

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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| In the Matter of the Petitions | : | |
| of | : | |
| RICHARD SIEGAL (ESTATE OF), GAIL SIEGAL, ADMINISTRATOR | : | ORDER |
| for Redetermination of Deficiencies or for Refund of Personal Income Tax under Article 22 of the Tax Law for the Years 2001 and 2002. | : | DTA NOS. 826661 AND 826750 |

Petitioner, Richard Siegal (Estate of), Gail Siegal, Administrator, filed petitions for redetermination of deficiencies or for refund of personal income tax under article 22 of the Tax Law for the years 2001 and 2002. Petitioner appeared by Latham & Watkins LLP (Miriam L. Fisher, Esq., and Brian C. McManus, Esq., of counsel). The Division of Taxation appeared by Amanda Hiller, Esq. (Kathleen D. O’Connell, Esq., of counsel). A hearing was held before Barbara J. Russo, Administrative Law Judge, in New York, New York, on October 19, 20, and 21, 2017. Following the hearing, petitioner filed a brief in support of its petition, the Division of Taxation filed a brief in opposition, and petitioner filed a reply brief. The Division of Tax Appeals issued a determination on February 15, 2018, granting the petition to the extent indicated in Conclusions of Law C, E, F, and G of that determination, but in all other respects denying the petition, canceling the notice of deficiency for 2002, dated December 18, 2013, and directing the Division of Taxation to recompute the notices of deficiency for 2001, dated August 25, 2008 and September 15, 2008, in accordance with Conclusion of Law E, F, and G of that determination, and as so modified, sustaining the notices for 2001.

Petitioner filed a motion for reargument, together with supporting documents, on March 9, 2018. The Division of Taxation's response was due by April 11, 2018, which date began the 90-day period for the issuance of this order. Upon review of petitioner's motion, the Division of Taxation's response, and the entire record herein, Barbara J. Russo, Administrative Law Judge, renders the following order.

ISSUE

Whether petitioner's motion for reargument should be granted.

FINDINGS OF FACT

The facts as determined in *Matter of Siegal*, Division of Tax Appeals, February 15, 2018, are fully incorporated herein by reference.

CONCLUSIONS OF LAW

A motion to reargue a prior determination "is designed to afford a party an opportunity to establish that the court overlooked or misapprehended the relevant facts, or misapplied any controlling principle of law. Its purpose is not to serve as a vehicle to permit the unsuccessful party to argue once again the very questions previously decided" (*Foley v Roche*, 68 AD2d 558, 567 [1st Dept 1979], *lv denied* 56 NY2d 507 [1982]; *see Matter of Barker*, Tax Appeals Tribunal, June 23, 2011; *see also* CPLR 2221 [d] [2]).

Petitioner argues that the administrative law judge "may have inadvertently overlooked certain critical evidence in the record that is relevant to the [Division of Tax Appeals'] ultimate findings for 2001" and contends that "such evidence might reasonably be expected to alter the conclusion reached by [the Division of Tax Appeals]." Specifically, petitioner takes issue with the administrative law judge's determination that petitioner failed to present evidence of genuine debt between petitioner and the drilling partnerships PW&F-S-01, Bayou, PW&F-W-01,

Sanoraoc, and Challenger. Petitioner contends that the record contains evidence of interest and principal repayments to the partnerships, and relies upon two of the Division of Taxation's (Division) exhibits admitted into the record. The first document relied upon by petitioner, Exhibit HH, was introduced by the Division at the end of the hearing without any testimony. The Division's attorney identified the document, without sworn witness testimony, as "a check history for investor Richard Siegal, Estate of, from Bistate Oil Company." There was no authentication, explanation, or further description of the document, but petitioner posed no objection to its admission. Neither party elicited testimony from any witness regarding the document. Petitioner now asserts new factual allegations based on assumptions regarding the document with no citations or support from the record in an attempt to explain the contents of Exhibit HH. Petitioner's argument that Exhibit HH evidences interest and principal repayments interprets the document without the benefit of any testimony, and in doing so assumes facts that are not in the record. Contrary to petitioner's argument, Exhibit HH, with no testimony authenticating or describing the contents therein, does not provide sufficient evidence of interest or principal repayments to the partnerships. Exhibit HH was not overlooked in the prior determination, rather it was accorded no weight.

Petitioner further relies on Exhibit CCC, which was submitted post-hearing by the Division within the time period allowed for the submission of additional documents. The Division asserted that Exhibit CCC was an unsigned copy of Mr. Siegal's 2002 federal income tax return. Ironically, petitioner vehemently objected to the admission of Exhibit CCC on the grounds that:

"there is *no evidence* that the unsigned document compilations proffered by the Division are true and correct copies of federal and state tax returns and Forms K-1 that were *actually filed* with the Division or IRS In the absence of any evidence establishing the authenticity of these documents, the proposed exhibits

are *not relevant* since the documents could not, under any reasonable circumstances, make the existence of any fact that is of consequence to the determination of this matter more or less probable than it would be without the admission of the documents” (petitioner’s correspondence to Division of Tax Appeals dated February 15, 2017, emphasis in original).

Exhibit CCC was accepted into the record and the administrative law judge noted petitioner’s objections, stating that, “[p]etitioner’s argument that the returns are unsigned and that there is no evidence that they are true and correct copies of the returns that were actually filed will be considered in determining the weight to accord these exhibits.” The administrative law judge further noted that petitioner was afforded the opportunity to provide documents in rebuttal to the Division’s submission, but petitioner chose not to present any documents in response.

Petitioner now relies on the unsigned document, claiming that it “suggests that interest income was allocated to Mr. Siegal for the five partnerships at issue” Again, petitioner points to no testimony to support what it purports that the document “suggests” and provides merely unsubstantiated allegations and arguments. There is no testimony explaining the document and petitioner makes assumptions about the document not supported by the record. Petitioner’s representative’s unsworn, unsubstantiated statements made in the motion to reargue are simply insufficient to meet petitioner’s burden of proof (*see Matter of Erdman*, Tax Appeals Tribunal, April 6, 1995). Again, this document was not overlooked, rather it simply is insufficient to support petitioner’s argument of interest and principal repayments.

Accordingly, it is hereby ORDERED that petitioner’s motion for reargument is denied in its entirety.

DATED: Albany, New York
June 28, 2018

/s/ Barbara J. Russo
ADMINISTRATIVE LAW JUDGE