STATE OF NEW YORK

DIVISION OF TAX APPEALS

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

Petitioner, Charles B. Udoh, filed a petition for redetermination of deficiencies or for refund of New York State and New York City personal income taxes under article 22 of the Tax Law and the Administrative Code for the City of New York for the years 2012, 2013 and 2014.

A hearing was held on February 19, 2020 in New York, New York, at 10:30 a.m., with all briefs to be submitted by August 20, 2020, which date began the six-month period for issuance of this determination. Petitioner appeared pro se. The Division of Taxation appeared by Amanda Hiller, Esq. (Christopher O'Brien, Esq., of counsel). After due consideration of the documents and arguments submitted, Dennis M. Galliher, Administrative Law Judge, renders the following determination.

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.

FINDINGS OF FACT

1. Petitioner, Charles B. Udoh, was a resident of New York State and City, as defined under Tax Law sections 605 (b) (1) (A), (B) and the New York City Administrative Code, for the years 2000 through 2015. Petitioner admits 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 he was owed refunds for tax years 2012, 2013 and 2014. A conciliation conference was held on May 19, 2016, and a conciliation order (Conciliation Order), dated June 17, 2016, was issued denying the requested refunds and sustaining the Division's disallowance of the same (CMS No. 268289)

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

[1] These facts are not disputed, and it appears petitioner was, likewise, a New York State and City resident for some periods of time both before 2000 and after 2015.

tax returns for the years 2000 through 2015. Petitioner alleges 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 were 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 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 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 (***see Matter of Charles Udoh***, DTA No. 824866, Division of Tax Appeals, August 29, 2013). 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 untimely with respect to the deemed denial of the claimed refund. The Division asserts 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 there is no jurisdiction in this forum to address such year, and seeks dismissal of the petition as to the year 2010.

[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)

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 there is 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 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

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[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.

[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]).

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 16, 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 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 16, 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 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] 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.

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 to confined itself to those years. In contrast, the petition broadly expanded the years at issue to span 2000 through 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 two (***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

[6] Review also shows that 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.

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.

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 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, shoes, arts, electronics, general merchandise and many more products for sale overseas and hear.
>
> 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 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

[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.

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 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 the information supplied by petitioner did not allow the Division to verify his business income or expenses so as to confirm entitlement to the earned income credits claimed by petitioner on his returns, or to confirm petitioner's entitlement to the child and dependent credits claimed on such returns.

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

14. Petitioner maintained, in his post-hearing briefs, 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 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 petitioner has not provided substantiation supporting his refund claims for such years.

16. Finally, 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]).

CONCLUSIONS OF LAW

A. The first question presented is whether, and to what extent, the Division of Tax Appeals has jurisdiction to address any substantive issues presented in this matter.

B. Tax Law §§ 2000, 2006 [4] state that the Tax Appeals Tribunal (Tribunal) is authorized to provide a hearing as a matter of right "unless a right to such a hearing is 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 the absence of legislative action, this forum cannot extend its authority to disputes that have not been specifically delegated to it (***see Matter of Hooper,*** Tax Appeals Tribunal, July 1, 2010).

C. In order for the Division of Tax Appeals to have jurisdiction to address the substantive matters raised in a petition, the petitioner must show the issuance of a statutory document giving rise to the right to a hearing before the Division of Tax Appeals. In this regard, Tax Law § 2008 (1), provides:

> "All proceedings in the division of tax appeals shall be commenced by the filing of a petition with the division of tax appeals protesting *any written notice* of the division of taxation which has advised the petitioner of a tax deficiency, a notice of determination of tax due, *a denial of a refund or credit application* . . ., or any other notice which gives a person the right to a hearing the division of tax appeals under this chapter or other law." (Emphasis added.)

The Tribunal's Rules of Practice and Procedure, at 20 NYCRR 3000.1, define the term "statutory notice" as follows:

> "**(k) Statutory notice.** The term 'statutory notice' means *any written notice of the Commissioner of Taxation and Finance which advises a person* of *a* tax deficiency, determination of tax due, assessment, or *denial of a refund*, credit or reimbursement application, or of cancellation, revocation, suspension or denial of an application for a license, permit or registration, missing from the typed definition or for denial or revocation of an exempt status, or any other notice which gives the person a right to a hearing in the division of tax appeals" (Emphasis as in original; italics added).

In addition, while a taxpayer may contest a statutory notice or other action that is within the statutorily prescribed jurisdiction of the Division of Tax Appeals, such a challenge must be filed within the requisite statutory time period for doing so. It is well established that where a taxpayer has not initiated such a challenge, either by filing a petition for a hearing before the Division of Tax Appeals within the statutorily prescribed time period for doing so, or alternatively, by filing a request for a conciliation conference with BCMS if the time to petition

for such a hearing (before the Division of Tax Appeals) has not elapsed (***see*** Tax Law § 170 [3-a] [a]), the Division of Tax Appeals is without jurisdiction to consider the substantive merits of the protest (***see e.g., Matter of Lukacs***, Tax Appeals Tribunal, November 8, 2007; ***Matter of Sak Smoke Shop***, Tax Appeals Tribunal, January 6, 1989).

D. In this matter, petitioner filed a conciliation Request alleging he was owed refunds for the years 2012 through 2014. A conciliation conference was held, and a conciliation order was issued denying petitioner's Request for those years. Petitioner, in turn, challenged the conciliation order by filing a petition concerning not only the years specified in the Request and conciliation order (i.e., 2012 through 2014), but expanding his challenge to include the broader time frame spanning all of the years 2000 through 2015 (***see*** findings of fact 1 through 3). In response, the Division has not challenged jurisdiction with respect to the years 2012 through 2014, and has withdrawn its challenge to jurisdiction for the year 2015. However, the Division has continued its challenge to jurisdiction in this forum for the years 2000 through 2011. These jurisdictional challenges will be addressed hereinafter on a year-to-year basis, or in any other instance where a jurisdictional issue is apparent. Where jurisdiction is found to exist for any of the years in question, the substantive merits of the issues presented for those years will also be addressed.

E. For the years 2000 through 2006, petitioner makes the generic assertion that he did not receive any of the refunds he allegedly claimed for such years. However, petitioner provided no evidence upon which to base a conclusion that he claimed any refunds for any of such years, or the bases upon which the same may have been claimed, or to establish the amounts of any such allegedly claimed refunds. Furthermore, petitioner provided no statutory document showing the Division's disallowance of any such allegedly claimed refunds, carrying with it the

right to file a challenge with respect thereto (***see generally*** Tax Law § 2008 [1]). There is likewise no basis upon which to conclude that the Division failed to pay or otherwise act upon any refund claims allegedly filed for any of such years within six months after any such claim was made, so as to result in a deemed denial of a claimed refund, triggering in turn the right to file a challenge thereto within the statutorily prescribed time frame for doing so (***see*** Tax Law § 689 [c] [3], [4]). Under these circumstances, petitioner's generic assertions that he filed returns upon which he claimed refunds, and that he did not receive such refunds, are insufficient to establish any basis upon which the Division of Tax Appeals has jurisdiction to entertain such claims, or to address the substantive merits thereof. Accordingly, petitioner's assertion that the petition properly raises the years 2000 through 2006, and that such years may be addressed herein, is denied upon the basis that the Division of Tax Appeals lacks jurisdiction over such years, and the petition is dismissed with respect to such years.

F. For the year 2007, petitioner's claim concerns an April 27, 2011 notice of additional tax due issued to him by the Division (***see*** finding of fact 4 [b]). This notice was issued as the consequence of a change whereby the IRS increased petitioner's reported business income, thereby increasing his federal adjusted gross income, and his federal tax liability. This change, in turn, served to increase petitioner's New York tax liability. The foregoing change made by IRS was not reported to the Division by petitioner as required (***see*** Tax Law § 659). A taxpayer's failure to report a federal change, as required, authorizes the Division to issue a notice of additional tax due, assessing thereby any increase to the taxpayer's New York tax liability without regard to any period of limitations on such assessment (***see*** Tax Law 683 [c] [1] [C]). A notice of additional tax due is not a statutory notice that carries with it protest rights, including specifically the right to a conciliation conference with BCMS, or a hearing before the Division of

Tax Appeals (***see*** Tax Law § 173-a [2] [specifically construing a notice of additional tax due as denying and modifying the right to a hearing for purposes of Tax Law § 2006 (4)]). Accordingly, as a matter of law, petitioner's assertion that the petition properly raises the year 2007 is denied upon the basis that the Division of Tax Appeals lacks jurisdiction to provide a hearing with respect to the notice of additional tax due pertaining to that year (***see Matter of Kyte***, Tax Appeals Tribunal, October 9, 2014), and the petition is dismissed with respect to such year.

G. For the year 2008, the Division issued to petitioner a notice of disallowance, dated August 13, 2010, denying petitioner's claimed refund (***see*** finding of fact 4 [c]). Petitioner challenged that notice of disallowance by filing a petition with the Division of Tax Appeals, seeking a small claims hearing. A small claims hearing was held on June 26, 2013, and the petition was denied by a determination dated August 29, 2013 (***see Matter of Charles Udoh***, DTA No. 824866, Division of Tax Appeals, August 29, 2013). As a small claims matter, that determination was not appealable absent a showing of misconduct on the part of the presiding officer (***see*** Tax Law § 2012), and there is no claim or evidence here of any misconduct. The August 29, 2013 determination was therefore a final determination upon its issuance, and is not subject to being relitigated (***see Matter of Mostovoi***, Tax Appeals Tribunal, May 23, 2019; ***Matter of Kyte***; ***Matter of Am. Home Assur. Co.***, Tax Appeals Tribunal, August 8, 2002). Accordingly, petitioner's assertion that the petition properly raises the year 2008 is denied for lack of jurisdiction, and the petition is dismissed with respect to such year.

H. For the years 2009 and 2010, petitioner claimed refunds with the filing of his returns (***see*** finding of fact 4 [d], [e]). Pursuant to Tax Law § 689 (c) (3), a taxpayer may file a petition for the amounts sought in a claim for refund if the Division has:

a) issued to the taxpayer a notice of disallowance of such claim, in whole or in part, or

b) where a notice of disallowance has not been issued and six-months have expired since the claim for refund was filed.

Where six months have expired after a claim for refund was filed, and the Division has not issued a statutory notice of disallowance, Tax Law § 689 (c) (3) provides that the refund request is considered to have been denied by statute (deemed denial). A request for refund made on a filed tax return commences the foregoing the six-month period (***id***). In turn, where a refund request is deemed denied by statute, a request for a BCMS conciliation conference or a petition for a hearing before the Division of Tax Appeals must be filed within two years from the date on which the refund request was deemed denied in order to be considered timely filed (***see*** Tax Law § 689 [c] [4]; ***Matter of Janet Yoell-Mirel***, Tax Appeals Tribunal, September 21, 2015).

I. Petitioner's returns for 2009 and 2010 appear to have been filed prior to the statutorily prescribed due date for filing such returns. Notwithstanding such "early" filings, personal income tax returns are, by statute, deemed to have been filed on the 15th day of the fourth month after the close of the tax years in question, and any refunds set forth on such returns are likewise deemed to have been claimed on such deemed filing dates, without regard to any extensions of the time to file such returns (***see*** Tax Law §§ 651; 687 [h]). Thus, the refunds set forth on petitioner's returns for the years 2009 and 2010 were claimed on April 15th of 2010 and 2011, respectively, and it is these dates that triggered the commencement of the six-month period for determining the applicable dates for purposes of any deemed denials of such refund claims. The Division did not issue a notice of disallowance as to the refunds claimed on petitioner's returns for either of the years 2009 or 2010 (***see*** finding of fact 4 [d], [e]), and such refunds were therefore deemed denied by statute six months after the filing dates of the returns. Six months after the April 15, 2010 and 2011 filing dates, respectively, fell on October 15, 2010 and 2011,

and petitioner therefore had two years from those dates, i.e., until October 15, 2012 and October 15, 2013, respectively, within which to file either a request for a conciliation conference, or a petition, challenging the deemed denials of his refund claims for the years 2009 and 2010. The Request in this matter was filed on October 23, 2015, and the petition was filed thereafter on July 8, 2016. Both of these dates fall after the above-noted October 15, 2012 and 2013 dates by which any such challenge had to have been filed. Further, petitioner's October 23, 2015 Request limited itself to the years 2012 through 2014, and by its own terms did not encompass the years 2009 or 2010. Thus, petitioner did not file a timely challenge to the deemed denials of his claimed refunds for either of the years 2009 or 2010, and the Division of Tax Appeals does not have jurisdiction to address those years. Accordingly, petitioner's assertion that the petition properly raises the years 2009 and 2010 is denied, and the petition is dismissed with respect to such years.

J. For the year 2011, petitioner filed form IT-201 on March 20, 2012, reporting no New York taxable income and claiming a refund in the amount of $1,530.00, based upon various refundable tax credits (***see*** finding of fact 4 [f]). The Division did not issue a notice of disallowance to petitioner. Rather, on April 11, 2012, the Division paid the full amount of the refund claimed by petitioner ($1,530.00) by direct deposit to his personal checking account. Petitioner's claim that he did not receive this payment is rejected, based on the Division's post-hearing submission of proof of payment of the full amount of the claimed refund (***see*** finding of fact 4 [f], [n 3]). Accordingly, petitioner's assertion that the petition properly raises the year 2011 is denied upon the basis that the refund claimed by petitioner for 2011 has been paid in full, leaving no justiciable claim at issue herein, no basis to further address such year, and the petition is dismissed with respect to such year.

K. For the year 2012, petitioner filed form IT-201 on February 27, 2013, reporting no New York taxable income and claiming a refund in the amount of $2,683.00, based upon various refundable tax credits claimed (***see*** finding of fact 4 [g]). The Division did not issue a notice of disallowance, and thus petitioner's refund was deemed denied six months after the April 15, 2013 date of filing of such claim, i.e., on October 15, 2013, thus commencing the period within which either a request for a BCMS conference, or a petition, could be filed challenging the deemed denial (***see*** conclusion of law I). Two years after October 15, 2013 fell on October 15, 2015. The Request in this matter was filed on October 23, 2015, and the petition was filed thereafter on July 8, 2016. Both of these dates fall after the October 15, 2015 date by which a challenge had to have been filed in order to be considered timely for purposes of conferring jurisdiction to address the claim herein. While the Division did not challenge this forum's jurisdiction over the petition for the year 2012, the relevant dates set forth above reveal that petitioner did not file a timely challenge for such year. Notwithstanding the Division's failure to challenge jurisdiction, the Division of Tax Appeals may not confer jurisdiction upon itself, and is not precluded from addressing the issue of its own jurisdiction based upon the evidence in the record (***see*** conclusions of law B and C; ***Matter of Janet Yoell-Mirel***). Since petitioner's challenge herein was not timely filed, there is no jurisdiction to address the merits of petitioner's refund claim for the year 2012. Accordingly, petitioner's assertion that the petition properly raises the year 2012 is denied, and the petition is dismissed with respect to such year.[8]

[8] In order to provide a complete record for any appeal, and assuming a timely challenge is found to have been filed, the record includes no evidence to substantiate petitioner's entitlement to the refund claimed for 2012. Specifically, there is no evidence supporting the amount of petitioner's earned income for such year, or concerning the petitioner's child, upon which the subject credits underlying the claimed refund was based. Accordingly, petitioner's claim for refund for the year 2012 is properly subject to denial based upon petitioner's failure to have met his burden of establishing entitlement to the refund claimed for such year (***see*** findings of fact 8 through 10, 12, 13; conclusions of law B and M).

L. For each of the years 2013 and 2014, petitioner filed form IT-201, claiming refunds thereon in the respective amounts of $1,474.00 (2013) and $1,579.00 (2014). For 2013, the Division issued to petitioner an account adjustment notice allowing a partial refund in the amount of $63.00, but applied the same as an offset against another New York liability, leaving the $1,411.00 balance of petitioner's claimed refund denied (***see*** finding of fact 4 [h]). For 2014, the Division issued to petitioner an account adjustment notice recomputing petitioner's New York taxable income and tax liability, and allowing a partial refund in the amount of $100.75. The partial refund allowed was applied against another New York liability, leaving the $1,478.25.00 balance of petitioner's claimed refund denied (***see*** finding of fact 4 [i]).

M. In response to petitioner's filings for 2013 and 2014, the Division issued account adjustment notices to petitioner for the portions of his claimed refunds that were not granted (***see*** conclusion of law L). An account adjustment notice clearly constitutes a "written notice of the [Division]" advising petitioner of "a denial of a refund or credit application," and as such constitutes a "statutory notice" under 20 NYCRR 3000.1 (k), carrying with it the right to a hearing (***see*** Tax Law §§ 2006 (4), 2008 (1); ***Meyers v Tax Appeals Trib.***, 201 AD2d 185 [3d Dept 1994], ***lv denied*** 84 NY2d 810 [1994]). In fact, the Tax Appeals Tribunal has consistently ruled on petitions challenging reductions or disallowances of taxpayers' claimed refunds, as set forth on account adjustment notices, rather than rejecting such notices as not constituting statutory notices giving rise to the right to a hearing so as to be beyond the ambit of its jurisdiction to provide a hearing as a matter of right (***id., see e.g. Matter of Balbo***, Tax Appeals Tribunal, August 18, 2016; ***Matter of Solis-Cohen***, Tax Appeals Tribunal, March 3, 2016; ***Matter of Goode***, Tax Appeals Tribunal, October 17, 2013).

Moreover, even assuming that the account adjustment notices for 2013 and 2014 did not constitute a "statutory document" that gives rise to the right to a hearing, such right exists by operation of law. Review of the relevant dates of petitioner's filing of his refund claims for 2013 and 2014, and of the dates of the filing of his request for a BCMS conference and his petition herein, confirms that the Division of Tax Appeals has jurisdiction to review the merits of petitioner's refund claims for those years (***see*** finding of fact 4 [h], [i]; conclusions of law H and I). That is, the Division unquestionably disallowed a portion of each of petitioner's claimed refunds, and did not issue notices of disallowance thereafter (***see*** finding of fact 4 [h], [i]). More than six months have elapsed since the April 15, 2014 and 2015 dates on which petitioner is deemed to have filed his 2013 and 2014 returns claiming the disputed refunds. Therefore, it follows that such remaining claimed amounts have been deemed denied, that petitioner had the right to file a petition challenging such deemed denials within two years thereafter, and that his Request, and his subsequent petition, fall within the two-year period. Accordingly, there exists jurisdiction in this forum to address the merits concerning the disallowed portions of petitioner's claimed refunds for the years 2013 and 2014.

N. As to the merits of petitioner's 2013 and 2014 refund claims, where a statute grants a tax credit or exemption, it is the taxpayer's burden to show clear-cut entitlement to the benefit of the credit or exemption (***see*** Tax Law § 689 [e]; 20 NYCRR 3000.15 [d] [5]; ***Matter of Carroll***, Tax Appeals Tribunal, May 18, 2018; ***Matter of Leogrande v Tax Appeals Trib.***, 187 AD2d 768 [3d Dept 1992], ***lv denied*** 81 NY2d 704 [1993]). Petitioner seeks refunds for the years 2013 and 2014, premised upon his claim of entitlement to certain refundable tax credits (***see*** finding of fact 4 [h], [i]), with the particular credits identified herein at finding of fact 4, n. 2.

O. For the year 2013 and 2014, a portion of the refund amounts claimed by petitioner were not disallowed by the Division, but instead were granted and were applied by the Division as offsets in payment against other, preexisting, New York liabilities owed by petitioner (***see*** finding of fact 4 [h], [i]). The Division's authority to apply overpayments against outstanding liabilities is found in Tax Law § 686 (a), which provides, in relevant part, as follows:

> "General.- The commissioner of taxation and finance, within the applicable period of limitations, may credit an overpayment of income tax and interest on such overpayment against any liability in respect of any tax imposed by this chapter . . . on the person who made the overpayment, against any liability in respect of any tax imposed pursuant to the authority of this chapter or any other law on such person if such tax is administered by the commissioner of taxation and finance . . . ."

There is no evidence to show that the outstanding liabilities against which petitioner's refunds for the years 2013 and 2014 were applied were not fixed and final liabilities that were subject to collection. In fact, petitioner has presented no discernible challenge to any of the liabilities described herein against which portions of his claimed refunds were applied. It is well established that the jurisdiction of the Division of Tax Appeals does not extend to the Division's collection activities (***see Matter of Club Marakesh v Div. of Tax Appeals***, Sup Ct., Albany Co., Nov 7, 1990, Keniry J.; ***Matter of Driscoll,*** Tax Appeals Tribunal, April 11, 1991; ***Matter of Barrier Oil***, Tax Appeals Tribunal, July 29, 1999).

As to the balance of petitioner's claimed, but disallowed, refunds for the years 2013 and 2014, the record in this matter includes no evidence to substantiate petitioner's entitlement to the credits upon which the claimed refunds rest. Specifically, and notwithstanding the Division's requests for such supporting substantiation (***see*** finding of fact 8), there is no evidence detailing or substantiating the reported amounts of petitioner's earned income for either of such years, or concerning the petitioner's child, upon whom the subject credits underlying the claimed refunds were based. Accordingly, petitioner's claims for the disallowed portions of his claimed refunds

for the years 2013 and 2014 are denied based upon petitioner's failure to have met his burden of establishing entitlement to such claimed refunds (***see*** findings of fact 8 through 10, 12, 13), and the Division's disallowance of petitioner's claims for refund for the years 2013 and 2014 are sustained.

P. Finally, for the year 2015, the Division initially and correctly asserted that petitioner's challenge was premature. However, in the context of this case, the petition is no longer premature, as claimed in the Division's answer, and may properly be addressed, nunc pro tunc, as a challenge to the Division's account adjustment notice. While petitioner apparently maintains that he is entitled to a refund for 2015, the record bears out that the Division granted petitioner's claim, as shown by the account adjustment notice dated May 13, 2016 (***see*** finding of fact 4 [j]). In particular, the Division applied a portion of petitioner's refund against other outstanding New York tax liabilities, and against an outstanding child support obligation, and paid the remaining $746.82 balance of petitioner's claimed refund by direct deposit to his personal checking account. As to the portions of petitioner's refund that were applied against other outstanding liabilities, such offset payments are clearly within the authority of the Division of Taxation, and constitute collection activities that are not within the jurisdiction of the Division of Tax Appeals (***see*** conclusion of law O). Any assertion by petitioner that he did not receive payment of the remaining $746.82 balance of his claimed refund for 2015 is rejected based on the Division's post-hearing submission of proof of payment of the full amount of such remaining claimed refund (***see*** finding of fact 4 [j,], [n. 5]). In sum, petitioner's claimed refund for 2015 has been paid in full, leaving no justiciable claim at issue herein, no basis to further address such year, and the petition is dismissed with respect to the year 2015.

Q. The petition of Charles B. Udoh is hereby dismissed for the years 2000 through 2012, and for 2015, and is denied for the years 2013 and 2014.

DATED: Albany, New York
February 18, 2021

/s/ Dennis M. Galliher
ADMINISTRATIVE LAW JUDGE