STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
PATRICK MURPHY	:	
for Redetermination of a Deficiency or for Refund of Personal Income Tax under Article 22 of the Tax Law and the New York City Administrative Code for the Year 2006.	:	ORDER DTA NO. 825277

In the Matter of the Petition	:	
of	:	
KATHLEEN MURPHY	:	
for Redetermination of a Deficiency or for Refund of Personal Income Tax under Article 22 of the Tax Law and the New York City Administrative Code for the Year 2006.	:	

The Division of Taxation filed a notice of motion, together with an affirmation and memorandum of law in support of a motion for reargument, requesting that the Tax Appeals Tribunal reverse its prior decision in the ***Matter of Murphy*** (Tax Appeals Tribunal, March 6, 2018). Petitioners, Patrick Murphy and Kathleen Murphy, filed an affirmation and memorandum of law in opposition to the Division of Taxation's motion for reargument.

The Division of Taxation (Division) appeared by Amanda Hiller, Esq. (Brian J. McCann, Esq., of counsel). Petitioners appeared by Murphy and O'Connell (Kathleen M. O'Connell, Esq., of counsel).

The 90-day period for issuance of this order began on September 10, 2018, the day that petitioners' response to the Division's motion was received.

After reviewing the entire record in this matter, the Tax Appeals Tribunal renders the following order.

ORDER

On March 6, 2018, this Tribunal issued its decision in ***Matter of Murphy*** (Tax Appeals Tribunal, March 6, 2018) (***Matter of Murphy II***)[1], involving a notice of deficiency issued to petitioners for personal income tax under article 22 of the Tax Law. The issue in ***Matter of Murphy II*** that is the subject of the motion for reargument is whether the Division could attribute to petitioners a gain realized by JJF Realty Employees Stock Ownership and Plan Trust (JJF ESOP) on the theory that JJF ESOP was not a trust qualified under IRC (26 USC) § 401 (a), but was a sham. Petitioners argued that this Tribunal could not decide such an issue because the existence of a valid pension plan relates to the plan's compliance with the Employee Retirement Income Security Act of 1974 (ERISA) and thus is covered by the federal preemption provisions of ERISA. Initially, we agreed with the Administrative Law Judge that the mere claim of the existence of an ERISA pension plan should not be sufficient to create a shield of preemption against an assessment by the Division. However, we found that the record in this case contained prima facie evidence, including documentary evidence, of the existence of JJF ESOP. This finding led to our ultimate conclusion that we were preempted under ERISA from addressing the question of whether JJF ESOP was a trust qualified under IRC (26 USC) § 401 (a). Thus the

[1] The Tribunal also issued a decision in this matter affirming an order of an Administrative Law Judge denying petitioners' motion to withdraw subpoenas duces tecum issued by the Administrative Law Judge at the behest of the Division (***Matter of Murphy***, Tax Appeals Tribunal, July 2, 2015) (***Matter of Murphy I***).

notice of deficiency was canceled.

In reaching our decision, we considered the arguments posited by the Division that: (1) Tax Law §§ 601 and 681 relate to imposition of tax and the requirements of a notice of deficiency and do not relate to ERISA; (2) the only issue related to ERISA is whether JJF ESOP, including the trust that it established, is legitimate; and (3) whether this Tribunal's decision in ***Matter of Murphy I*** and the Albany County Supreme Court decision relating to the subpoenas required a finding of no preemption (***Matter of Murphy v Div. of Tax Appeals and Tax Appeals Trib.***, Sup Ct, Albany County, Jan 8, 2016, McDonough, R., index No. 4379-15).

We now turn to the issues raised by the motion. At the outset, it must be noted that:

> "[w]e have no statutory authority to reconsider our decisions and in the absence of statute, our authority to reconsider our decisions is limited (***Matter of Fisher***, Tax Appeals Tribunal, July 19, 1990; ***Matter of Capitol Coin***, Tax Appeals Tribunal, August 23, 1989; ***Matter of Goldome Capital Inv.***, Tax Appeals Tribunal, November 3, 1988). Our authority is limited, due to the long established principle, as articulated by the Court of Appeals in the case of ***Evans v. Monaghan***, that '[t]he rule which forbids the reopening of a matter once judicially determined by a competent jurisdiction, applies as well to the decisions of special and subordinate tribunals as to decisions of courts exercising general judicial powers (citations omitted). Security of person and property requires that determinations in the field of administrative law should be given as much finality as is reasonably possible' ***Evans v. Monaghan***, 306 NY 312, 118 NE2d 452, 457" (***Matter of Jenkins Covington, N.Y.***, Tax Appeals Tribunal, November 21, 1991, ***affd*** 195 AD2d 625 [3d Dept 1993], ***lv denied*** 82 NY2d 664 [1994]; ***see also*** 20 NYCRR 3000.16 [c]; ***Matter of Trieu***, Tax Appeals Tribunal, June 2, 1994, ***confirmed Matter of Xuong Trieu v Tax Appeals Trib. of State of N.Y.***, 222 AD2d 743 [3d Dept 1995], ***appeal dismissed*** 87 NY2d 1054 [1996], ***lv denied*** 88 NY2d 809 [1996], ***rearg denied*** 88 NY2d 1065 [1996]).

A motion to reargue is thus addressed to our discretion and any reconsideration of a previous decision must be for compelling reasons.

In exercising such limited authority, we recognize that reargument is "designed to afford a

party an opportunity to establish that the court overlooked or misapprehended the relevant facts, or misapplied any controlling principle of law" (***Foley v Roche***, 68 AD2d 558, 561 [1st Dept 1979]; ***see also*** Siegel, NY Prac § 254, at 495 [6th ed 2018] [the purpose of a motion to reargue is "to convince the court that it overlooked or misapprehended something on the first go around and ought to change its mind"]). A motion to reargue is not, however, intended to "afford the unsuccessful party successive opportunities to reargue issues previously decided or to present arguments different from those originally asserted" (***William P. Pahl Equip. Corp. v Kassis***, 182 AD2d 22, 27 [1st Dept 1992], ***lv dismissed in part, lv denied in part*** 80 NY2d 1005 [1992], ***rearg denied*** 81 NY2d 782 [1993] [citations omitted]).

In ***Matter of Murphy II***, the Division did not put forth any of the arguments set forth in its submissions in support of its motion to reargue. Thus, we conclude that this is a case where the Division is attempting to reargue issues that were decided in ***Matter of Murphy II*** by utilizing arguments not made in the initial proceeding.

However, the Division urges that, irrespective of that conclusion, this Tribunal should find that we misapplied a controlling principle of law applicable to ERISA preemption cases, i.e., that the status of a pension plan may be determined in either state or federal courts and such a determination is not preempted by ERISA. The Division points to various court decisions in support of its position that we have the authority to determine the issue of whether JJF ESOP was a valid trust under IRC (26 USC) § 401 (a) as such authority is not preempted by ERISA.

As explained in ***Matter of Murphy II***, this Tribunal found that there is a difference between what the Division refers to as the status of a pension plan, which we interpret to mean its proven existence, and the issue of whether such a plan is valid under IRC (26 USC) § 401 (a). The majority

of the decisions cited by the Division more closely align with our conclusion in ***Matter of Murphy II*** that petitioners had proven the existence of the trust, but that we were preempted from determining its validity under ERISA. On the other hand, ***Knapp v. Cardinale***, 963 F.Supp.2d 928 (N.D. Cal 2013) does seem to indicate that a state court could determine "that the plan is a sham or that funds were transferred to it in fraud of creditors" (***id.*** at 934). However, even if this decision were directly on point, we find that one decision from a California federal district court does not amount to a controlling principle of law that would require us to reconsider our decision. This is especially the case where the Division is attempting to introduce new arguments that it could have made in the initial proceeding (***see Amato v Lord & Taylor, Inc.***, 10 AD3d 374 [2d Dept 2004] ["Here, the plaintiff did not originally present the argument regarding the applicability of the doctrine of res ipsa loquitur"]).

Succinctly stated, we are cognizant of our responsibility to provide the parties with "as much finality as is reasonably possible" in regard to the Tax Appeals process (***Matter of Evans v Monaghan***, 306 NY 312, 323 [1954]), and in the particular circumstances of this case, we find nothing that would require us to exercise our limited authority to reconsider our decision.

Accordingly, it is ORDERED, ADJUDGED and DECREED that the motion for reargument filed by the Division of Taxation is denied.

DATED: Albany, New York
December 7, 2018

/s/ Roberta Moseley Nero
Roberta Moseley Nero
President

/s/ Dierdre K. Scozzafava
Dierdre K. Scozzafava
Commissioner

/s/ Anthony Giardina
Anthony Giardina
Commissioner