

STATE OF NEW YORK
TAX APPEALS TRIBUNAL

In the Matter of the Petition :
of :
CHARLES B. UDOH :
for Redetermination of Deficiencies or for Refund of : **DECISION**
New York State and New York City Personal Income : **DTA NO. 827767**
Taxes under Article 22 of the Tax Law and the :
Administrative Code of the City of New York for the :
Years 2012, 2013 and 2014. :

Petitioner, Charles B. Udoh, filed an exception to the determination of the Administrative Law Judge issued on February 18, 2021. Petitioner appeared pro se. The Division of Taxation appeared by Amanda Hiller, Esq. (Christopher O’Brien, Esq., of counsel).

Petitioner filed a brief in support of his exception. The Division of Taxation filed a letter brief in opposition. Petitioner filed a brief in reply. Petitioner’s request for oral argument was denied. Petitioner’s reply brief was received on October 18, 2021, which date began the six-month period for issuance of this decision.

Petitioner filed a motion with this Tribunal for reconsideration of its decision to deny petitioner’s request for oral argument. The parties were given an opportunity to submit responses to the notice of motion, with the last response due to be filed by January 6, 2022.

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

ISSUES

I. Whether the Division of Tax Appeals has jurisdiction to address the merits of any

claims made by petitioner for any of the years 2000 through 2015.

II. Whether, if so, petitioner has established his entitlement to any of the refund amounts claimed on any New York tax returns for any of the years 2000 through 2015.

III. Whether the Administrative Law Judge acted with improper bias against petitioner during the course of the hearing and in rendering his determination.

IV. Whether this Tribunal properly denied petitioner's request for oral argument.

FINDINGS OF FACT

We find the facts as determined by the Administrative Law Judge, except for findings of fact 12 and 13, which we have modified for clarity. We have also added an additional finding of fact, numbered 17. The modified findings of fact and the additional finding of fact, together with the facts as determined by the Administrative Law Judge, are set forth below.

1. Petitioner, Charles B. Udoh, was a resident of New York State and City, as defined under Tax Law § 605 (b) (1) (A), (B) and the New York City Administrative Code for the years 2000 through 2015. Petitioner admits that he was, as such, obligated to file State and City tax returns.¹

2. On October 23, 2015, petitioner filed a request for conciliation conference (request) with the Bureau of Conciliation and Mediation Services (BCMS) of the Division of Taxation (Division), asserting that he was owed refunds for tax years 2012, 2013 and 2014. A conciliation conference was held on May 19, 2016, and a conciliation order (CMS No. 268289), dated June 17, 2016, was issued denying the requested refunds and sustaining the Division's disallowance of the same.

¹ These facts are not disputed, and it appeared that petitioner was a New York State and City resident both before 2000 and after 2015.

3. In response to the foregoing conciliation order, petitioner filed a petition with the Division of Tax Appeals. The petition is dated as signed by petitioner on July 1, 2016. The envelope in which the petition was mailed to the Division of Tax Appeals bears a United States Postal Service (USPS) postmark dated July 8, 2016, and the petition is stamped as received by the Division of Tax Appeals on July 13, 2016. There is no dispute that the petition was timely filed when it was mailed on July 8, 2016, insofar as it challenged the conciliation order and the years captioned thereon (i.e., 2012 through 2014). However, the petition itself is not captioned as pertaining to any specific years. Rather, the petition states, in its body, the broader allegation that the Division improperly denied claims for refund allegedly made by petitioner on all of his tax returns for the years 2000 through 2015. Petitioner alleges that he filed a form IT-201 (resident income tax return) for each of such years on or before the due dates for such returns. There is no claim or evidence in the record indicating that extensions of the time for filing were sought or obtained by petitioner with respect to any of such returns actually or allegedly filed for any of such years.

4. In its answer, the Division addressed the petition as it concerns the years set forth in the body of the petition, i.e., 2000 through 2015, including the three years specifically covered by the request and the conciliation order, i.e., 2012 through 2014. Based on the answer, and on the evidence submitted during the hearing held herein, a chronology of facts concerning the years 2000 through 2015 follows:

a) 2000 - 2006: Petitioner did not include with his petition, or otherwise provide, any evidence of any outstanding unpaid claims for refund, or of any statutory notices giving rise to the right to a hearing, for any of such years. The Division asserts that there is no jurisdiction in this forum to address such years and seeks dismissal of the petition as to the years 2000 through 2006.

b) 2007: The Division issued to petitioner a notice of additional tax due (L-035759548), dated April 27, 2011, in the amount of \$282.13 (consisting of tax

[\$227.00] and interest [\$55.13]). This notice was based on a federal change made by the Internal Revenue Service (IRS), which increased petitioner's reported business income, thus increasing his federal adjusted gross income, and hence his federal tax liability. This change was not reported to the Division by petitioner. However, the IRS reported its increase to petitioner's adjusted gross income to the Division, resulting in an increase to petitioner's New York tax liability, as set forth on the above-referenced notice of additional tax due. Petitioner requested a conciliation conference with BCMS regarding the April 27, 2011 notice of additional tax due. By a letter dated July 29, 2011, petitioner was advised that a notice of additional tax due is not a notice that provides protest rights, and that his request could not be accepted by BCMS. The Division asserts that there is no jurisdiction in this forum to address such year and seeks dismissal of the petition as to the year 2007.

c) 2008: Petitioner filed a form IT-201 for 2008, on which he claimed a refund in the amount of \$1,307.00. The Division conducted an audit of petitioner's return for 2008 and requested additional information concerning the claimed refund. The Division issued an account adjustment notice, dated March 19, 2010, granting petitioner's claimed refund to the extent of \$204.00, but disallowing the \$1,103.00 remaining amount of the claimed refund. In turn, the Division issued a notice of disallowance to petitioner, dated August 13, 2010, sustaining the \$1,103.00 partial refund disallowance. Petitioner challenged the notice of disallowance by filing a petition requesting a small claims hearing before the Division of Tax Appeals. A small claims hearing was held on June 26, 2013, and a determination was thereafter issued on August 29, 2013, denying the petition and affirming the partial disallowance of petitioner's claim for refund. The Division asserts that petitioner's claim for 2008 has been previously litigated, that a final determination on the matter has been issued, that the issue may not be relitigated herein, that there is no jurisdiction in this forum to address such year and seeks dismissal of the petition as to the year 2008.

d) 2009: On his form IT-201 for 2009, petitioner reported business income of \$9,920.00, reduced the same by the standard deduction and, after claiming various refundable tax credits, sought a refund in the amount of \$1,493.00.² The Division did not issue a notice of disallowance to petitioner, and alleges that the refund claimed by petitioner on his 2009 return was deemed denied by operation of law six months after the refund claim was filed. The Division maintains that no challenge was filed by petitioner within two years after the date of the deemed denial, and that the petition, filed on July 8, 2016, was

² The refunds sought by petitioner for the years in question result from his claim for some, or all, of the following refundable tax credits:

- Empire State Child Credit (ESCC)
- New York State Earned Income Credit (NYSEIC)
- Real Property Tax Credit (RPTC)
- New York City Earned Income Credit (NYCEIC)
- New York City School Tax Credit (NYCSTC)

untimely with respect to the deemed denial of the claimed refund. The Division asserts that there is no jurisdiction in this forum to address such year and seeks dismissal of the petition as to the year 2009.

e) 2010: On his form IT-201 for 2010, petitioner reported business income of \$12,529.00, reduced the same by \$886.00 in federal adjustments to income, by the standard deduction amount of \$10,500.00, and by \$1,000.00 based upon a claim of one dependent exemption, leaving reported taxable income of \$143.00 and tax due of \$9.00. After reducing such liability by various tax credits, including refundable tax credits (*see* footnote 2), petitioner claimed a refund in the amount of \$1,507.00. On May 6, 2011, the Division issued a refund check to petitioner in the amount of \$1,507.00, using the address listed on his tax return. Petitioner denies having received that payment. The Division provided a copy of the issuance advice for that check, indicating that the check had been voided (by the Division) with the following explanation: “[w]e were unable to direct deposit your refund as requested.” There is no evidence that any replacement check was reissued or that the refund was otherwise paid. The Division did not issue a notice of disallowance to petitioner and alleges that the refund claimed by petitioner on his 2010 return was properly deemed denied by operation of law six months after the refund claim was filed. The Division maintains that no challenge was filed by petitioner within two years after the date of the deemed denial and that the petition, filed on July 8, 2016, was untimely with respect to such claimed refund. The Division asserts that there is no jurisdiction in this forum to address such year and seeks dismissal of the petition as to the year 2010.

f) 2011: Petitioner filed form IT-201 for the year 2011 on March 20, 2012, reporting thereon business income of \$10,341.00. Petitioner reduced the same by \$730.00 in federal adjustments to income and by the standard deduction amount of \$10,500.00, resulting in no New York taxable income for 2011. Petitioner in turn claimed a refund in the amount of \$1,530.00 for 2011, based upon various refundable tax credits claimed (*see* footnote 2). The Division did not issue a notice of disallowance to petitioner. Rather, on April 11, 2012, the Division issued a full refund of the amount claimed by petitioner (\$1,530.00) by direct deposit to his personal checking account.³ The Division asserts that there is no remaining issue, that there is no jurisdiction in this forum to address such year and seeks dismissal of the petition as to the year 2011.

g) 2012: Petitioner filed form IT-201 for the year 2012 on February 27, 2013, reporting thereon business income of \$10,543.00. Petitioner reduced the same by \$745.00 in federal adjustments to income, by the standard deduction amount of \$10,500.00, and by \$1,000.00 based upon a claim of one dependent exemption, resulting in no New York taxable income. Petitioner sought a refund

³ Proof of such payment is confirmed by exhibit O, filed with the Division’s brief pursuant to its request, made and granted at hearing, for permission to submit the same.

in the amount of \$2,683.00 for 2012, based upon various refundable tax credits claimed (*see* footnote 2). The Division did not issue a notice of disallowance to petitioner, and alleges that the refund claimed by petitioner on his 2012 return was properly deemed denied by operation of law six months after the refund claim was filed. Petitioner challenged the deemed denial of his refund claim by filing the request for a conference with BCMS on October 23, 2015, a date that (according to the Division) falls within two years after the effective date of the deemed denial of his claim for refund. The Division accepted the request as constituting a timely challenge affording BCMS jurisdiction to determine whether petitioner was entitled to the claimed refund. The June 17, 2016 BCMS order sustained the denial of petitioner's claimed refund. Petitioner continued his challenge by filing the petition herein.⁴

h) 2013: Petitioner filed form IT-201 for the year 2013 on March 31, 2014, reporting thereon business income of \$10,220.00. Petitioner reduced the same by \$722.00 in federal adjustments to income, by the standard deduction amount of \$7,700.00, and by \$1,000.00 based upon a claim of one dependent exemption, resulting in New York taxable income of \$798.00 and tax due of \$8.00. After reducing such liability by various tax credits, including refundable tax credits (*see* footnote 2), petitioner claimed a refund in the amount of \$1,474.00 for 2013. The Division sent an account adjustment notice (Audit Case: X-005092591) to petitioner, allowing only a partial refund in the amount of \$63.00, representing the New York City School Tax Credit, but applied the same as an offset against another New York tax liability (Assessment ID No. L-038383158), leaving the balance of petitioner's refund claim disallowed. The Division did not issue a notice of disallowance to petitioner and alleges that the remaining disallowed amount of the refund claimed by petitioner on his 2013 return was properly deemed denied by operation of law six months after the refund claim was filed. Petitioner challenged the deemed denial of his refund claim by filing his request for a conference with BCMS on October 23, 2015, a date that falls within two years after the effective date of the deemed denial of his claim for refund. The Division accepted the request as a timely challenge affording BCMS jurisdiction to determine whether petitioner was entitled to the balance of his claimed refund. The June 17, 2016 BCMS order sustained the denial of petitioner's claimed refund. Petitioner continued his challenge by filing the petition herein.

i) 2014: Petitioner filed form IT-201 for the year 2014 on April 8, 2015, reporting thereon business income of \$11,000.00, plus wages in the amount of \$300.00. Petitioner reduced the same by \$778.00 in federal adjustments to income, by the standard deduction amount of \$10,950.00, and by \$1,000.00 based

⁴ Separately, and for the year 2012, on August 2, 2012, the Division issued to petitioner a Notice and Demand for Payment of Tax Due (L-038383158), in the amount of \$314.65 (consisting of tax [\$308.19] and interest [\$6.46]). This notice and demand pertains to an allegedly erroneous refund issued to petitioner on April 23, 2012, concerning child support paid by his wife. The Division correctly points out that a notice and demand is not a notice that gives a taxpayer protest rights, and that petitioner is not entitled to a hearing before the Division of Tax Appeals with respect to this separate issue for the year 2012 (*see* Tax Law § 173-a [2]).

upon a claim of one dependent exemption, resulting in no New York taxable income. Petitioner sought a refund in the amount of \$1,579.00 for 2014, based upon various refundable tax credits claimed (*see* footnote 2). The Division sent an account adjustment notice (Audit Case: X-0005527934) to petitioner, disallowing petitioner's claimed refund. The Division recomputed petitioner's taxable income to be \$11,650.00, allowed credits in the amount of \$100.75, but applied the same as an offset against another New York tax liability (Assessment ID No. L-038383158), thus leaving the \$1,478.25 balance of petitioner's refund claim disallowed. The Division did not issue a notice of disallowance to petitioner and alleges that the remaining amount of the refund claimed by petitioner on his return was properly deemed denied by operation of law six months after the refund claim was filed. Petitioner challenged the deemed denial of his refund claim by filing his request for a conference with BCMS on October 23, 2015, a date that falls within two years after the effective date of the deemed denial of his claim for refund. The Division accepted the request as a timely challenge affording BCMS jurisdiction to determine whether petitioner was entitled to the remaining balance of his claimed refund. The June 17, 2016 BCMS order sustained the denial of petitioner's claimed refund. Petitioner continued his challenge by filing the petition herein.

j) 2015: Petitioner filed form IT-201 for the year 2015 on April 9, 2016, reporting thereon business income of \$8,700.00, plus wages in the amount of \$580.00. Petitioner reduced the same by \$615.00 in federal adjustments to income, by the standard deduction amount of \$11,100.00, and by \$1,000.00 based upon a claim of one dependent exemption, resulting in no New York taxable income. Petitioner sought a refund in the amount of \$1,422.00 for 2015, based upon various refundable tax credits claimed (*see* footnote 2). The Division sent an account adjustment notice (Refund ID No: X-0058521509) dated May 13, 2016 to petitioner, applying \$213.18 of the claimed refund as an offset against another New York tax liability (Assessment ID No L-038383158), and applying \$462.00 against a liability owed to the New York State Division of Child Support Enforcement, thereby reducing the remaining amount of petitioner's claimed refund to \$746.82. On May 7, 2016, the Division issued a refund of the remaining amount of petitioner's refund claim by direct deposit to his personal checking account.⁵ The Division asserts that there is no remaining issue, that there is no jurisdiction in this forum to address such year and seeks dismissal of the petition as to the year 2015.

5. As noted, petitioner's request for a conciliation conference identified the years at issue as 2012 through 2014, and the conciliation order issued in response thereto confined itself to those years. In contrast, the petition broadly expanded the years at issue to span 2000 through

⁵ Proof of such payment is confirmed by exhibit P, filed with the Division's brief pursuant to its request, made and granted at hearing, for permission to submit the same.

2015. No documents concerning any of the years addressed hereinabove were included with the petition, and the facts set forth above were determined upon the basis of the documents submitted in evidence by the Division.

6. At the hearing, petitioner testified that he always filed his tax returns. Petitioner further testified that he always responded if, and when, he was advised by the Division that a refund he claimed had been denied. Petitioner claimed that he submitted all necessary documents to substantiate his refund claims for all years from 2000 through 2015. Petitioner further stated that he included originals of documents in support of his claimed refunds with his returns when filed. Petitioner asserted in his petition that the Division did not issue the refunds he claimed for such years, and that he is owed “over \$10,000.00” in “unpaid refunds and interest.”

7. Review of the forms IT-201 in evidence reveals that the refunds shown thereon result from petitioner’s claim of federal adjustments to income, from a claimed dependent exemption, and from his claim for various refundable tax credits noted in footnote 2 (*see* finding of fact 4 [d], [n. 2]).⁶

8. The Division’s review of petitioner’s returns for the years 2012 through 2014 resulted in the issuance of letters to petitioner requesting supporting documents to substantiate the amounts reported on his return, including specifically with respect to petitioner’s reported business income and expenses from self-employment, and information concerning petitioner’s claims for child or dependent tax credits. The Division’s letters were dated March 21, 2013, April 14, 2014, and May 11, 2015, for the years 2012, 2013, and 2014, respectively.

⁶ Petitioner reduced his reported adjusted gross income on each of the returns in evidence by the amount of the allowable New York standard deduction for each particular year and did not claim itemized deductions for any of such years.

9. In response to the Division's foregoing inquiry letters seeking supporting substantiation for the items set forth on the returns for the years 2012 through 2014, petitioner submitted (by facsimile dated January 14, 2015) a letter stating the following:

"The name of my business is called TACANT ENTERPRISE [see attached business certificate].

2. My business EIN is 13-*****12.

3. My business interest are [sic] in import and Export and General Merchandise. I transact business in cash.

4. I do not collect sales tax.

5. I buy computers, clothing's [sic], shoes, arts [sic], electronics, general merchandise and many more products for sale overseas and hear [sic].

6. I use/used [home address] as an office for my business too.

7. I used cell phone, phones, copier, tax, emails for my business. I spend money on transport etc. I don't keep good records like write down everything I do for my business. I track my spending and buying through my accounts, receipts and other means.

8. I used my personal checking accounts to buy and pay my business bills. I had [a] business account."⁷

10. Attached to petitioner's foregoing correspondence was a copy of his business certificate for Tacant Enterprise, as well as one annual summary statement of credit card expenses, listed by various categories and pertaining to the year 2013 only. Also included was a copy of a social security card, Medicaid card and insurance card for petitioner's daughter. The record includes no additional documents or testimony from petitioner by which to correlate the items and amounts shown on the credit card summary statement to any particular purpose, or to differentiate the same as business expenses versus personal expenses. In addition, petitioner did

⁷ Petitioner's business EIN has been partially redacted, and his home address has not been set forth herein, for purposes of maintaining petitioner's privacy.

not provide a copy of his daughter's birth certificate, as requested by the Division, or any information concerning his daughter, including school information or information as to which parent or legal guardian his daughter resided with during any particular year, as requested by the Division.

11. Petitioner also stated, in an undated letter to the Division concerning his refund claim for the year 2014, that he had not provided any of the documents requested by the Division for that year because he was waiting for the Division to provide form DTF-215 (Recordkeeping Suggestions for Self-Employed Persons), for him to complete and submit together with his records (including specifically business information and a copy of his daughter's birth certificate as requested in the Division's previous correspondence).

12. The Division responded to petitioner's submission by its issuance of account adjustment notices dated March 3, 2015, July 3, 2015, and May 13, 2016, for the years 2013, 2014 and 2015, respectively (*see* finding of fact 4 [h], [i], [j]). The Division's responses explained that the information supplied by petitioner did not allow the Division to verify his business income or expenses so as to confirm entitlement to the refundable credits claimed by petitioner on his returns.

13. Petitioner did not submit any additional documents in substantiation of any claimed refunds for any of the years 2000 through 2015 at the hearing.

14. Petitioner maintained in his post-hearing briefs to the Administrative Law Judge that he has been damaged by the Division's failure to have issued all of his claimed refunds, with interest, and asserts he is owed "over \$100,000.00." Petitioner did not quantify either his initial claim of being owed \$10,000.00 (*see* finding of fact 6), or his claim to an increased amount of \$100,000.00 other than to assert that he is seeking recovery and recompense for monies, refunds,

earned income credit, dependent (child) exemption, plus interest for all of the years, as well as breach of contract, breach of payments, loss of income, loss of money and “ruined credit history and record.”

15. The Division maintains that while the petition captions the years in question as spanning 2000 through 2015, there is no jurisdiction to address any of the years 2000 through 2011. The Division has indicated its belief that petitioner filed timely challenges and does not contest jurisdiction in this forum to address the years 2012 through 2014 but asserts that petitioner has not provided substantiation supporting his refund claims for such years.

16. While the Division initially alleged that the petition was premature for the year 2015, it now accepts that petitioner has made a timely challenge for that year. However, the Division notes that the refund claimed by petitioner for the year 2015 was not disallowed, but instead was granted, with a portion of the refund applied to other outstanding New York State liabilities, with the balance paid to petitioner via direct deposit (*see* finding of fact 4 [j]).

17. Following issuance of the determination of the Administrative Law Judge, petitioner filed an exception with the Tax Appeals Tribunal on March 16, 2021. Petitioner requested oral argument pursuant to the Tax Appeals Tribunal’s Rules of Practice and Procedure (Rules) (*see* 20 NYCRR 3000.17 [d]), which was denied via correspondence to petitioner on November 8, 2021. Petitioner filed a notice of motion dated November 18, 2021, seeking reconsideration of his request for oral argument before the Tax Appeals Tribunal. The Secretary to the Tax Appeals Tribunal granted the parties an opportunity to respond to the notice of motion. The Division filed a response, dated December 16, 2021, and petitioner’s response followed on December 24, 2021.

THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE

The Administrative Law Judge began his determination by citing the sections of the Tax Law that provide for a hearing as a matter of right, except where the right to such a hearing is otherwise specifically provided for, modified or denied by another provision of the Tax Law. According to the Administrative Law Judge, the Division of Tax Appeals is an adjudicatory body of limited jurisdiction whose powers are confined to those expressly conferred in its authorizing statute. He noted that the Division of Tax Appeals can only address matters raised in a petition protesting a notice of deficiency, notice of determination or a denial of a refund or credit. Furthermore, any such challenge must be filed within the requisite statutory time period for doing so. Failing to do so is fatal to the taxpayer's challenge because, in such a case, the Division of Tax Appeals is without jurisdiction to consider the substantive merits of the protest.

Next, the Administrative Law Judge described the procedural history of this matter and noted that, following the BCMS conference, petitioner expanded his challenge to encompass tax years 2000 through 2015. The Administrative Law Judge observed that the Division objected to jurisdiction with respect to years 2000 through 2011 but did not challenge jurisdiction with respect to tax years 2012 through 2015. The Administrative Law Judge painstakingly laid out the jurisdictional basis for each of the years at issue and concluded that no jurisdiction was found for tax years 2000 through 2012 and 2015, and that jurisdiction was found for tax years 2013 and 2014. Specifically, for tax years 2000 through 2006, jurisdiction is lacking due to a lack of a written notice or outstanding claim for a refund upon which any challenge can be based. For tax year 2007, the Division offset petitioner's claimed refund due to unreported federal changes to income and issued a notice of additional tax due, which is not a notice that grants protest rights. For tax year 2008, jurisdiction was lacking due to the fact that petitioner had previously filed a

petition for the refund claim for that year that was adjudicated in a small claims hearing. For tax years 2009 and 2010, petitioner's challenge to the deemed denial of his refund claim was untimely as it was filed more than two years following the deemed denial, and thus no jurisdiction existed to address the merits for those years. The refund petitioner claimed in tax year 2011 was actually paid to petitioner by the Division, as evidenced by the Division's post-hearing submission, and thus there is no jurisdiction over the petition for that year as there remain no issues in contention. For tax year 2012, notwithstanding the lack of an objection to jurisdiction from the Division, the Administrative Law Judge determined that petitioner's challenge was not timely filed following the Division's deemed denial of petitioner's refund claim, thus leaving no jurisdiction to consider the merits for that year. For tax years 2013 and 2014, the Administrative Law Judge found that the Division allowed a partial refund in each year, but offset the allowed portion of the refund claims against other New York liabilities. Because petitioner's challenge to the deemed disallowances was timely, the Administrative Law Judge found that the Division of Tax Appeals had jurisdiction over the petition with respect to those tax years. As for tax year 2015, the Administrative Law Judge found that the portion of petitioner's refund claim that was not offset by other New York liabilities was paid to petitioner, leaving no issue in contention and no jurisdiction over the petition for that year.

Based on the foregoing, the Administrative Law Judge considered the merits of petitioner's challenge only with respect to 2013 and 2014 and concluded that the refund claims for those years had been allowed in part, even if those partial refunds were offset to other New York State liabilities, as allowed under law. The Administrative Law Judge found that petitioner failed to substantiate entitlement to the disallowed portion of the claimed refunds. Specifically, the Administrative Law Judge noted the lack of any evidence in the record substantiating the

reported amounts of petitioner's claimed earned income for either of those years and the lack of evidence concerning petitioner's child, upon whom the claimed credits underlying the refund were based. Accordingly, the Administrative Law Judge dismissed the petition with regard to tax years 2000 through 2012 and 2015 and denied the same with regard to 2013 and 2014.

ARGUMENTS ON EXCEPTION

Petitioner argues on exception that the Administrative Law Judge erred in concluding that the Division of Tax Appeals lacks jurisdiction over his petition with respect to tax years 2000 through 2012 and 2015 and argues that he is in fact entitled to the full amount of the refundable credits, especially the earned income credit, that he claimed from 2000 through 2015. Petitioner claims that his request for a subpoena for documents and the appearance of the Division's auditors involved in his case was ignored. Petitioner argues that the Division failed to demonstrate why the claimed refunds cannot be paid to him. He reiterates on exception that he had provided all documents required to substantiate his refundable credit claims to the Division prior to this proceeding. Petitioner also makes general accusations of bias against him in this proceeding, in essence claiming that he was denied due process of law.

Petitioner also filed a motion asking the Tax Appeals Tribunal to reconsider its decision to not grant oral argument in this matter. He claims that he was denied his right to present oral argument in support of his exception.

The Division urges this Tribunal to affirm the determination of the Administrative Law Judge for the reasons stated therein. The Division argues that there is no basis to find jurisdiction to consider the merits of the petition for tax years 2000 through 2006 because petitioner failed to produce any evidence of unpaid refund claims or statutory notices giving rise to a right to a hearing. For 2007, the Division argues that jurisdiction is similarly lacking due to

the fact that the notice petitioner challenged, a notice of additional tax due, does not give rise to a right to a hearing. It also argues that the refund claim for 2008 had been adjudicated in a prior hearing, thus precluding jurisdiction. According to the Division, the petition was correctly dismissed as to tax years 2009, 2010 and 2012 because petitioner's challenge was untimely. For 2011 and 2015, the Division asserts that the record shows that the refund claim was paid in full, which leaves no justiciable claim for those years. For 2013 and 2014, the Division claims that petitioner failed to provide evidence that the Division improperly applied petitioner's claimed refunds to other outstanding New York State liabilities, and thus such challenges to the deemed denials were properly denied.

OPINION

We begin with our authorizing statute, Tax Law § 2000, which provides that the Division of Tax Appeals shall be responsible for “providing hearings as prescribed pursuant to this chapter or as a matter of right where the right to a hearing is not specifically provided for, modified or denied by another provision of this chapter” The Division of Tax Appeals is an adjudicatory body of limited jurisdiction whose powers are confined to those expressly conferred in its authorizing statute (*see Matter of Scharff*, Tax Appeals Tribunal, October 4, 1990, revd on other grounds sub nom *Matter of New York State Dept. of Taxation & Fin. v Tax Appeals Trib.*, 151 Misc 2d 326 [1991]).

In order for the Division of Tax Appeals to obtain jurisdiction to address the merits of a petition, the petition must protest a written notice issued by the Division advising the taxpayer of a tax deficiency, a notice of determination of tax due, a denial of a claim for a refund or credit or any other notice that gives the person a right to a hearing before the Division of Tax Appeals (Tax Law § 2008 [1]; *see also* 20 NYCRR 3000.1 [defining “statutory notice”]). Furthermore, it

is well-established that a taxpayer must file any challenge to a statutory notice giving a right to a hearing within the statutory deadline for doing so, either with the Division of Tax Appeals or with BCMS (*id.*, *see also* Tax Law § 170 [3-a] [providing for conciliation conferences requested within the statutory timeframe allowed for filing of a petition]). Failure to file a timely challenge denies the Division of Tax Appeals jurisdiction to consider the substantive merits of the challenge to the statutory notice (*Matter of Lukacs*, Tax Appeals Tribunal, November 8, 2007; *Matter of Sak Smoke Shop*, Tax Appeals Tribunal, January 6, 1989).

As relevant here, where a taxpayer has filed a timely claim for a refund with the Division, the taxpayer may file a petition with the Division of Tax Appeals for the amounts asserted in such claim after either the Division's issuance of a notice of disallowance or the expiration of six months from the filing of the claim, but any challenge to the disallowance must be filed within two years under either scenario (*see* Tax Law § 689 [c]). Furthermore, the Division may offset any overpayment of tax against any outstanding tax liability and certain other past-due legally enforceable debts to the State (*see* Tax Law § 686 [a]).

We have reviewed the record in this matter and agree with the Administrative Law Judge that jurisdiction is lacking to consider the merits of the petition with regard to tax years 2000 through 2012 and 2015 for the reasons stated in his determination and clearly set out in the findings of fact herein. We also agree with the Administrative Law Judge's rationale and conclusion that petitioner failed to bear his burden of showing clear-cut entitlement to the disallowed portions of the refunds claimed for tax years 2013 and 2014, and further that petitioner failed to show that the portions of his refund claims that the Division did allow were improperly applied to other outstanding liabilities subject to offset under Tax Law § 686 (a).

Next, we address petitioner's claim that the hearing below and the resulting determination of the Administrative Law Judge were "marred" by bias and misconduct. Our careful and thorough review of the transcript of the hearing does not support petitioner's assertion that the Administrative Law Judge was prejudiced against petitioner or exercised any bias against him in the course of conducting the hearing. Petitioner's specific complaint is that his request for a subpoena for the appearance of certain Division employees and production of records was ignored by the Administrative Law Judge. Petitioner makes no other specific allegation regarding misconduct by the Administrative Law Judge. The record clearly shows that petitioner's request for a subpoena was made to the Division's attorney and not the Administrative Law Judge, to whom such a request is required by our Rules to be made (*see* Tax Law § 2006 [10]; 20 NYCRR 3000.7). The Administrative Law Judge never had the opportunity to review the request for a subpoena before the hearing date because a written request for one was never sent to him (*see* hearing transcript, at 35-40). In addition, the Division notified petitioner via correspondence dated January 29, 2020, that it had received petitioner's purported notice of motion for discovery demand, but that it would not respond to it as motions for discovery are not permitted before the Division of Tax Appeals (Division's exhibit L; *see also* 20 NYCRR 3000.5 [setting forth our Rule that motions related to discovery procedures will not be entertained]). Accordingly, we conclude that the Administrative Law Judge properly declined to entertain petitioner's attempted subpoena request at the hearing.

Petitioner also argues that this Tribunal erred in denying his request for oral argument.⁸ Petitioner asserts that his right to present oral argument before this Tribunal was improperly

⁸ We note that although petitioner titled his filing with this Tribunal as a "notice of motion," we are treating his disagreement with our determination to deny his request for oral argument as an issue to be decided on exception.

denied. We do not agree. The Tax Law and our Rules clearly provide that a party taking exception to a determination may request the opportunity to deliver an oral argument in support of the exception (Tax Law § 2006 [7]; 20 NYCRR 3000.17 [d] [1]); however, under the statute, the Tribunal retains full discretion to grant or deny any such request (*id.*).

Petitioner argues, in essence, that this Tribunal's denial of his request for oral argument violated his due process right to be heard. From the outset, we note that statutes are presumed to be constitutional (*Matter of Silverstein*, Tax Appeals Tribunal, December 7, 2017, citing *Matter of Bucherer, Inc.*, Tax Appeals Tribunal, June 28, 1990). The Division of Tax Appeals' jurisdiction does not encompass challenges to the constitutionality of a statute on its face (*id.*; *see also Matter of Fourth Day Enterprises*, Tax Appeals Tribunal, October 27, 1988). As noted, the statute does not provide a petitioner with a right to oral argument on exception. Where petitioner's argument constitutes a facial challenge to the constitutionality of the statute, we lack authority to consider it.

To the extent that petitioner's argument regarding our denial of his request for oral argument represents an as-applied constitutional argument, we may consider it (*Matter of Flair Beverages Corp.*, Tax Appeals Tribunal, December 2, 2021). We note that our decisions regarding the granting or denial of oral argument in any case are made based upon a review of the facts and circumstances of that case.

“The fundamental requisite of due process of law is the opportunity to be heard . . . The hearing must be ‘at a meaningful time and in a meaningful manner . . .’” (*Goldberg v Kelly*, 397 US 254, 267 [1970] [internal citations omitted]). Our authorizing statute grants taxpayers a hearing before the Division of Tax Appeals as a matter of right, as well as a right to appeal an adverse determination by filing a timely exception with the Tribunal. As discussed above, the

Tax Law also provides that oral argument is granted at the discretion of the Tribunal. Here, petitioner's case was heard by an administrative law judge at an in-person hearing held on February 19, 2020. Following issuance of the determination, petitioner filed a timely exception with this Tribunal. Ultimately, petitioner's exercise of his right to challenge the refund disallowances, deemed denials and offsets of his refund claims at the hearing below, followed by his exercise of his right to take an exception to the Administrative Law Judge's determination, illustrate that petitioner was afforded due process at each stage of this proceeding. The record clearly shows that petitioner was afforded a meaningful time and manner in which to challenge the Division's disallowances and offsets of his refund claims for the tax years at issue, both at the hearing and on exception. Considering that the present matter involves jurisdictional issues and a question of whether petitioner substantiated his claims for refund at the hearing, this Tribunal determined that oral argument would not aid us in reaching our decision in this matter.

Accordingly, we reject petitioner's argument.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Charles B. Udoh is denied;
2. The determination of the Administrative Law Judge is affirmed; and
3. The petition of Charles B. Udoh is dismissed for years 2000 through 2012 and for 2015, and denied for years 2013 and 2014.

DATED: Albany, New York
April 14, 2022

/s/ Anthony Giardina
Anthony Giardina
President

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

/s/ Cynthia M. Monaco
Cynthia M. Monaco
Commissioner