

STATE OF NEW YORK
DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
ADEL ADDAILAM	:	DETERMINATION
for Redetermination of a Deficiency or for Refund of	:	DTA NO. 850776
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.	:	

Petitioner, Adel Addailam, 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.

The Division of Taxation, by its representative, Amanda Hiller, Esq. (Kobena Eyiah, Esq., of counsel), brought a motion on December 23, 2025, seeking dismissal or for summary determination in its favor in the above-referenced matter pursuant to 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 the due date of January 22, 2026, 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, Alejandro Taylor, Administrative Law Judge, renders the following determination.

ISSUE

Whether the Division of Taxation has established that no material and triable issue of fact exists such that the petition should be dismissed or that summary determination may be granted in its favor.

FINDINGS OF FACT

1. On March 16, 2023, petitioner, Adel Addailam, filed form IT-201, New York State resident income tax return, for the year 2022 (return), wherein he claimed two dependent exemptions, the Empire State child credit, the New York State earned income credit, the New York City school tax credit and the New York City earned income credit.

2. The Division of Taxation (Division) selected petitioner's return for review. On March 28, 2023, the Division issued to petitioner a request for information, form DTF-948, which requested additional information regarding petitioner's claimed exemptions and credits for 2022.

3. On April 25, 2023, petitioner responded to the Division's request for information by providing his federal schedule C (profit or loss from business), form 1099-NEC (nonemployee compensation), a copy of a lease agreement and information regarding his claimed dependents.

4. On September 11, 2023, the Division issued an account adjustment notice, which adjusted certain amounts reported on petitioner's return and explained that the adjustments were due to the Division's inability to verify petitioner's reported business income and his relationship to the children claimed as dependents and their residency. The Division asked petitioner to submit further documentation proving the amount of the nonemployee income claimed and the qualifying status of the claimed dependents.

5. On January 2, 2024, the Division issued a notice of disallowance (notice), partially disallowing petitioner's claimed refund for tax year 2022, but allowing petitioner's claimed New

York City school tax credit. It explained that it was disallowing the claimed refund of \$3,516.00 for the reasons listed in its previous notice.

6. On or about January 8, 2024, petitioner requested a conciliation conference before the Division's Bureau of Conciliation and Mediation Services (BCMS). On July 8, 2024, a conciliation conference was held before BCMS. On July 12, 2024, petitioner executed a consent issued by BCMS (CMS No. 000357956) allowing \$200.00 of petitioner's claimed refund of \$3,516.00. According to the terms of the consent, petitioner waived any right to a hearing in the Division of Tax appeals concerning the notice.

7. On January 6, 2024, petitioner filed a petition with the Division of Tax Appeals protesting the notice. By correspondence, dated February 7, 2024, the Division of Tax Appeals informed petitioner that he could not simultaneously pursue a conciliation conference before BCMS and a hearing before the Division of Tax Appeals. The letter requested that petitioner withdraw his petition and clarified that petitioner may file a petition with the Division of Tax Appeals after the conclusion of his proceeding at BCMS.

8. On December 23, 2025, the Division filed a motion for dismissal or for summary determination in its favor, stating that petitioner executed a consent issued to him by BCMS and, thus, waived his rights to any further review of the notice of disallowance before the Division of Tax Appeals. In support of its motion, the Division attached several exhibits to its motion, including a copy of petitioner's return; a copy of the Division's request for further information from petitioner, dated March 28, 2023; petitioner's response, dated April 25, 2023, to the Division's request for further information; the Division's account adjustment notice, dated September 11, 2023; the Division's notice of disallowance dated January 2, 2024; petitioner's request for a BCMS conference dated January 16, 2024; the petition filed in this matter; the

Division's answer, dated March 27, 2024; correspondence from BCMS of July 9, 2024 proposing a modification to the notice; the BCMS consent executed by petitioner on July 12, 2024; and proof of the Division's payment of the modified refund as of August 13, 2024.

9. Petitioner did not respond to the Division's motion for dismissal or for summary determination.

CONCLUSIONS OF LAW

A. The Division submitted a motion to dismiss the petition or for summary determination in this matter asking for a determination in its favor or other relief due to petitioner's waiver of a right to a hearing before the Division of Tax Appeals pursuant to petitioner's agreement to the BCMS consent. Thus, as the Division is effectively arguing that this forum lacks jurisdiction over the subject matter of the petition, a motion to dismiss, rather than a motion for summary determination, is the proper procedural vehicle (*see Matter of Liaquat Ali, Inc.*, Tax Appeals Tribunal, January 22, 2015; Tax Law § 2006 [5] [ii]; 20 NYCRR 3000.9 [a] [1] [ii]).

B. Section 3000.9 (c) of the Rules of Practice and Procedure of the Tax Appeals Tribunal (Rules) provides that a motion for summary determination is subject to the same provisions as a motion for summary judgment pursuant to Civil Practice Law and Rules (CPLR) 3212 and that a motion to dismiss a petition is subject to the same provisions as motions filed pursuant to CPLR 3211. The standard of review for both such motions is the same (*Matter of Nwankpa*, Tax Appeals Tribunal, October 27, 2016). "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]). “If material facts are in dispute, or if contrary inferences may be drawn reasonably from undisputed facts, the issue is for the fact finders to decide on trial, and not for determination by a judge on 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).

C. The documents submitted with the Division’s motion establish that petitioner requested and participated in a conciliation conference before BCMS and ultimately executed a consent modifying the notice. BCMS is tasked with providing conferences to taxpayers who request them and has been delegated the authority to modify notices under protest (Tax Law § 170 [3-a] [c], [e]). Under the Division’s regulations pertaining to BCMS conferences, after reviewing the testimony, evidence and comments, the conciliation conferee will serve on the requester a proposed resolution in the form of a consent (20 NYCRR 4000.5 [c] [3] [i]). If the requestor agrees with the proposed consent, the requestor may only accept the modification of the notice subject to a waiver of any right to petition for a hearing in the Division of Tax Appeals concerning the notice (20 NYCRR 4000.5 [c] [3] [ii]).

D. The Division of Tax Appeals is authorized to “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]). As the Division of Tax Appeals is an adjudicatory body of limited jurisdiction, its powers are confined to those expressly conferred in its authorizing statute (*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]). This forum cannot extend its authority to disputes to which its jurisdiction does not extend (*Matter of Hooper*, Tax Appeals Tribunal, July 1, 2010).

E. As set forth in the findings of fact, petitioner did not respond to the Division's motion. Therefore, it is deemed that petitioner has conceded the facts alleged in the motion (*see Kuehne & Nagel v Baiden*, 36 NY2d 539, 544 [1975]; *John William Costello Assoc. v Standard Metals Corp.*, 99 AD2d 227, 229 [1st Dept 1984], *appeal dismissed* 62 NY2d 942 [1984]). As such, it is concluded that petitioner agreed to the consent issued by BCMS, thereby rendering the modified refund fixed and final, and waiving any hearing rights in the Division of Tax Appeals that attach to the notice. As a result, the Division of Tax Appeals lacks jurisdiction to consider the merits of petitioner's protest.

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

DATED: Albany, New York
April 16, 2026

/s/ Alejandro Taylor
ADMINISTRATIVE LAW JUDGE