

STATE OF NEW YORK

DIVISION OF TAX APPEALS

	:	
In the Matter of the Petition	:	
	:	
of	:	
	:	
AVIVA GROSSMAN	:	ORDER
AND LEONARD TEITZ	:	DTA NO. 850834
	:	
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 2019.	:	

Petitioners, Aviva Grossman and Leonard Teitz, filed a petition 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 2019.

On March 25, 2025, petitioners, appearing by Polsinelli, PC (Scott Ahroni, Esq., of counsel), filed a motion seeking summary determination in the above-captioned matter pursuant to sections 3000.5 and 3000.9 (b) of the Rules of Practice and Procedure of the Tax Appeals Tribunal. The Division of Taxation, appearing by Amanda Hiller, Esq. (Maria Matos, Esq., of counsel), was granted an extension of time within which to file its response to May 27, 2025, which date commenced the 90-day period for the issuance of this order.

Based upon the motion papers and all pleadings and documents submitted in connection with this matter, Alexander Chu-Fong, Administrative Law Judge, renders the following order.

ISSUE

Whether petitioners have established that no material and triable issue of fact exists such that summary determination may be granted in their favor.

FINDINGS OF FACT

1. On December 5, 2023, petitioners, Aviva Grossman and Leonard Teitz, filed their New York State nonresident and part-year resident income tax return, form IT-203, for the tax year 2019 (NYS return).

2. The NYS return listed petitioners' address in New Jersey and their status as married filing jointly with one dependent. It also indicated total payments of \$209,790.00, total tax due in the amount of \$82,441.00, which resulted in an overpayment of \$127,349.00. Petitioners elected to claim this amount as a credit to be applied to their estimated taxes for the tax year 2020. The NYS return bore the signatures of petitioners' accountant as well as that of petitioners, Aviva Grossman and Leonard Teitz, but, notably, the date boxes for each signature are blank.

3. With their NYS return, petitioners attached a form IT-203-B, nonresident and part-year resident income allocation and college tuition itemized deduction worksheet, which indicated that their dependent attended college during tax year 2019. Box C on schedule C of this form requested date of birth heir dependent, but it was blank.

4. On January 17, 2024, the Division of Taxation (Division) issued an account adjustment notice denying petitioners' claim for refund or credit in the amount of \$127,349.00 as follows:

“We denied your claim for the refund or credit because it was filed too late. The tax law allows a refund or credit if the taxpayer makes the claim within three tax years from the time the return was required to be filed or within two years from the time the tax was paid, whichever is later.”

5. On February 7, 2024, the Division issued a notice of disallowance (notice) disallowing petitioners' claim as explained in the account adjustment notice.

6. On or about April 5, 2024, petitioners filed a timely petition with the Division of Tax Appeals in protest of the notice.

7. On March 25, 2025, petitioners filed a notice of motion for summary determination and supporting documents, including: (i) an affirmation of Scott Ahroni, Esq., dated March 20, 2025; (ii) a copy of petitioners' form IT-370, application for automatic six-month extension of time to file for individuals, for the tax year 2019; (iii) a copy of their NYS return; (iv) a printout of a "2019 e-file Activity Report" (activity report) generated by petitioners' accountant, Harry Szafranski, CPA (accountant), and retrieved on February 29, 2024, at 10:21 AM; and (v) a copy of the notice.

8. Petitioners base their motion on their assertion that, on August 30, 2020, their accountant electronically filed (or e-filed) their NYS return and supported it with the aforementioned activity report.

9. The activity report indicates that petitioners' accountant e-filed. The activity report indicated that the "Current Status" of the form IT-370, referenced as the "New York Extension," was "ACCEPTED" by the Division on "07/14," with no indication of the year, and bore a submission ID of "205592202019603j2ejm." This entry had a "Previous Activity" section, which provided the following:

"- 07/14	Sent to New York
- 07/14	Received at Lacerte
- 07/14	Sent to Lacerte
- 07/14	Ready to Send
- 07/14	Passed Validation"

10. The activity report contains entries for petitioners' tax year 2019 federal and New Jersey returns. For all documents, the fields followed the same pattern. For example, with regard to petitioners' federal return, the activity report indicated that its "Current Status" was "E-

FILE COMPLETE,” on “02/29,” with no indication of the year. For this entry, the “Previous Activity” section provided the following:

- “- 08/30 Accepted
- 08/30 Sent to the IRS [Internal Revenue Service]
- 08/30 Received at Lacerte
- 08/30 Sent to Lacerte
- 08/30 Ready to Send
- 08/30 Passed Validation”

11. Similarly, for petitioners’ New Jersey return, the activity report indicated that its “Current Status” was “E-FILE COMPLETE,” on “02/29,” with no indication of the year. For this entry, the “Previous Activity” section provided the following:

- “- 08/31 Accepted
- 08/30 Sent to New Jersey
- 08/30 Received at Lacerte
- 08/30 Sent to Lacerte
- 08/30 Ready to Send
- 08/30 Passed Validation”

12. The activity report indicated that petitioners’ NYS return’s “Current Status” was “REJECTED” and lists the date of “08/30,” with no indication of the year, and bore the submission ID of “205592202224206ucptb.” The relevant “Previous Activity” section, listed the following:

- “- 08/30 Received at Lacerte
- 08/30 Sent to Lacerte”

This materially differs from other “Previous Activity” sections in the activity report because it lacks confirmation that the NYS return was sent to the Division (*see* findings of fact 9-11 [the “Previous Activity” sections contain “Sent to” language indicating transmission to the relevant taxing authority]).

13. The activity report also provided the following message:

“Filing Rejected - This filing was rejected by the taxing agency on August 30, 2022. You need to fix errors that caused the rejection before it can be accepted by the agency. Follow these instructions for fixing the errors and you can transmit again at no additional charge.

[Error Code and Field strings omitted.]

Reject: Dependent information is missing or invalid.

Reject Resolution: For each student listed on Form IT-203-B, Schedule C, please verify that all information ([sic] Student Name; Date of Birth) is entered on the federal Education Credits/Tuition Deduction screen or the New York Claim for College Tuition Credit (IT-272) screen.

If necessary make the appropriate change and re-submit this filing electronically.

This filing was postmarked by the transmitter August 30, 2022 17:49 PM EST”

As indicated above, the “Previous Activity” section did not contain years for the listed items.

The only year reference appeared in the rejection message, which referred to August 30, 2022.

However, petitioners claim that their accountant e-filed the NYS return on August 30, 2020.

14. In opposition to petitioners’ motion, the Division submitted, among other documents, the following: (i) an affirmation of Maria Matos, Esq., an attorney employed in the Division’s Office of Counsel, dated May 5, 2025; (ii) an affidavit of John Verba, a Taxpayer Services Specialist 4 in the Division’s Individual Liability Resolution Center, sworn to on May 2, 2025, with attached exhibits; and (iii) an affidavit of Tyler Waldron, a Taxpayer Services Specialist 2 in the Division’s Personal Income Tax Modernized e-File unit, sworn to on May 5, 2025, with attached exhibits.

15. In his affidavit, Mr. Verba averred that he has worked for the Division for 23 years and has held his current position for 8 years. He stated that his current responsibilities include managing an approximately 40-person unit that resolves protests of personal income tax returns and overseeing a unit that handles cases before the Division’s Bureau of Conciliation and Mediation Services. Mr. Verba reviewed the information in the Division’s systems, which were

kept in the ordinary course of business, including correspondence, case contacts, filing history and other documents for petitioners and their NYS return.

16. Mr. Verba averred that on July 14, 2020, petitioners filed the form IT-370, and that on December 5, 2023, petitioners filed their NYS return. He stated that Division conducted a review of the return and found that the claimed overpayment of \$127,349.00 was compromised solely of income tax withheld or estimated income tax paid . Mr. Verba explained that the claim for credit or refund was made on December 5, 2023, and deemed to be time barred pursuant to Tax Law § 687 (a). He stated that the Division issued the account adjustment notice in this matter, and then the subject notice. Mr. Verba also averred that, in his review of the Division's records, he found that petitioners did not file any personal income tax return for the tax year 2019 prior to December 5, 2023.

17. Executive Order 202.12 and NYS Dept of Taxation & Fin Notice N-20-2 (March 2020) specifically extended the due date for New York State personal income tax returns due on April 15, 2020. All related tax payments, including estimated tax payments that were due on April 15, 2020, could be deferred to July 15, 2020, without penalties and interest. Additionally, all extension requests made by July 15, 2020 were automatically granted, extending the due date to October 15, 2020.

CONCLUSIONS OF LAW

A. Tax Law § 2006 (6) and section 3000.9 (b) of the Rules of Practice and Procedure of the Tax Appeals Tribunal (Rules) apply herein. A motion for summary determination “shall be granted if, upon all the papers and proof submitted, the administrative law judge finds that it has been sufficiently established that no material and triable issue of fact is presented” and the

moving party is entitled to a favorable determination as a matter of law (20 NYCRR 3000.9 [b] [1]).

B. Section 3000.9 (c) of the Rules provides that a motion for summary determination is subject to the same provisions as a motion for summary judgment pursuant to Civil Practice Law and Rules 3212. “The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case” (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985], citing *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). 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 a material issue of fact is “arguable” (*Glick & Dolleck v Tri-Pac Export Corp.*, 22 NY2d 439, 441 [1968]; *Museums at Stony Brook v Village of Patchogue Fire Dept.*, 146 AD2d 572, 573 [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 (*see Gerard v Inglese*, 11 AD2d 381, 382 [2d Dept 1960]).

C. Tax Law § 687 (a) provides, in relevant part, that:

“Claim for credit or refund of an overpayment of income tax shall be filed by the taxpayer within (i) three years from the time the return was filed, [or] (ii) two years from the time the tax was paid . . . whichever of such periods expires the latest . . . If the claim is filed within the three year period, the amount of the credit or refund shall not exceed the portion of the tax paid within the three years immediately preceding the filing of the claim plus the period of any extension of the time for filing the return . . .”

The Division denied petitioners’ claim for refund or credit because it was filed late. However, petitioners filed their NYS return on December 5, 2023, and made their claim for credit or refund on that return. Therefore, as it was filed within three years from the date of

filing, petitioners' claim is timely. Tax Law § 687 (a) operates by limiting the refundable amount to taxes paid by the taxpayer, for that tax year, within the period of three years before filing the refund claim plus any period of extension for filing the return.

D. Pursuant to Tax Law § 687 (i), any tax paid by a taxpayer, income tax withheld from a taxpayer, and any amount paid by a taxpayer as estimated income tax for a taxable year is deemed paid on the fifteenth day of the fourth month following the close of the taxable year with respect to which such amount constitutes a payment or credit. For tax year 2019, Executive Order No. 202.12 and Notice N-20-2 extended the date to file to July 15, 2020, and the date to file extensions to July 15, 2020. Petitioners timely requested a six-month extension, which expanded the refund period to three years plus six months (*see* Tax Law § 687 [a]). Since October 15, 2023 was a Sunday, the next business, Monday, October 16, 2023 was final date of the extended refund period.

E. Petitioners based their motion on the contention that they filed their NYS return on August 30, 2020. As this date falls well within the period established under Tax Law § 687 (a) for tax year 2019, they argue that they are entitled to the entire claimed overpayment, i.e., \$127,349.00. The Division contends that it first received the claim for credit or refund when petitioners filed their NYS return on December 5, 2023. Using this date, it argues the refundable amount would be limited to zero because the payments for 2019 were made outside of the three-year and six-month period prior to filing their claim.

F. Petitioners' motion for summary determination must be denied because material questions of fact remain unresolved. In support of their argument that they filed their NYS return on August 30, 2020, petitioners rely upon the activity report. The activity report does not establish the filing of the NYS return on August 30, 2020, because the document bears no

references to the years in which the activities occurred. This includes the purported filing of the NYS return. The only clear reference to a year appears in the rejection message, which does not reference 2020, but the year 2022. The activity report raises further questions as to the identity of the “taxing agency” and the “transmitter” in this message, given the lack of the “Sent to” language in the “Previous Activity” section. Put simply, petitioners brought forth insufficient evidence to affirmatively establish that they filed the NYS return on August 30, 2020. On the arguments raised in petitioners’ motion, summary determination must be denied because they failed to resolve all factual disputes and, thus, failed to make a prima facie showing of entitlement to judgment.

G. The motion for summary determination filed by petitioners, Aviva Grossman and Leonard Teitz, is denied, and a hearing will be scheduled in due course.

DATED: Albany, New York
August 21, 2025

/s/ Alexander Chu-Fong
ADMINISTRATIVE LAW JUDGE