

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
ANTHONY LIBERATORE	:	ORDER
		DTA NO. 821442
for Redetermination of Deficiencies or for Refund of New	:	
York State Personal Income Tax under Article 22 of the		
Tax Law for the Period October 1, 2002 to June 30, 2003	:	

Petitioner, Anthony Liberatore, filed a petition for redetermination of a deficiency or for refund of personal income tax under Articles 22 of the Tax Law for the period October 1, 2002 to June 30, 2003.

The Presiding Officer issued a determination on May 29, 2008, which granted the petition of Anthony Liberatore and canceled the notices of deficiency dated February 14, 2005, pertaining to quarters ending December 31, 2002, March 31, 2003, and June 30, 2003.

By letter filed July 23, 2002, petitioner, appearing by Green & Seifter, Attorneys, PLLC (David G. Burch, Esq.), brought an application for costs under Tax Law § 3030. Based upon petitioner's application for costs, the determination issued August 1, 2002 and all pleadings and documents submitted in connection with this matter, Daniel J. Ranalli, Administrative Law Judge, renders the following order.

ISSUE

Whether petitioner is entitled to an award of costs pursuant to Tax Law § 3030.

FINDING OF FACT

1. By letter dated July 23, 2008 and received by the Division of Tax Appeals on July 28, 2008, petitioner made an application for costs totaling \$5,000.00. Petitioner also provided an affidavit of his net worth being less than two million dollars and a statement of paid legal fees rendered in connection with this matter.

CONCLUSIONS OF LAW

A. Tax Law § 3030(c)(5)(A)(ii) provides that a party entitled an award of costs is one who:

(I) within thirty days of final judgment in the action, submits to the court an application for fees and other expenses which shows that the party is a prevailing party and is eligible to receive an award under this section. . . .

B. The small claims determination was issued on May 29, 2008, and petitioner filed his application for costs on July 23, 2008, a date beyond the 30-day limit for applications for costs.

C. Petitioner's application for costs is denied.

DATED: Troy, New York
August 7, 2008

/s/ Daniel J. Ranalli
ADMINISTRATIVE LAW JUDGE