appeals. In performance of those responsibilities, Ms. Poutre "reviewed the information in the Division's systems including personal income tax filings, returns, forms, correspondence, case contacts, and other documents related to [petitioners] specifically including" their 2017 return.

7. Ms. Poutre alleges that petitioners' 2017 return was originally required to be filed by April 15, 2018 but petitioners filed it on August 5, 2021. Ms. Poutre further alleges that the 2017

return, filed by petitioners on August 5, 2021, was the first return received by the Division for tax year 2017 and the first notification the Division had that petitioners were claiming a refund for tax year 2017. Ms. Poutre asserts that "[u]nder Tax Law § 687(a), petitioners['] refund is limited to *tax paid within the three years immediately preceding the filing of the claim, plus the* period of any extension of time for filing if requested." Ms. Poutre further asserts that the Division issued an account adjustment notice to petitioners informing them that "they were no longer entitled to their claim/ refund because it was made beyond the statutory time allowed."

8. The Division searched its files and provided two certifications by Deputy Tax Commissioner Amanda R. House, employed in the Disclosure and Government Exchange unit of the Division's Office of Budget and Management Analysis. The first certification indicates that a search was made of the Division's files on October 2, 2024, for form IT-370, application for automatic six-month extension of time to file for individuals (extension request form), for petitioners for tax year 2017 and no such extension request form was found. The second certification indicates that a search of the Division's files was made on October 2, 2024 for the personal income tax return for petitioners for tax year 2017 and no such personal income tax return was found filed prior to August 3, 2021.

9. Petitioners were not present at the hearing. However, their representative presented the affidavit of petitioner Sabrina M. Cohen, sworn to on September 2, 2025. In her affidavit, Ms. Cohen avers that she "sent the 2017 extension form to the State Processing Center, PO Box 61000, Albany, NY 12261." She further avers that she "filed (at the same time as the Federal Form 4868, Application for Automatic Extension of Time to File U.S. Individual Income Tax Return) the [extension request form] on April 2018 for the 2017 tax return." Ms. Cohen asserts that she "timely filed the 2017 Form IT-201 (Resident Income Tax Return) to claim a refund."

10. The record includes a copy of a typed extension request form for petitioners for tax year 2017. Petitioners' extension request form for tax year 2017 reports zero sales and use tax due and zero total payment due.

11. Page 3 of the instructions for the extension request form for tax year 2017 indicates that an extension request form without a payment should be mailed to:

Extension Request-NR
PO Box 4126
Binghamton NY 13902-4126.

12. The record includes a copy of petitioners' federal form 4868, application for automatic extension of time to file U.S. individual income tax return (federal personal income tax extension form), for tax year 2017. Petitioners reported a balance due of $25,000.00 and reflected a payment of this amount on their federal personal income tax extension form for tax year 2017.

13. Petitioners' representative testified at the hearing. Mr. Belanger testified that he is a New Hampshire certified public accountant and does not usually prepare New York State returns for clients. However, he prepared petitioners' federal form 1040 for tax year 2017 and their 2017 return at the request of Ms. Cohen, his daughter. Mr. Belanger testified that, shortly before August 3, 2021, he prepared both the federal and state returns at the same time and mailed both returns to petitioners for their signatures and filing of the same.

14. Mr. Belanger testified that he did not prepare an extension request form for petitioners for tax year 2017 and stated that he was unaware that petitioners prepared and mailed their extension request form for tax year 2017 until he asked Ms. Cohen about the same during the pendency of the instant matter. According to Mr. Belanger, Ms. Cohen indicated to him that petitioners prepared and filed their extension request form for tax year 2017. Mr. Belanger

testified that he was unaware of the address to which petitioners' extension request form for tax year 2017 was sent until he received Ms. Cohen's affidavit as part of his preparation for the hearing in this matter. Mr. Belanger acknowledged that petitioners sent their extension request form for tax year 2017 to a different address than the address noted in the instructions for the extension request form for tax year 2017.

15. At the conclusion of the hearing, petitioners requested and were granted additional time, until October 9, 2025, to submit documents regarding their federal personal income tax extension form request for tax year 2017, their filed federal form 1040 for tax year 2017 and any federal tax refund for tax year 2017. In addition, the Division was granted an opportunity to submit rebuttal documents by October 25, 2025.

16. Petitioners timely submitted: (i) a copy of their federal personal income tax extension form for tax year 2017, (ii) an unsigned copy of their federal form 1040 with required attached forms for tax year 2017, and (iii) an extracted copy of petitioners' checking account for the period May 17, 2022 through June 15, 2022 "showing the [d]eposit of the taxpayer's 2017 Federal refund noting that the refund included interest."

17. A review of petitioners' federal form 1040 for tax year 2017 indicates that petitioners reported a credit for child and dependent care expenses of $452.00, total payments of $138,258.00 consisting of federal income tax withheld of $113,258.00 and an amount paid with the federal personal income tax extension form of $25,000.00. Petitioners reported total tax due of $132,427.00, an overpayment of $5,831.00 and a refund due of $5,673.00 (based upon petitioners' determination that they owed an estimated underpayment of tax penalty of $158.00).

18. A review of the extract from petitioners' checking account, for the period May 17, 2022 to June 15, 2022, indicates that an "IRS TREAS 310 DES: TAX REF

ID:XXXXXXXXXX00909 INDN: COHEN, MITCHELL C & SA CO" in the amount of $6,315.04 was deposited into the account on June 15, 2022.

CONCLUSIONS OF LAW

A. The period of limitations for claiming a credit or refund of personal income tax is set forth in Tax Law § 687 (a) that provides, in part, as follows:

> "[c]laim for credit or refund of an overpayment of income tax shall be filed by the taxpayer within (i) three years from the time the return was filed [or] (ii) two years from the time the tax was paid . . . whichever of such periods expires the latest, or if no return was filed, within two years from the time the tax was paid. If the claim is filed within the three year period, the amount of the credit or refund shall not exceed the portion of the tax paid within three years immediately preceding the filing of the claim plus the period of any extension of time for filing the return . . ."

B. The Division "denied [petitioners'] claim for the refund or credit because it was filed too late." However, petitioners filed their 2017 return on August 3, 2021, and made the refund claim on that 2017 return. Therefore, petitioners' refund claim was made within the three-year period set forth in Tax Law § 687 (a) and is considered timely filed because the refund was claimed with the filing of petitioners' 2017 return (***see Matter of Diaz***, Tax Appeals Tribunal, March 17, 2011; ***Matter of Petrovich,*** Tax Appeals Tribunal, January 20, 2000). However, any refund of an overpayment is limited by the provisions of Tax Law § 687 (a) to the amount of tax paid within the three-year period preceding the filing of the claim for refund plus any extension of time to file the return.

C. There is no dispute that petitioners did not file their 2017 return before August 3, 2021. Petitioners claim that they filed an extension request form that reported zero sales and use tax due and zero total payment due for tax year 2017 with the Division. In support of their claim, petitioners submitted the affidavit of Ms. Cohen. In her affidavit, Ms. Cohen stated that she sent the extension request form for tax year 2017 to the State Processing Center, PO Box

61000, Albany, NY 12261. Ms. Cohen further stated that she filed the extension request form for tax year 2017 at the same time she filed the federal personal income tax extension form for tax year 2017 “on April 2018.” The Division requires the filing of an extension request form to extend the period of time for filing an income tax return (***see*** Tax Law § 657 [a]; ***see also*** 20 NYCRR 157.2 [a], [b]). An application for an extension of time, such as the extension request form, “must be delivered, mailed, or transmitted to the address or location as directed in the appropriate forms and instructions” (***see*** 20 NYCRR 152.13). The instructions for the extension request form for tax year 2017 provided the following address as to where a taxpayer was to mail an extension request form where no payment was enclosed: Extension Request-NR, PO Box 4126, Binghamton NY 13902-4126. Given the statements in Ms. Cohen’s affidavit regarding where and when petitioners mailed their extension request form for tax year 2017, petitioners failed to prove that they filed an extension request form for tax year 2017. Moreover, the certification of Deputy Tax Commissioner House that a search of the Division’s files found no record of petitioners filing an extension request form for tax year 2017 is prima facie evidence that petitioners have not filed an extension request form for tax year 2017 (***see*** Tax Law § 691 [d]). As such, the due date of April 17, 2018 for filing petitioners’ 2017 return was not extended. Petitioners filed their 2017 return and refund claim on August 3, 2021. Because petitioners did not file an extension request form for tax year 2017, petitioners’ refund is limited by Tax Law § 687 (a) to the amount of tax paid within the three years immediately preceding the August 3, 2021, refund claim, i.e., August 3, 2018 through August 3, 2021.

D. Pursuant to 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 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. The 2017 payments that comprise petitioners' refund claim were deemed paid on April 17, 2018.[2] Petitioners' refund claim for tax year 2017, though timely filed, exceeds the amount of tax paid within the three-year period immediately preceding that claim and, thus, is limited by Tax Law § 687 (a) to $0.00.

E. The petition of Mitchell C. Cohen and Sabrina M. Cohen is denied and the notice of disallowance, dated October 25, 2021, is sustained.

DATED: Albany, New York
July 9, 2026

/s/ Winifred M. Maloney
ADMINISTRATIVE LAW JUDGE

[2] April 15, 2018 fell on a Sunday and Emancipation Day, a legal holiday in the District of Columbia, was celebrated on Monday, April 16, 2018. Therefore, under federal law, the national tax filing deadline was extended to April 17, 2018 (***see*** Internal Revenue Code [IRC] [26 USC] § 7503; ***see also*** Treas Reg [26 CFR] § 301.7503-1).