

STATE OF NEW YORK
DIVISION OF TAX APPEALS

In the Matter of the Petitions
of
MARION SAKOW
for Redetermination of a Deficiency or for Refund of
New York State Personal Income Tax under Article 22
of the Tax Law for the Year 2015.

ORDER
DTA NO. 850084

Petitioner, Marion Sakow, filed two petitions for redetermination of a deficiency or for refund of New York State personal income tax under article 22 of the Tax Law for the year 2015.¹

On February 10, 2023, petitioner, appearing by the Law Offices of Carol M. Luttati (Carol M. Luttati, Esq., of counsel), filed a motion seeking an order, pursuant to 20 NYCRR 3000.6 (a) (4), precluding the Division of Taxation from presenting evidence at the hearing with respect to all items for which defective and insufficient particulars were provided. The Division of Taxation (Division), appearing by Amanda Hiller, Esq. (Jennifer Hink-Brennan, Esq., of counsel), timely filed a response in opposition to the motion.

By order dated June 8, 2023 (June 8, 2023 Order), the undersigned Administrative Law Judge directed the Division to provide a supplemental bill of particulars in relation to: (i) any fraudulent scheme by petitioner to transfer assets (paragraph 3 of the demand for a bill of particulars [Demand]); and (ii) a transfer of assets between petitioner and Walter Sakow to avoid

¹ On March 14, 2022, petitioner simultaneously filed two petitions related to the year 2015. The two petitions were consolidated by the Division of Tax Appeals under DTA No. 850084.

tax or payment of tax (paragraph 4 of the Demand). The June 8, 2023 Order further directed that if the Division failed to supplement its bill of particulars with respect to paragraphs 3 and 4 of the Demand within 30 days of the issuance of same, then the Division would be precluded from offering evidence at the hearing in this matter regarding any fraudulent scheme by petitioner to transfer assets, and a transfer of assets between petitioner and Mr. Sakow to avoid tax or payment of tax (*see* 20 NYCRR 3000.6 [a] [5]).

The Division failed to provide a supplemental bill of particulars to petitioner as directed by the June 8, 2023 Order.

On August 4, 2023, petitioner filed a motion seeking an order, pursuant to 20 NYCRR 3000.6 (a) (3), precluding the Division from offering evidence at the hearing in this matter on items that were to be addressed in the supplemental bill of particulars, as directed by the June 8, 2023 Order. In support of her motion for an order of preclusion, petitioner filed the affirmation, dated August 4, 2023, of Carol M. Luttati, Esq. The Division did not respond to the motion.

Petitioner's motion for an order of preclusion is granted. The Division is precluded from offering evidence at the hearing in this matter as to the following:

- (i) that petitioner and Walter Sakow transferred assets as part of a fraudulent scheme; and
- (ii) that Walter Sakow transferred property to petitioner to avoid tax or the payment of tax, or that petitioner transferred property to Walter Sakow to avoid tax or the payment of tax.

DATED: Albany, New York
November 16, 2023

/s/ Winifred M. Maloney
ADMINISTRATIVE LAW JUDGE