

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition	:	
of	:	
<b>LEANDRO CAMPOS-LIZ</b>	:	ORDER
for Redetermination of a Deficiency or for Refund of	:	DTA NO. 826984
Personal Income Tax under Article 22 of the Tax Law	:	
for the Year 2012.	:	

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Petitioner, Leandro Campos-Liz, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 2012.

A hearing was scheduled before Administrative Law Judge Barbara J. Russo in Albany, New York, on Tuesday, August 22, 2017 at 10:30 A.M. Petitioner failed to appear and a default determination was duly issued on September 14, 2017. Petitioner, appearing pro se, has made a written application, dated October 12, 2017, that the default determination be vacated. The Division of Taxation, by Amanda Hiller, Esq. (Christopher O'Brien, Esq., of counsel), submitted its written opposition on November 10, 2017. Petitioner was granted permission for a reply, which was submitted on November 21, 2017, and began the 90-day period for rendering this order. Upon a review of the entire case file in this matter, Herbert M. Friedman, Jr., Supervising Administrative Law Judge, issues the following order.

***FINDINGS OF FACT***

1. On May 26, 2015, petitioner, Leandro Campos-Liz, filed a petition with the Division of Tax Appeals. The petition was filed in protest of a conciliation order (CMS number 261502), issued by the Bureau of Conciliation and Mediation Services (BCMS) on December 26, 2014.

2. On August 7, 2015, the supervising administrative law judge issued a notice of intent to dismiss petition to petitioner. The notice of intent indicated that the relevant conciliation order was issued on December 26, 2014, but that the petition was not filed until May 26, 2015, or 151 days later.

3. By determination dated January 7, 2016, the administrative law handling the matter upheld the notice of intent and dismissed the petition.

4. Petitioner timely filed an notice of exception with the Tax Appeals Tribunal. On January 12, 2017, the Tribunal granted petitioner's exception, reversed the administrative law judge's determination, and remanded the matter for further proceedings on the issue of timeliness of the petition consistent with its decision and, if appropriate, a determination on the merits.

5. On July 17, 2017, the director of the Hearing Support Unit of the Division of Tax Appeals sent two notices of hearing to petitioner and the Division of Taxation advising them that a hearing in the above matter had been scheduled for Tuesday, August 22, 2017, at 10:30 A.M., at the offices of the Division of Tax Appeals, Agency Building #1, 2<sup>nd</sup> Floor, Albany, New York.

The notice of hearing stated that:

“[a]n adjournment may be requested but will be granted only for good cause and only if the request is received in writing by the Division of Tax Appeals at least 15 days prior to the hearing date.”

6. On August 22, 2017, petitioner telephoned the Hearing Support Unit and requested an adjournment of that day's proceedings. Petitioner did not submit a written request prior to that date.

7. On August 22, 2017, at 10:30 A.M., the administrative law judge commenced a hearing as scheduled in the *Matter of Leandro Campos-Liz*. The Division appeared by its attorney. Petitioner did not appear at the hearing and a motion for default was duly made by the Division.

8. Petitioner filed a letter dated August 26, 2017, and received by the Division of Tax Appeals on August 30, 2017, seeking a retroactive adjournment of the August 22 hearing. He noted that he had job-related concerns that prohibited him from attending. He did not offer any proof of a meritorious case.

9. By letter of August 31, 2017, the administrative law judge denied petitioner's tardy request for an adjournment.

10. On September 14, 2017, the administrative law judge issued a default determination against petitioner, denying the petition in this matter.

11. On October 12, 2017, petitioner filed the instant application to vacate the default determination. In the application, petitioner alleged that he started work in June in the state of Florida and was unable to leave work. Petitioner attached a letter from his employer as substantiation for his reason for his failure to attend.

12. Petitioner did not offer any evidence or argument regarding the merits of his case.

13. In its opposition to the instant application, the Division noted that a timely adjournment of the hearing was never requested despite petitioner's assertion that he began working in Florida months earlier. Moreover, the Division added that petitioner did not claim that he failed to receive the hearing notice. Finally, the Division maintained that petitioner did not provide anything to demonstrate a meritorious case.

### ***CONCLUSIONS OF LAW***

A. As provided in the Rules of Practice and Procedure of the Tax Appeals Tribunal,

“[i]n the event a party or the party's representative does not appear at a scheduled hearing and an adjournment has not been granted, the administrative law judge shall, on his or her own motion or on the motion of the other party, render a default determination against the party failing to appear” (20 NYCRR 3000.15 [b] [2]).

The rules further provide that, “[u]pon written application to the supervising administrative law judge, a default determination may be vacated where the party shows an excuse for the default and a meritorious case” (20 NYCRR 3000.15 [b] [3]).

B. Petitioner did not appear at the scheduled hearing or obtain an adjournment. Therefore, the administrative law judge correctly granted the Division of Taxation’s motion for default pursuant to 20 NYCRR 3000.15 (d) (2) (*see Matter of Hotaki*, Tax Appeals Tribunal, December 14, 2006; *Matter of Zavalla*, Tax Appeals Tribunal, August 31, 1995).

C. Once the default determination was issued, it was incumbent upon petitioner to show an acceptable excuse for not attending the hearing and to show that he had a meritorious case (20 NYCRR 3000.15 [d] [3]; *see Matter of Poindexter*, Tax Appeals Tribunal, September 7, 2006; *Matter of Zavalla*). First, petitioner has not established an acceptable excuse for its failure to appear at the hearing. As the Division points out, petitioner was issued timely notice of the hearing, but failed to make a timely request for an adjournment. The grounds cited by petitioner in his application (employment out of state) existed as early as two months prior to the hearing and certainly could have been presented in a letter at least 15 days prior to the hearing. Unfortunately, petitioner chose to risk default by solely telephoning the Division of Tax Appeals on the day of the hearing rather than filing a written request within the appropriate time period, as instructed. Accordingly, petitioner has not met the first criterion to have the default determination vacated.

D. Furthermore, petitioner has not established a meritorious case. “In order to meet the meritorious case criterion for vacatur, petitioner must make a prima facie showing of legal merit, and may not rely on conclusory statements unsupported by the facts” (*Matter of Gordon*, Tax Appeals Tribunal, January 29, 2015). Petitioner’s motion to vacate lacks any evidence

whatsoever to support his underlying case or meet his burden on the substantive issues. As a result, petitioner's motion fails on this prong as well.

E. The application of petitioner, Leandro Campos-Liz, to vacate the default determination of September 14, 2017, is denied.

DATED: Albany, New York  
February 15, 2018

/s/ Herbert M. Friedman, Jr.  
SUPERVISING ADMINISTRATIVE LAW JUDGE