

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
MIRIAM SNYDER : ORDER
 : DTA NO. 826108
 :
for an Award of Costs Pursuant to Article 41, :
Section 3030 of the Tax Law for the Year 2013. :
 :

On March 12, 2015, petitioner, Miriam Snyder, filed an application for an award of costs pursuant to Article 41, § 3030, of the Tax Law for the year 2013. The Division of Taxation had 30 days thereafter, or until April 13, 2015, to file a response to petitioner’s application for costs. The Division of Taxation did not file a response, and such April 13, 2015 date began the 90-day period for issuance of this order.

Based upon petitioner’s application for costs, and all pleadings and proceedings had herein, Dennis M. Galliher, Administrative Law Judge, renders the following order.

ISSUE

Whether applicant, Miriam Snyder, is entitled to an award of costs pursuant to Tax Law § 3030.

FINDINGS OF FACT

1. The Division of Taxation (Division), issued to petitioner, Miriam Snyder, a Notice of Proposed Driver License Suspension Referral (60-Day Notice) dated November 8, 2013. Ms. Snyder challenged this 60- Day Notice by filing a Request for Conciliation Conference (Request) with the Division’s Bureau of Conciliation and Mediation Services (BCMS). BCMS, in turn,

issued a Conciliation Order Dismissing Request (Dismissal Order) dismissing Ms. Snyder's Request upon the position that her Request was untimely as not filed within 30 days from the date of mailing of the 60-day Notice.

2. Ms. Snyder challenged the Dismissal Order by filing a timely petition with the Division of Tax Appeals.

3. The Division filed its answer to the petition, and thereafter brought a motion, dated September 17, 2014, seeking dismissal of the petition or, alternatively, summary determination in its favor.

4. By an Order dated January 8, 2015, the Division's motion for dismissal was denied as improperly brought, its motion for summary determination was denied because there existed material and triable issues of fact, and the petition challenging the Division's referral for suspension of Ms. Snyder's driver's license was to proceed.

5. On January 15, 2015, the Division issued a Notice of Discontinuance of Proceeding whereby it canceled the 60-Day Notice referenced in Finding of Fact 1. This notice provided, as follows:

“Please take notice that the Division of Taxation, after review of the above-captioned matter regarding the [60-day Notice], hereby agrees to cancel the aforementioned [60-Day Notice], as of this date.”

6. In turn, on February 18, 2015, an Order of Discontinuance was issued by the Division of Tax Appeals decreeing the 60-Day Notice to be canceled and the proceeding (i.e., the petition challenging the 60-Day Notice) to be discontinued with prejudice. The foregoing Order of Discontinuance, at paragraph 4 thereof, states:

“Pursuant to the Stipulation of Discontinuance executed by the parties, petitioner has waived her rights to apply for costs and fees under Tax Law § 3030”

7. On March 12, 2015, Ms. Snyder filed her application, denominated a motion to reconsider, seeking an award for costs allegedly incurred in connection with the now-discontinued proceeding she initially commenced by filing her Request challenging the Division's 60-Day Notice.

8. Ms. Snyder agrees with the January 15, 2015 Notice of Discontinuance and its cancellation of the 60-Day Notice by which the Division had sought suspension of her driver's license. Consistently, she also agrees with and does not contest the portion of the February 18, 2015 Order of Discontinuance that confirms such discontinuance and cancellation. However, Ms. Snyder does contest the portion of the Order of Discontinuance stating she has waived her rights to apply for costs and fees under Tax Law § 3030. She states she did not waive any such rights, and seeks herein a "just and reasonable award of costs, fees, and refunds under NYS Tax Law Section 3030."

9. Ms. Snyder has provided the following statement and calculation in support of the amount sought herein:

"Petitioner resubmits her counterclaim for a reasonable award based on the over one year of self-defense work, time, research, consultations, materials, ink, copies, mailings, and resources she has had to buy and what she used to defend herself. One month of work at \$75.00 an hour at 20 hours a week equals 80 hours a month by \$75.00 equals \$6,000.00 a month. The Petitioner defended herself in this case for over a year. If she was to be compensated for such at \$6,000.00 a month she would get \$72,000.00

The Petitioner humbly applies for a reasonable award of costs at a minimum amount of \$6,000.00 which would expedite the closing of this matter."

CONCLUSIONS OF LAW

A. Tax Law § 3030(a) provides, generally, as follows:

“In any administrative or court proceeding which is brought by or against the commissioner in connection with the determination, collection, or refund of any tax, the prevailing party may be awarded a judgment or settlement for:

(1) reasonable administrative costs incurred in connection with such administrative proceeding within the department, and

(2) reasonable litigation costs incurred in connection with such court proceeding.”

Reasonable administrative costs include reasonable fees paid in connection with the administrative proceeding, but incurred after the issuance of the notice or other document giving rise to the taxpayer’s right to a hearing. (Tax Law § 3030[c][2][B].) The statute also provides fees for the services of an individual who is authorized to practice before the Division of Tax Appeals are treated as fees for the services of an attorney. (Tax Law § 3030[c][3].)

B. Tax Law § 3030(c)(6) defines the term “administrative proceeding” to mean “any procedure or other action before the division of taxation (such as the bureau of conciliation and mediation services) or division of tax appeals.” Tax Law § 3030(c)(7) defines the term “court proceeding” to mean “any civil action brought in a court of the state of New York.”

C. A prevailing party is defined by the statute as follows:

“[A]ny party in any proceeding to which [Tax Law § 3030(a)] applies (other than the commissioner or any creditor of the taxpayer involved):

(i) who (I) has substantially prevailed with respect to the amount in controversy, or (II) has substantially prevailed with respect to the most significant issue or set of issues presented, and

(ii) who (I) within thirty days of final judgment in the action, submits to the court an application for fees and other expenses which shows that the party is a prevailing party and is eligible to receive an award under this section, and the amount sought, *including an itemized statement from an attorney or expert witness representing or appearing in behalf of the party stating the actual time expended and the rate at which fees and other expenses were computed . . .* and (II) *is an individual whose net worth did not exceed two million dollars at the time the civil action was filed . . .*

(B) Exception if the commissioner establishes that the commissioner's position was substantially justified.

(i) General rule. A party shall not be treated as the prevailing party in a proceeding to which subdivision (a) of this section applies if the commissioner establishes that the position of the commissioner in the proceeding was substantially justified.

(ii) Burden of proof. The commissioner shall have the burden of proof of establishing that the commissioner's position in a proceeding referred to in subdivision (a) of this section was substantially justified, in which event, a party shall not be treated as a prevailing party.”

D. As an initial matter, Ms. Snyder correctly points out she did not, in fact, waive her rights to apply for an award of costs. The Notice of Discontinuance, by which the Division cancelled the 60-Day Notice and its proposed driver's license suspension (*see* Finding of Fact 5), was a unilateral act undertaken by the Division following its review of the January 8, 2015 Order denying its motion for dismissal of Ms. Snyder's challenge to the 60-Day Notice. Since the Division's action was unilateral, the February 18, 2015 Division of Tax Appeals Order of Discontinuance confirming such action (*see* Finding of Fact 6) incorrectly stated Ms. Snyder had waived her rights to apply for costs. Consequently, Ms. Snyder was entitled to file an application for costs. However, for the reasons set for hereinafter, the application for an award of costs in this case is properly denied.

E. Even assuming Ms. Snyder was the prevailing party, as defined, and further assuming the Division's position in issuing the 60-day Notice was not substantially justified, her application for costs would still fail. First, Ms. Snyder represented herself in the proceeding, and there is nothing in the record to indicate she paid or incurred any fees or expenses that may be awarded as reasonable administrative costs as such are defined under Tax Law § 3030 (e.g.,

expenses of expert witnesses, costs of any necessary study, analysis, engineering report, test, or project, or fees paid or incurred for the services of an attorney or other individual who is authorized to practice before the Division of Tax Appeals (Tax Law § 3030[c][2][B]; [3]). Furthermore, Ms. Snyder has failed to establish her expenses pursuant to the statute and its requirement that an itemized statement of the actual time expended, and the rate at which fees and other expenses she paid were computed, must be submitted. The only basis provided for the amount of the award sought is found in the generic statement set forth at Finding of Fact 9. Such general assertions as to calculating the amount sought to be awarded as costs represents essentially an estimate, and falls far below the requirement to provide an itemized statement of “the actual time expended and the rate at which fees and other expenses were computed,” per Tax Law § 3030(c)(5)(A)(ii)(I).¹

F. The application for costs and fees is denied.

DATED: Albany, New York
June 25, 2015

/s/ Dennis M. Galliher
ADMINISTRATIVE LAW JUDGE

¹ As an additional independent basis for denying the relief sought, Ms. Snyder has not established her net worth did not exceed two million dollars at the time the proceeding was filed, as explicitly required by Tax Law § 3030(c)(5)(A)(ii)(II).