

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition :  
of :  
**DARLEEN MARCH** : ORDER  
for an Award of Costs Pursuant to Article 41, § 3030 : DTA NO. 826057  
of the Tax Law for the Years 2004, 2005, 2006, 2007, :  
and 2008. :

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Petitioner, Darleen March, appearing by Roger Gromet, Esq., filed a petition making an application for an award of administrative costs under section 3030, article 41 of the Tax Law on June 9, 2017.

The Division of Taxation, appearing by Amanda Hiller, Esq. (Charles Fishbaum, Esq., of counsel), was granted an extension of time within which to file a response to the application for costs. The Division of Taxation filed an affirmation, including attached exhibits and a supporting affidavit, in opposition to the application for costs by the due date of August 17, 2017, and such date began the 90-day period for issuance of this order.

Based upon petitioner's application for costs, the Division of Taxation's response in opposition thereto, and all pleadings and proceedings had in this matter, Catherine M. Bennett, Administrative Law Judge, renders the following order.

***ISSUE***

Whether petitioner is entitled to an award of costs pursuant to Tax Law § 3030.

***FINDINGS OF FACT***

1. An investigation by the Division of Taxation (Division) into real estate professionals who had not filed personal income tax returns in New York State resulted in an examination of petitioner and her husband, Stanley March, by the Division's Revenue Crimes Bureau concerning tax years 2004, 2005, 2006, 2007 and 2008. In early 2008, petitioner's accountant had just completed or was working on petitioner's personal income tax returns for tax years 2004, 2005 and 2006.

2. The matter was referred to the Albany County District Attorney for prosecution and petitioner and Stanley March appeared in Albany City Court on May 6, 2008, facing a charge of repeated failure to file personal income tax returns pursuant to Tax Law § 1802 (a), a class E felony. Prior to the proceedings, petitioner and Stanley March filed their joint personal income tax returns for the years 2004, 2005 and 2006; therefore, when petitioner and her husband appeared in Court for the first time, taxes for those years had been paid and the returns filed.

The criminal matter was resolved by a plea agreement. The City Court Judge noted on his file that Stanley March agreed to plead to disorderly conduct, pay back taxes and a fraud penalty, and complete 20 hours of community service. Upon satisfaction of these terms, he was to receive a conditional discharge and no fine. Petitioner agreed to plead guilty to disorderly conduct and complete 20 hours of community service, after which she would receive a conditional discharge and no fine. The court noted on both files that proof had been submitted and the cases were closed October 27, 2008. No further mention or provision was made for payment of a fraud penalty in the criminal matter. The report of the criminal proceeding prepared by the Revenue Crimes Bureau indicated that it believed the sentence directed that all

further payments be made through the Division. Petitioner submitted no other evidence to explain the failure to pay a fraud penalty as ordered by the court.

3. Petitioner and Mr. March also failed to file timely returns for the years 2007 and 2008. When the returns were filed in 2008 and 2009, respectively, the Division issued notices and demands for the taxes shown due but not remitted with the returns. Included with the notices and demands for 2007 and 2008 were late filing and late payment penalties, along with interest.

4. The Division issued a notice of deficiency for the years 2004, 2005 and 2006, on July 23, 2009. The notice indicated the following: 1) additional tax due for 2004, plus fraud penalty and interest; 2) a fraud penalty and interest for 2005; and 3) a fraud penalty and interest for 2006. This notice of deficiency was not protested and became a fixed and final liability on October 21, 2009.

5. Petitioner was issued a consolidated statement of tax liabilities, dated August 13, 2010, which indicated that she was liable for three fixed and final tax assessments for personal income tax that were ripe for collection.<sup>1</sup> This consolidated statement included petitioner's liabilities for tax years 2004, 2005, 2006, 2007 and 2008, with penalties alone totaling \$10,460.73, and a total balance due at that time of \$15,439.87.

6. Petitioner and Stanley March were married in 1998 and remained so until he died on July 11, 2009. A contributing cause of death, as listed on his death certificate, was acute alcohol intoxication and cirrhosis. Mr. March suffered from alcoholism for several years prior to his death, a fact attested to by his physician, Dr. Howard Fritz, step-daughter, and petitioner.

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<sup>1</sup> In addition, the statement indicated that there was another assessment issued to her for the year 2007 that stated additional interest and penalty due but not yet ripe for collection.

7. Following Mr. March's death, petitioner sold their residence in Schroon Lake, Essex County, New York. At that time, the closing statement, dated August 19, 2010, reflected a credit to the purchaser described as "Pay NYDT&F Lien" in the sum of \$15,443.04, an amount almost identical to the sum set forth on the consolidated statement of tax liabilities issued to petitioner on August 13, 2010.

8. On or about July 9, 2012, petitioner, through her representative, applied for an income tax refund of \$10,460.73. This amount reflected the portion of the payment from the proceeds of the sale of her home in Schroon Lake attributable to the penalties asserted in the three fixed and final assessments subject to collection, as set forth in Finding of Fact 5. In her second amended petition, petitioner revised the refund request so that she then sought a refund of the full amount paid from the proceeds of the sale of her home in Schroon Lake in the sum of \$15,443.04.

9. The refund application was denied by the Division on August 3, 2012. Petitioner requested a conference before the Bureau of Conciliation and Mediation Services (BCMS) dated August 3, 2012, and, by BCMS order dated October 25, 2013, the refund denial was sustained. Petitioner then filed a petition with the Division of Tax Appeals, dated January 20, 2014, challenging the BCMS order.

10. Petitioner and Mr. March filed income tax returns jointly during his lifetime. For the years 2004 through 2006, petitioner received commissions as a licensed real estate broker. Also, the couple reported income and loss from Adirondack Country Homes Realty, Inc., which petitioner owned, and Internet Time Share Resources, Inc., owned by Mr. March. The latter reported income from its operation as an internet company that leased out mainframe computer time. Both companies were profitable during the years in issue.

11. Petitioner established Adirondack Country Homes Realty, Inc., after beginning in the real estate field as an agent. She then formed a partnership with another agent and began operations as Adirondack Country Homes and eventually became the sole owner of the business. At one time, the company had eight offices and was quite lucrative. For a time, Mr. March was affiliated with the company as an agent.

12. Petitioner provided corporate tax records for her real estate company to the couple's accountant, which were then incorporated into the final tax returns, while Mr. March provided the tax records for his business. During the years in issue, the couple always employed an accountant for the preparation of their tax returns, although several different accountants were employed over the years.

13. Petitioner was aware that the returns in issue were not filed on time and pointed this out to her husband on many occasions. She explained that she was not sure why the returns were not filed, but thought Mr. March may have located additional information necessary for the return preparation. She also conceded that Mr. March's alcoholism and abusive behavior caused her to avoid confrontations with him, and that the filing of tax returns, a job they had hired an accountant to complete, "wasn't the most important issue in the family."

14. The couple's income was deposited into bank accounts over which petitioner had authority. However, even though petitioner had equal authority and control, her husband managed all their accounts. Credit cards were applied for and maintained in petitioner's name, but she was permitted to make payments with credit cards only with her husband's approval. This was explained as part of what she referred to as the "credit card juggle," a scheme Mr. March employed, and in which petitioner concurred, to maintain zero interest balances by using

several credit cards. The credit card juggle was utilized throughout the years in issue, notwithstanding Mr. March's alcoholism.

15. Petitioner did have sole control over the checking account for Adirondack Country Homes Realty, Inc., but only used her control to pay routine bills. After Mr. March became involved in her real estate business, he began making "program" decisions on behalf of that company. Petitioner explained that Mr. March was "smart" and it was "wise to listen to him."

16. By the end of 2008, Mr. March's alcoholism led petitioner to consider a divorce due to his mood swings, lack of mental acuity, disputes and abuse. These issues were echoed by petitioner's daughter, who recalled Mr. March's alcoholism, control of the family's finances and fits of anger and abuse, which began as early as 1999 or 2000. On one occasion, July 5, 2006, petitioner's daughter called the police to report an episode of abuse, to which New York State Police responded, and petitioner reported a verbal altercation with her husband, who was very intoxicated, had threatened to "kill her." Petitioner refused to request that her husband be arrested and the matter was closed with a domestic violence report.

17. Despite his serious condition, Mr. March was never hospitalized and did not seek rehabilitation for his alcoholism. He attempted abstinence from alcohol on his own, without success. Despite the serious and debilitating disease from which he suffered, he was functional in many respects, continuing to drive, operate and manage his company and participate in petitioner's real estate business. He was able to communicate with accountants, successfully juggle credit cards to evade interest payments on outstanding balances and manage the family's finances.

18. In 2008, coinciding with her thoughts of divorce, petitioner approached the couple's accountant to discuss the option of changing her filing status to married filing a separate return. Petitioner could not explain why she had never done this previously, even though she did not know if returns were being filed. She recounted how extensions and returns prepared by the accountant were placed before her and she signed them as directed, but she did not know "what years she signed when."

19. On November 13, 2008, Administrative Law Judge Joseph W. Pinto, Jr., addressed this matter and issued his determination. He summarized the issue as to whether petitioner established a basis for the refund of penalties assessed to petitioner and her late husband.

The Division's basis for the imposition of the fraud penalty was the discovery that petitioner and Mr. March had not filed their tax returns or paid taxes for several years, including the years in issue, which resulted in charges filed by the Albany County District Attorney's office, which case was later closed by plea deals. Judge Pinto acknowledged that since the returns and taxes for the years before Albany City Court had been filed and paid prior to petitioner's first appearance there, the only requirements to be fulfilled before the cases could be closed were performance of 20 hours of community service and payment of a criminal fraud penalty. Satisfactory proof had been submitted and the criminal cases were closed. He noted that the City Court Judge's notes were silent with respect to any subsequent civil action, much less any constriction of the Division's rights to collect any additional taxes, penalties and interest due from petitioner and her husband. Judge Pinto concluded that the argument that the criminal matter relieved petitioner of her tax liability pursuant to the assessments issued to her must be rejected, and that there was no credible evidence that petitioner's civil liabilities were discharged

by the Albany City Court matter. Judge Pinto additionally noted that the fact that the City Court Judge imposed a fraud penalty in the criminal action, which was accepted in the plea agreement with Mr. March, indicates that the Court found fraudulent conduct and penalized it. Judge Pinto stated:

“It is not disclosed why the Judge ordered only Mr. March to pay the taxes due and the fraud penalty, since the obligation emanated from the couple’s jointly filed tax returns. For that reason, petitioner’s argument that Judge Kretser’s notes shield her from further action by the Division to impose fraud penalty is unwarranted and without any basis in the record. The Judge’s notes acknowledge the most important factors supporting the Division’s assertion of a fraud penalty: she ordered the taxes and a fraud penalty to be paid based on a repeated failure to file income tax returns and pay the taxes due.”

Judge Pinto noted that on or about July 23, 2009, almost nine months after closure of the criminal case, a notice of deficiency was issued to petitioner and Mr. March, who had passed away on July 11, 2009. Such notice included fraud penalties for tax years 2004, 2005 and 2006, and petitioner’s failure to protest the deficiency resulted in a fixed and final assessment. He concluded that petitioner’s appeal for abatement of the fraud penalty for tax years 2004, 2005, and 2006 was unavailing because reasonable cause is not considered where the Division has established that the failure to file and pay the taxes is due to fraud. For tax years 2007 and 2008, where only a negligence penalty was assessed, reasonable cause based on Mr. March’s alcoholism as a serious illness was considered by Judge Pinto, but he reached a conclusion that petitioner had not demonstrated entitlement thereto based upon the fact that, although afflicted with alcoholism, Mr. March was extremely functional, having profitably operated a computer business, managed the family finances and exhibited an adroitness of juggling credit cards to avoid interest charges. Judge Pinto concluded that although the alcoholism had deleterious



effects on Mr. March's life, petitioner did not clearly establish a causal connection between the disease and petitioner's failure to file and pay taxes, and thus, he denied abatement of penalties. Lastly, Judge Pinto held that since petitioner did not demonstrate what constituted the additional refund claimed, that tax, penalties and interest were satisfied out of the house proceeds but petitioner had not challenged her liability for the taxes outstanding, she would not be eligible for a refund of the enhanced amount. The Division's refund denial dated August 27, 2012, was upheld.

20. Judge Pinto's determination was appealed to the Tax Appeals Tribunal, and on May 10, 2017, the Tribunal issued its decision. Although the Tribunal concluded that the Division was within its authority under article 22 of the Tax Law to include a fraud penalty, the Tribunal noted that there is a limit to the joint and several liability arising out of the marital relationship and joint return filing, as to fraud. The Tribunal stated that fraud could not be asserted with respect to the tax of a spouse unless some part of the underpayment is due to the fraud of such spouse. The burden of proof to establish that some part of the underpayment for each of the tax years 2004, 2005 and 2006 was due to fraud by petitioner had not been established according to the Tribunal. Although the Tribunal agreed with the administrative law judge that "such a consistent and substantial understatement of tax liability may be considered 'strong evidence of fraud'" citing *Merritt v Commissioner* (301 F2d 484 [1962]), the understatement of income by itself was not sufficient to prove fraud, and the Tribunal concluded that such additional factors were simply not present for the Division to meet its burden to prove fraud. Likewise, the Tribunal did not find that petitioner's guilty plea in the criminal proceeding supported a finding of fraud, though agreeing with the administrative law judge, also concluded that the plea itself did not relieve petitioner from liability for fraud penalties, since the criminal proceeding, the

Judge's notes or petitioner's plea did not restrict the Division's right to proceed civilly against petitioner. The Tribunal also concluded that petitioner's avoidance of confrontation with her alcoholic and abusive husband does not give rise to an inference of fraudulent intent on her part and that her conduct, taken as a whole, fell short of the clear and unmistakable standard required to sustain a fraud penalty, citing *Matter of Sona Appliances* (Tax Appeals Tribunal, March 16, 2000). Having concluded that the Division failed to meet its burden to sustain the fraud penalties for tax years 2004, 2005 and 2006, the Tribunal next considered whether the Division could raise alternative penalties, and concluded it could not, since such alternate penalties were not previously raised during the hearing and, thus, the Division had not provided adequate notice of the same. The Tribunal next considered whether the penalties for failure to timely file or failure to pay tax shown on a return as asserted by the notices and demands for tax years 2007 and 2008 could be abated by the reasonable cause arguments raised by petitioner concerning Mr. March's alcoholism. The Tribunal concluded that, although petitioner established the fact of the alcoholism and that Mr. March had procrastinated in filing their returns, petitioner had not established that the alcoholism caused the procrastination, especially considering the evidence that Mr. March was quite functional in some areas of his life over a course of many years despite his alcoholism. Thus, the Tribunal concluded that petitioner was not liable for any penalties for tax years 2004, 2005 and 2006, and the Division was directed to recompute petitioner's liability for those years. Further, the Division was directed to reapply payments previously applied to those years (listed in the details of the consolidated statement), and to reapply the \$15,443.04 payment made on or about August 19, 2010, to the remaining liability for the years in issue, with the balance after such application, refunded to petitioner, together with interest as may be lawfully due.

21. The instant application seeks an award of costs in the amount of \$11,914.84, consisting specifically of the following items:

a) \$9,875.40 for attorney's fees incurred for 87.2 hours of service by Roger Gromet, Esq.<sup>2</sup> Petitioner submitted hours, including fractional hours, as well as specific details of services performed by Mr. Gromet between December 27, 2011 and January 3, 2017. The chart below reflects all the calculations made by Mr. Gromet and the basis for each is stated, as follows:

No. of hours	Hourly Rate	Total Cost of Attorney fees	Characterization of rate calculated
87.2	\$75.00	\$6,540.00	\$75.00 per hour pursuant to Tax Law § 3030
87.2	\$200.00	\$17,440.00	\$200.00 per hour was Mr. Gromet's regular billing rate
87.2	\$113.25	\$9,875.40	\$113.25 was calculated by Mr. Gromet as including a 151% cost of living increase(s) over the original \$75.00 per hour rate, since the enactment of § 3030 in 1997 (citing § 3030 [c] [1] [B] [iii]).

b) \$2,039.44 for disbursements incurred between December 27, 2011 and January 3, 2017, also detailed with additional specificity in the evidence as follows:

Expense Category	Total Amount
Preparation of Report by Howard Fritz, MD, 1 hr., 6 minutes at \$300.00 per hour	\$330.00
AMF Reporting Services for tax hearing transcript; 160 pages at \$2.50 per page plus an administrative fee of \$10.00	\$410.00

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<sup>2</sup> Mr. Gromet employed several calculations of attorney's fees in petitioner's cost application. Each is set forth in the chart. Ultimately, the request was for fees and expenses in the amount of \$9,875.40 and \$2,039.44, respectively.

Travel mileage and expenses for travel to the Harriman Campus, to Albany City Court for documents, to Division of Tax Appeals and Tax Appeals Tribunal office for appearance at two hearings	\$1,068.08
Facsimile fees, postage and costs of copies	\$231.36
<b>Total Costs</b>	<b>\$2,039.44</b>

22. Also accompanying petitioner's application for costs is her affidavit, dated June 9, 2017, setting forth, in pertinent part, the following information:

- "4. My net worth is less than Two Million Dollars.
- 5. I own a corporation, Adirondack Country Homes, Inc., which has a net worth of less than seven million dollars and less than five hundred employees."

***SUMMARY OF THE PARTIES' POSITIONS***

23. Petitioner maintains that she is the prevailing party and should be awarded the full amount of the costs she is seeking. Further, petitioner argues that the Division's allegation of fraud was not substantially justified, since the Tribunal determined that the Division "offered no evidence of other common indicators of fraud" to support its finding.

24. In opposition to petitioner's application, the Division maintains that petitioner's application for costs should be denied because the Division's position in this matter was substantially justified.

***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 that 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. A prevailing party is defined by Tax Law § 3030 [c] [5] as follows:

“Prevailing party. (A) In general. The term ‘prevailing party’ means any 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, or is an owner of an unincorporated business, or any partnership, corporations, association, unit of local government or organization, the net worth of which did not exceed seven 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.

(iii) Presumption. For purposes of clause (i) of this subparagraph, the position of the commissioner shall be presumed not to be substantially justified if the department, inter alia, did not follow its applicable published guidance in the administrative proceeding. Such presumption may be rebutted.

(iv) Applicable published guidance. For purposes of clause (ii) of this subparagraph, the term 'applicable published guidance' means (I) regulations, declaratory rulings, information releases, notices, announcements, and technical services bureau memoranda, and . . . .

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(C) Determination as to prevailing party. Any determination under this paragraph as to whether a party is a prevailing party shall be made by agreement of the parties or (i) in the case where the final determination with respect to tax is made at the administrative level, by the division of tax appeals, or (ii) in the case where such final determination is made by a court, the court.

C. Tax Law § 3030 is clearly modeled after Internal Revenue Code § 7430. It is proper, therefore, to use Federal cases for guidance in analyzing this state law (*see Matter of Levin v Gallman*, 42 NY2d 32 [1977]; *Matter of Ilter Sener*, Tax Appeals Tribunal, May 5, 1988). A position is substantially justified if it has a reasonable basis in both fact and law (*see Information Resources, Inc. v United States*, 996 F2d 780, 785[1993]), with such determination properly based "on all the facts and circumstances surrounding the case, not solely upon the final outcome" (*Phillips v Commissioner*, 851 F2d 1492, 1499 [1988]; *Heasley v Commissioner*, 967 F2d 116, 120 [1992]). The fact that the fraud penalties were cancelled by the Tribunal is a factor to be considered in this case (*id.*). However, this outcome does not preclude a finding that the Division's position was substantially justified at the time the notice was issued, since the finding

must be made in view of what the Division knew at the time its position was taken (Tax Law § 3030 [c] [8] [B]; *see DeVenney v Commissioner*, 85 TC 927, 930 [1985]).

D. In accordance with the Tribunal decision, petitioner substantially prevailed with respect to the most significant issue presented herein, i.e., the imposition of fraud penalties for 2004, 2005 and 2006.<sup>3</sup> The Tribunal agreed with the determination of the administrative law judge that a consistent and substantial understatement of tax liability as confirmed in this case, and the repeated pattern of non-filing and late-filing by petitioner and Mr. March, was strong evidence of fraud. However, without proof of additional factors, i.e., willful, knowledgeable and intentional wrongful acts or omissions constituting false representation on the part of petitioner, the understatement of income by itself was not sufficient to prove fraud. Notwithstanding this result, however, petitioner is not the prevailing party within the meaning and intent of Tax Law § 3030, because the Division was substantially justified in issuing the notice based upon the information in its possession at the time the notice was issued. At the time the assessment was issued on July 23, 2009, the Division based its imposition of fraud penalties for 2004, 2005 and 2006 on a repeated pattern of non-filing, non-payments and late payments. The Division's Revenue Crimes Bureau had previously referred the matter to the Albany County District Attorney for prosecution of such omissions, where a plea agreement resulted in an order for Mr. March to pay the taxes due, the imposition of a criminal fraud penalty and community service.<sup>4</sup>

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<sup>3</sup> As to the penalties for late filing and late payment assessed for tax years 2007 and 2008, petitioner did not prevail on her reasonable cause argument based upon the alcoholism of Mr. March.

<sup>4</sup> As noted in the administrative law judge's determination, despite the City Court Judge's differentiation in how she penalized petitioner and Stanley March individually, the criminal fraud penalty did not merely attach to Mr. March. Judge Pinto stated: "It is not disclosed why the Judge ordered only Mr. March to pay the taxes due and the fraud penalty, since the obligation emanated from the couple's jointly filed tax returns. For that reason, petitioner's argument that Judge Kretser's notes shield her from further action by the Division to impose fraud penalty is unwarranted and without any basis in the record. The Judge's notes acknowledge the most important factors

Petitioner's plea acknowledged the same wrongdoing and the couple filed joint returns. The fact that additional factors were later deemed lacking did not preclude the Division from having a firm basis upon which to issue an assessment bearing fraud penalties in the first instance.

Accordingly, the exception to the general "prevailing party" rule applies and petitioner will not be treated as the prevailing party in this proceeding, since the Division established that its position was substantially justified (Tax Law § 3030 [c] [5] [B]).

\_\_\_\_\_E. Finally, as an independent basis for denying the relief sought, petitioner has not provided any information to establish that her net worth did not exceed two million dollars *at the time the action was filed*, or that as an owner of a corporation that its net worth did not exceed seven million dollars *at the time the civil action was filed*, and which did not have more than five hundred employees *at the time the civil action was filed*, as explicitly required by Tax Law § 3030 (c) (5) (A) (ii) (II) (emphasis supplied). The information provided by petitioner's affidavit was as of June 9, 2017, not at the time the petition was filed and the civil action commenced, on January 20, 2014, as required by law.

F. Since a determination has been made on dual grounds that petitioner is not entitled to an award of costs, it is unnecessary to determine whether the costs claimed are reasonable.

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supporting the Division's assertion of a fraud penalty: she ordered the taxes and a fraud penalty to be paid based on a repeated failure to file income tax returns and pay the taxes due."



G. Petitioner's application for costs and fees is denied.

DATED: Albany, New York  
November 9, 2017

/s/ Catherine M. Bennett  
ADMINISTRATIVE LAW JUDGE