

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition :

of :

**SHOSHANNAH SUMMERS** :

ORDER  
DTA NO. 829719

for Redetermination of a Deficiency or for Refund of :  
New York State and City Personal Income Tax under :  
Article 22 of the Tax Law and the New York City :  
Administrative Code for the Year 2018. :

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Petitioner, Shoshannah Summers, filed a petition for redetermination of a deficiency or for refund of New York State and City personal income taxes under article 22 of the Tax Law and the New York City Administrative Code for the year 2018.

On April 30, 2020, the Division of Taxation, by Amanda Hiller, Esq. (Maria Matos, Esq., of counsel), filed a motion seeking to have the petition dismissed for summary determination in its favor in the above-captioned matter pursuant to sections 3000.5 and 3000.9 (a) and (b) of the Rules of Practice and Procedure of the Tax Appeals Tribunal. Petitioner, appearing by Makeeva Darden, EA, did not respond to the motion. The 90-day period for issuance of this order commenced on May 30, 2020. Based upon the motion papers and all pleadings and documents submitted in connection with this matter, Jessica DiFiore, Administrative Law Judge, renders the following order.

### ***ISSUE***

Whether petitioner filed a timely petition with the Division of Tax Appeals following the Division of Taxation's issuance of a notice of disallowance.

### ***FINDINGS OF FACT***

1. Petitioner, Shoshannah Summers, timely filed a 2018 New York resident income tax return, form IT-201, requesting a refund of \$1,427.00.

2. On June 19, 2019, the Division of Taxation (Division) issued petitioner a notice of disallowance, denying her claim for refund because she did not respond to the Division's audit inquiry letter. The notice of disallowance stated, in relevant part "[i]f you **disagree** and would like further review of this matter you must file . . . a Petition for a Tax Appeals Hearing with the Division of Tax Appeals **within two years from the date of this notice**" (emphasis in original).

3. Petitioner filed a petition appealing the notice of disallowance with the Division of Tax Appeals on November 19, 2019. In her petition, petitioner alleged that she submitted the original return in the mail with all necessary schedules, attachments and all receipts. She also asserted that she submitted all receipts in support of her schedule C totals in response to the Division's audit inquiry.

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

A. As the issue is whether the petition was timely filed, and thus, whether the Division of Tax Appeals has jurisdiction over the subject matter of the petition, a motion to dismiss is the proper application to consider the timeliness of petitioner's appeal of the notice of disallowance (*see* 20 NYCRR 3000.9 [a]).

B. A notice of disallowance may be challenged by the filing of either a petition with the Division of Tax Appeals or a request for conciliation conference with the Bureau of Conciliation

and Mediation Services within two years after the issuance of the notice of disallowance (*see* Tax Law §§ 689 [c], 170 [3-a] [a]). As petitioner filed her petition five months after the Division issued the notice of disallowance, such petition was timely (*see* findings of fact 2 and 3). As such, the Division's motion to dismiss must be denied.

C. The Division of Taxation's motion to dismiss is denied, and a hearing will be scheduled in due course.

DATED: Albany, New York  
August 27, 2020

/s/ Jessica DiFiore  
ADMINISTRATIVE LAW JUDGE