

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition	:	
of	:	
<b>MONICA CARDENAS</b>	:	ORDER
for Administrative Costs under Article 41 of the	:	DTA NO. 826616
Tax Law for the Year 2012.	:	

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Petitioner, Monica Cardenas, appearing by Jhonatan Mondragon, filed a petition on November 4, 2014 seeking administrative costs under section 3030 of Article 41 of the Tax Law.

The Division of Taxation, appearing by Amanda Hiller, Esq. (Linda Harmonick), filed a response to the application for costs on December 3, 2014, which date began the 90-day period for issuance of this order.

Based upon petitioner's application for costs, the Division's response to the application, and all pleadings and proceedings had herein, Barbara J. Russo, 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. The Division of Taxation (Division) issued an account adjustment notice, dated March 26, 2014, to petitioner for tax year 2012, issuing a refund to petitioner in the amount of \$582.00.
2. During proceedings before the Bureau of Conciliation and Mediation Services, petitioner, by her representative, signed a consent with the Division, dated August 14, 2014,

wherein petitioner agreed to a credit or refund in the amount of \$952.85. The consent states, in part, “I hereby agree to waive any right to a hearing in the Division of Tax Appeals concerning the above notice(s).”

3. On November 4, 2014, petitioner filed a petition with the Division of Tax Appeals seeking an award of costs for fees paid to her representative. Attached to the petition is an invoice entitled “Detailed Tax Preparation Fees” indicating the following charges: 2 hour conciliation conference, unit price \$75.00, amount \$150.00; 2 hour legal research, unit price \$75.00, amount \$150.00; 6 hour follow up, faxing document, other paperwork, unit price \$75.00, amount \$450.00, for a total claim of costs in the amount of \$750.00. The attached invoice does not indicate the name of the representative or the dates services were rendered.

#### ***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 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]), with the dollar amount

of such fees capped at \$75.00 per hour, unless there are special factors that justify a higher amount (Tax Law § 3030[c][1][B][iii]).

B. A prevailing party is defined by the statute, in part, 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 . . . “ (Tax Law § 3030[c][5]).

C. As noted above, the application must be brought within 30 days of final judgment in the matter (Tax Law § 3030[c][5][A][ii][I]). Unfortunately, the term “final judgment” is not defined by the statute and no regulations have been promulgated pursuant to Tax Law § 3030.

However, Tax Law § 3030 is modeled after Internal Revenue Code § 7430. Therefore, it is proper to look to Federal regulations and cases for guidance in analyzing Tax Law § 3030 (*see Matter of Levin v. Gallman*, 42 NY2d 32, 396 NYS2d 623 [1977]; *Matter of Sener*, Tax Appeals Tribunal, May 5, 1988).

Internal Revenue Code § 7430(a) provides that:

“In any administrative or court proceeding which is brought by or against the United States in connection with the determination, collection, or refund of any tax, interest, or penalty under this title, the prevailing party may be awarded a judgment or a settlement for--

(1) reasonable administrative costs incurred in connection with such administrative proceeding within the Internal Revenue Service.”

Internal Revenue Code § 7430(b)(4) allows for an award of costs to be made by the Internal Revenue Service pursuant to IRC § 7430(a) if the application by the prevailing party is made by the 91<sup>st</sup> day “after the date on which the *final decision* of the Internal Revenue Service as to the determination of the tax, interest, or penalty is mailed to such party” (emphasis added). The term “final decision” is further delineated in the regulations.

The Federal regulation promulgated pursuant to IRC § 7430 provides, in pertinent part, as follows:

*“Period for requesting costs from the Internal Revenue Service.--To recover reasonable administrative costs pursuant to section 7430 and this section, the taxpayer must file a request for costs no later than 90 days after the date the final decision of the Internal Revenue Service with respect to all tax, additions to tax and penalties at issue in the administrative proceeding is mailed, or otherwise furnished, to the taxpayer. The final decision of the Internal Revenue Service for purposes of this section is the document which resolves the tax liability of the taxpayer with regard to all tax, additions to tax and penalties at issue in the administrative proceeding . . . .”* (Treas Reg § 301.7430-2[c][5]; emphasis added.)

D. Petitioner entered into a consent dated August 14, 2014, agreeing to a refund in the amount of \$952.85 and waiving any right to a hearing before the Division of Tax Appeals related to the matter. The consent thus resolves the tax liability of petitioner in the administrative proceeding. As such, the consent is deemed the final judgment for purposes of Tax Law § 3030 (*see* Treas Reg § 301.7430-2[c][3][iii][5]). The statute of limitations for filing an application for costs commenced on August 14, 2014, the date of the consent. The petition herein seeking administrative costs was filed on November 4, 2014. As the application for costs was filed more than 30 days after the final judgment in the action, petitioner’s application for costs is untimely.

E. The application for costs of petitioner, Monica Cardenas, is denied.

DATED: Albany, New York  
January 29, 2015

/s/ Barbara J. Russo  
ADMINISTRATIVE LAW JUDGE