

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
ELMER AND LORENA VELASQUEZ	:	DETERMINATION
		DTA NO. 851741
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 2024.	:	

Petitioners, Elmer and Lorena Velasquez, 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 2024.

The Division of Taxation, by its representative, Amanda Hiller, Esq. (Brian A. Kristel, Esq., of counsel), brought a motion on May 27, 2026, seeking summary determination in the above-referenced matter pursuant to Tax Law § 2006 and sections 3000.5 and 3000.9 (b) (1) of the Rules of Practice and Procedure of the Tax Appeals Tribunal. Petitioners, appearing pro se, did not file a response to the motion by June 26, 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 issues of fact exist such that summary determination may be granted in its favor.

FINDINGS OF FACT

1. On January 30, 2025, petitioners, Elmer and Lorena Velasquez, jointly filed form IT-201, New York State resident income tax return, for tax year 2024 (return). Therein, petitioners reported federal adjusted gross income of \$64,732.00, New York State adjusted gross income of \$64,732.00, a standard deduction of \$16,050.00, and dependent exemptions totaling \$5,000.00, resulting in taxable income of \$43,682.00 and New York State personal income tax due of \$1,685.00. After application of an Empire State child credit of \$500.00 and a real property tax credit of \$6,664.00, petitioners reported no tax due on their return.

2. The Division of Taxation (Division) reviewed petitioners' return. On February 20, 2025, the Division issued to petitioners a request for information, form DTF-948-O, requesting additional information regarding petitioners' claimed credits, including, as relevant here, petitioners' form IT-214, claim for real property tax credit.

3. On or about February 22, 2025, petitioners provided a copy of their form IT-214 for tax year 2024. On form IT-214, petitioners checked the box "YES" at line 3 in response to the question "[d]id you own real property with a current market value of more than \$85,000 during 2024." Line 5 of the form states, "[i]f you marked an **X** in the **Yes** box on line 3 . . . **stop**; you do not qualify for this credit." On line 16, petitioners reported \$64,732.00 for their household gross income. Directly below line 16 the form states, "[i]f line 16 is more than \$18,000, **stop**; you do not qualify for this credit."

4. On April 1, 2025, the Division issued a statement of proposed audit change (statement), bearing assessment number L-061412793, informing petitioners that their claim for the credit against real property tax was denied. The statement further explained that:

"1. The New York State tax you reported on your return reflected a computational error. We adjusted your return to correct this error.

2. We denied your claim for the Real Property Tax Credit because it appears that the current market value of your real property exceeds \$85,000, the maximum allowed.

3. We denied your claim for Real Property Tax Credit because your household gross income exceeds the amount allowed.”

As a result of denying petitioners’ claim for the real property tax credit, the Division determined a deficiency in personal income tax for 2024 and proposed additional tax due in the amount of \$1,570.00.

5. On August 29, 2025, the Division issued a notice of deficiency, assessment number L-061412793 (notice), to petitioners asserting additional tax due of \$1,570.00, plus penalties and interest, for tax year 2024.

6. On September 3, 2025, petitioners timely filed a petition with the Division of Tax Appeals protesting the notice.

7. On May 27, 2026, the Division filed a motion for summary determination in its favor. In support of its motion, the Division included an affirmation of the Division’s representative, Brian Kristel, Esq., dated May 27, 2026, together with attachments, including a copy of petitioners’ return; an affidavit of Elliot T. Rauba, Taxpayer Services Specialist 3 for the Individual Liability Resolution Center of the Office of Processing Services at the Division, sworn to on May 20, 2026, together with its own attachments; a copy of the Division’s request for information; a copy of petitioners’ response to the Division’s request for information; the statement dated April 1, 2025; the notice; the petition filed in this matter; and the Division’s answer, dated November 5, 2025.

8. Mr. Rauba averred that he has been an employee of the Division for more than sixteen years and has held his current position of Taxpayer Services Specialist 3 for the prior two

years. In the course of his job responsibilities, he reviewed petitioners' audit file and made his affidavit based on his personal knowledge of the facts and review of the Division's official records kept in the ordinary course of business. He explained that household gross income, for purposes of the RPTC, is calculated by totaling federal adjusted gross income, along with New York State additions to this gross income, any social security and supplemental security income payments, pensions, annuities, cash public assistance and relief and any other income of the taxpayer, taxpayer's spouse and all other household members during the tax year at issue. In this case, Mr. Rauba stated that only item used to determine petitioners' household income was the federal adjusted gross income reported on their return. As a result, the Division determined that petitioners' real property had a current market value greater than \$85,000.00 and that their household gross income was greater than \$18,000.00 and, thus, denied petitioners' claim for the RPTC.

9. Petitioners did not respond to the Division's motion for summary determination.

CONCLUSIONS OF LAW

A. A motion for summary determination is properly 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 that the administrative law judge can, therefore, as a matter of law, issue a determination in favor of any party" (20 NYCRR 3000.9 [b] [1]).

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 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 a 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, 573 [2d Dept 1989]). “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], quoting *Zuckerman v City of New York*, 39 NY2d at 562).

C. Tax Law § 606 (e), the real property tax circuit breaker credit, provides for a credit against real property tax paid by homeowners and renters meeting certain criteria (*see* L. 1978, ch. 70, § 7). This credit is available to a qualified taxpayer if they are a New York State resident for all the tax year at issue and occupied the same residence for 6 months or more of the taxable year (Tax Law § 606 [e] [1] [A]). However, the credit cannot be granted “[f]or taxable years beginning before January first, two thousand twenty-five, if household gross income for the taxable year exceeds eighteen thousand dollars” (Tax Law § 606 [e] [7] [A] [i]). Household gross income is defined as “aggregate adjusted gross income of all members of the household for the taxable year as reported for federal income tax purposes . . . with [possible] modifications . . .” (Tax Law § 606 [e] [1] [c]). While Mr. Rauba’s affidavit lists what modifications are included for household gross income, only petitioners’ self-reported federal adjusted gross income was used.

In this case, petitioners reported their household gross income as \$64,732.00. The maximum household gross income allowed to qualify for the real property tax circuit breaker credit is \$18,000.00. Clearly, petitioners' household gross income exceeds the statutory maximum that is allowed for the real property tax circuit breaker credit. Therefore, the Division properly denied petitioners' claim for the credit on this basis.

D. The real property tax circuit breaker credit cannot be granted "[t]o a property owner who owns real property, the full value of which exceeds eighty-five thousand dollars" (Tax Law § 606 [e] [7] [C]). Here, petitioners indicated on their 2024 form IT-214 that their property's current market value was greater than \$85,000.00 by checking the box "YES" when asked if its value exceeded \$85,000.00. Thus, the Division properly denied petitioners' claim for the real property tax circuit breaker credit, as the current market value of the real property cannot exceed \$85,000.00.

E. As mentioned above, petitioners did not respond to the Division's motion. Therefore, it is deemed that petitioners have conceded the facts alleged within 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 petitioners' household gross income and current market value of their property listed on their 2024 form IT-214 are accurate and true regarding their claimed credit against real property tax. As a result, there is no material and triable issue of fact regarding the denial of the real property tax circuit breaker credit, and summary determination should be granted in favor of the Division.

F. The Division of Taxation's motion for summary determination is granted, the petition of Elmer and Lorena Velasquez is denied and the notice of deficiency, dated August 29, 2025, is sustained.

DATED: Albany, New York
September 24, 2026

/s/ Alejandro Taylor
ADMINISTRATIVE LAW JUDGE