

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition	:	
of	:	
<b>DEEMIR ELLIS</b>	:	<b>DETERMINATION</b>
	:	<b>DTA NO. 850707</b>
for Redetermination of a Deficiency or for Refund of	:	
New York State and New York City Personal Income	:	
Taxes under Article 22 of the Tax Law and the	:	
Administrative Code of the City of New York for the	:	
Year 2022.	:	

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Petitioner, Deemir Ellis, filed a petition for redetermination of a deficiency or for refund of New York State and New York City personal income taxes under article 22 of the Tax Law and the Administrative Code of the City of New York for the year 2022.

On September 22, 2025, the Division of Taxation, by its representative, Amanda Hiller, Esq. (Brian Kristel), brought a motion seeking dismissal of the petition or, in the alternative, summary determination in its favor in the above-referenced matter pursuant to Tax Law § 2006 and sections 3000.5 and 3000.9 (a) and (b) of the Rules of Practice and Procedure of the Tax Appeals Tribunal. Petitioner, appearing pro se, did not file a response to the motion by October 22, 2025, which date commenced the 90-day period for the issuance of this determination.

Based upon the motion papers and all pleadings and documents submitted in connection with this matter, Kevin R. Law, Administrative Law Judge, renders the following determination.

***ISSUE***

Whether the petition in this matter is properly subject to dismissal.

### ***FINDINGS OF FACT***

1. On February 22, 2023, petitioner, Deemir Ellis, filed form IT-201, New York State resident income tax return, for the year 2022 (return), claiming a refund of a \$3,169.00 overpayment of personal income tax.

2. On March 29, 2023, the Division of Taxation (Division) sent a request for information letter (request) to petitioner requesting documentation to substantiate daycare expenses such as cashed checks, banks statements and receipts claimed on the return.

3. By notice of disallowance, dated September 7, 2023 (notice), the Division denied the claimed refund of \$3,169.00. The notice states that the refund denial is premised on petitioner's failure to respond to the request with information about her income, expenses and credits claimed on the return. There is no indication in the record that the Division requested documentation other than substantiation of daycare expenses such as cashed checks, bank statements and receipts claimed on the return

4. On October 17, 2023, petitioner filed a petition with the Division of Tax Appeals protesting the notice. Petitioner alleges that she never received the request and that she faxed a copy of the tax forms she filed for 2022. The only document filed with the petition is the notice.

5. Subsequently, on November 14, 2023, the Division sent an account adjustment notice to petitioner allowing in full the overpayment she claimed on her return. However, the account adjustment notice advised petitioner that the Division applied \$73.81 of said overpayment to pay a debt she owed to the New York City Transit Authority Transit Adjudication Bureau. This offset reduced petitioner's claimed refund, and, as such, \$3,095.19, was refunded to her.

### **CONCLUSIONS OF LAW**

A. The Division of Tax Appeals is a forum of limited jurisdiction (Tax Law § 2008; *Matter of Scharff*, Tax Appeals Tribunal, October 4, 1990, *revd on other grounds sub nom Matter of New York State Dept. of Taxation & Fin. v Tax Appeals Trib.*, 151 Misc 2d 326 [Sup Ct, Albany County 1991]). Its power to adjudicate disputes is exclusively statutory (*Matter of New York State Dept. of Taxation & Fin. v Tax Appeals Trib.*, 151 Misc 2d at 332). The Division of Tax Appeals is authorized “[t]o provide a hearing as a matter of right, to any petitioner upon such petitioner’s request . . . unless a right to such a hearing is specifically provided for, modified or denied by another provision of this chapter” (Tax Law § 2006 [4]).

B. A proceeding in the Division of Tax Appeals is commenced by filing a petition “protesting any written notice of the division of taxation . . . which has advised the petitioner of a tax deficiency, a determination of tax due, a denial of a refund . . . or any other notice which expressly gives a person the right to a hearing” (Tax Law § 2008 [1]).

C. Petitioner filed a petition protesting the notice that denied her claimed refund. A copy of the denial notice was attached to the petition, and the Division of Tax Appeals has jurisdiction to address the petition challenging the Division’s denial of petitioner’s claimed refund (see Tax Law §§ 2008 [1]; 2006 [4]).

D. The Division filed a motion to dismiss or for summary determination, in its favor. In this case, the notice at issue is a notice of disallowance specifically denying petitioner’s claimed refund for the year 2022. A copy of the return is not included with the Division’s motion papers. However, because petitioner never responded to the Division’s motion, she is deemed to have conceded the facts as alleged in the Division’s moving papers (see *Kuehne & Nagel v Baiden*, 36 NY2d 539, 544 [1975]). After the petition was filed protesting the notice of disallowance, the

Division allowed petitioner's overpayment in full and applied \$73.81 of it to pay a debt she owed to the New York City Transit Authority Transit Adjudication Bureau. As a result of the Division granting petitioner's claimed refund in full, petitioner has been given the relief she sought in her petition. Therefore, there is no longer any justiciable controversy presented, and the petition is properly subject to dismissal for failure to state a cause for relief (**see** Tax Law § 2006 [5] [vi]; **see also** 20 NYCRR 3000.9 [a] [1] [vi]).

E. It is noted that the Division did not disallow any portion of the overpayment claimed as a refund by petitioner on her return. Rather, as noted, the Division applied \$73.81 of her overpayment to a debt owed the New York City Transit Authority Transit Adjudication Bureau. The Division's authority to apply overpayments against outstanding liabilities is found in Tax Law § 171-f which authorizes State agencies to certify past-due legally enforceable non-tax debts to the Division for offset against New York State tax refunds. Pursuant to Tax Law § 171-f (1) (a), the New York City Transit authority, a public benefit corporation (**see** Public Authorities Law § 1201 [1]), is a state agency. To the extent that petitioner takes issue with this refund offset, the Division of Tax Appeals is without jurisdiction to address a challenge to the same because this would present a collection challenge that is beyond the subject matter jurisdictional authority granted to it (**see Matter of Club Marakesh v Div. of Tax Appeals**, Sup Ct, Albany County, Nov. 7, 1990, Keniry J.; **Matter of Driscoll**, Tax Appeals Tribunal, April 11, 1991; **Matter of Barrier Oil**, Tax Appeals Tribunal, July 29, 1999).

F. The Division of Taxation's motion to dismiss is granted and the petition of Deemer Ellis is dismissed.

DATED: Albany, New York  
January 15, 2026

/s/ Kevin R. Law  
ADMINISTRATIVE LAW JUDGE