

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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| In the Matter of the Petition   | : |                         |
| of  | : |                         |
| <b>MANUEL FRIAS</b>   | : | ORDER<br>DTA NO. 828498 |
| for Redetermination of a Deficiency or for Refund of<br>Personal Income Taxes under Articles 22 and 30 of the<br>Tax Law for the Year 2012. | : |                         |

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Petitioner, Manuel Frias, filed a petition for redetermination of a deficiency or for refund of personal income taxes under articles 22 and 30 of the Tax Law for the year 2012.

The Division of Taxation, by its representative, Amanda Hiller, Esq. (Charles Fishbaum, Esq., of counsel), brought a motion filed May 3, 2018, seeking summary determination in the above-referenced matter pursuant to Tax Law § 2006 (6) and sections 3000.5 and 3000.9 (b) of the Rules of Practice and Procedure of the Tax Appeals Tribunal. On June 25, 2018, petitioner, by his representative, Jhonatan Mondragon, EA, filed a response in opposition to the Division of Taxation's motion and a motion seeking summary determination in his favor. The Division of Taxation filed its opposition to petitioner's motion on July 16, 2018, which date began the 90-day period for issuance of this order.<sup>1</sup> Based upon the motion papers, the affidavits and documents submitted therewith, and all pleadings and documents submitted in connection with this matter, Donna M. Gardiner, Administrative Law Judge, renders the following order.

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<sup>1</sup> The Division of Taxation objected to the late filing of petitioner's response to its motion. Although the Rules of Practice and Procedure of the Tax Appeals Tribunal provide a thirty-day period for response to a motion, whether to accept non-jurisdictional documents after such time frame has elapsed is within the discretion of the Administrative Law Judge (*see Matter of DeMartino*, Tax Appeals Tribunal, December 16, 2016). Therefore, petitioner's response has been accepted.

**ISSUE**

Whether either party has established their entitlement to summary determination and that there is no material and triable issue of fact such that, as a matter of law, a determination can be made in favor of either party.

**FINDINGS OF FACT**

1. On or about January 30, 2013, petitioner, Manuel Frias, filed his federal income tax return for the tax year 2012.

2. On March 6, 2013, petitioner filed form IT-201, New York State Resident Income Tax Return, for the tax year 2012. On his New York State return, petitioner reported taxable income of \$58,000.00 and requested a refund of overpayment in the amount of \$959.00. The Division of Taxation (Division) issued a refund in this amount to petitioner.

3. On November 30, 2016, petitioner submitted form IT-201-X, New York State Amended Resident Income Tax Return for the tax year 2012. On his amended return, petitioner reported a rental loss of \$8,873.00, an itemized deduction of \$12,414.00 and a college tuition credit of \$400.00. This amended return requested an additional refund of overpayment in the amount of \$1,486.00.

4. On February 28, 2017, the Division issued to petitioner a notice of disallowance, form DTF-170, that disallowed the refund claim set forth in the amended return. The Division disallowed the refund claim because it determined that the claim was not timely filed.

5. Petitioner filed his petition with the Division of Tax Appeals on November 24, 2017 for review of the notice of disallowance.

6. Attached to his petition is a one-page decision of the United States Tax Court (Tax Court) in the *Matter of Manuel Frias v Commissioner of Internal Revenue*. This decision

states that the Tax Court determined a deficiency in income tax due in the amount of \$5,500.00 from petitioner for the tax year 2012. This decision was entered on August 17, 2016.

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

A. Any party appearing before the Division of Tax Appeals may bring a motion for summary determination as follows:

“Such motion shall be supported by an affidavit, by a copy of the pleadings and by other available proof. The affidavit, made by a person having knowledge of the facts, shall recite all material facts and show that there is no material issue of fact, and that the facts mandate a determination in the moving party’s favor” (20 NYCRR 3000.9 [b] [1]; *see also* Tax Law § 2006 [6]).

In reviewing a motion for summary determination, an administrative law judge is initially guided by the following regulation:

“The motion shall be granted if, upon all papers and proof submitted, the administrative law judge finds that it has been established sufficiently that no material and triable issue of fact is presented and that the administrative law judge can, therefore, as a matter of law, issue a determination in favor of any party. The motion shall be denied if any party shows facts sufficient to require a hearing of any material and triable issue of fact” (20 NYCRR 3000.9 [b] [1]; *see also* Tax Law § 2006 [6]).

Furthermore, a motion for summary determination made before the Division of Tax Appeals is “subject to the same provisions as motions filed pursuant to section three thousand two hundred twelve of the CPLR” (20 NYCRR 3000.9 [c]; *see also Matter of Service Mdse.*, Tax Appeals Tribunal, January 14, 1999). Inasmuch as summary judgment is the procedural equivalent of a trial, it should be denied if there is any doubt as to the existence of a triable issue or where the material issue of fact is “arguable” (*Glick & Dolleck v Tri-Pac Export Corp.*, 22 NY2d 439 [1968]; *Museums at Stony Brook v Vil. of Patchogue Fire Dept.*, 146 AD2d 572 [2d Dept 1989]). If material facts are in dispute, or if contrary inferences may be reasonably drawn

from undisputed facts, then a full trial is warranted and the case should not be decided on a motion (*Gerard v Inglese*, 11 AD2d 381 [2d Dept 1960]).

B. This case involves whether petitioner made a timely claim for refund on November 30, 2016, when he filed his amended return for the tax year 2012. Petitioner filed a federal income tax return for tax year 2012, on or about January 30, 2013. The Division argues that a change or correction to petitioner's federal income tax filing for tax year 2012 would trigger a corresponding New York State income tax filing requirement for tax year 2012 to reflect such federal change or correction. Additionally, the Division argues that "[t]o date, the IRS has not made or accepted any changes or corrections to Petitioner's federal income tax filing for tax year 2012" that would alter the time frame within which petitioner was required to file his claim for refund.

However, petitioner has shown that the Tax Court rendered a decision for the tax year 2012 on August 17, 2016. The one-page decision, on its face, does not adequately explain the basis for the decision other than to state a deficiency against petitioner was due in the amount of \$5,500.00 in income tax for the year 2012. Since it is not clear whether the Internal Revenue Service made a correction or change for the tax year 2012, this is a material issue of fact that requires a hearing and, as such, summary determination is not the proper vehicle for resolution of this matter.

C. The motions for summary determination are denied, and a hearing on the issues will be scheduled in due course.

DATED: Albany, New York  
October 11, 2018

/s/ Donna M. Gardiner  
ADMINISTRATIVE LAW JUDGE