

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petitions	:	
of	:	
JOHN J. PETITO, CPA, PLLC	:	ORDER
for Redetermination of Deficiencies for	:	DTA NOS. 827055
Failure to E-File under Article 1 of the Tax Law	:	AND 827385
for the Years 2012 and 2013.	:	
	:	

Petitioner, John J. Petito, CPA, PLLC, filed petitions for redetermination of deficiencies for failure to e-file under Article 1 of the Tax Law for the years 2012 and 2013.

On September 6, 2016, petitioner, appearing by John J. Petito, CPA, filed motions pursuant to 20 NYCRR 3000.8 to recuse the administrative law judge assigned to the case. The Division of Taxation did not respond to the motion. The Division of Taxation's response is due on October 7, 2016. Due to the imminent date of the hearing, no response from the Division of Taxation will be required.

Upon review of the entire case file in this matter, Daniel J. Ranalli, Supervising Administrative Law Judge, renders the following order.

FINDINGS OF FACT

1. On June 26, 2015 and December 15, 2015, petitioner, John J. Petito, CPA, PLLC, filed petitions contesting assessments of penalties for failure to e-file for the years 2012 and 2013, respectively. The petitions were answered by the Division of Taxation (Division) on February 24, 2016. By letter dated February 29, 2016, the Hearing Support Unit of the Division of Tax

Appeals sent a letter to both parties advising them that Administrative Law Judge Winifred M. Maloney had been assigned to the matters. Following two prehearing conferences, the parties set a hearing date of September 20, 2016.

2. On August 15, 2016, the Division of Tax Appeals sent a Notice of Hearing to each of the parties notifying them that a hearing in these matters had been scheduled for September 20 through 23, 2016 in New York City. On August 31, 2016, Bruce D. Lennard, Esq., the attorney representing the Division in these matters, pursuant to a directive of Judge Maloney, sent petitioner copies of a considerable number of documents that he intended to introduce as evidence at the hearing.

3. On the August 31, 2016, petitioner filed motions to compel discovery and for a continuance of the hearing in the instant matters. Judge Maloney denied these motions on September 7, 2016, advising petitioner that he had specifically agreed to these hearing dates on May 4, 2016 and that he indicated he would be prepared to proceed. With respect to the request to compel discovery, Judge Maloney clearly explained that the Tax Appeals Tribunal's Rules of Practice do not allow for discovery of any type.

4. Petitioner responded to the denial from Judge Maloney by filing the recusal motions that are the subject of this order. The basis of the motions is that Judge Maloney has demonstrated prejudice by denying petitioner's request for adjournment for the purpose of conducting discovery. However, the motion papers are also filled with unsupported, unfounded, scurrilous and outrageous accusations against Judge Maloney and Attorney Lennard, including the allegation that Judge Maloney is protecting Mr. Lennard from Mr. Petito because Mr. Petito has "annihilated" 48 IRS attorneys in the past 3 years and has also forced the resignations of a U.S.

Attorney, a U.S. Attorney General and the Commissioner of Internal Revenue.

CONCLUSIONS OF LAW

A. As provided in the Rules of Practice and Procedure of the Tax Appeals Tribunal, “[e]ither party may move before the supervising administrative law judge to recuse the administrative law judge . . . assigned to its case on the basis that the administrative law judge . . . has a personal bias with respect to the case . . .” (20 NYCRR 3000.8[a][1]).

B. Petitioner’s basis for asking for the recusal of Judge Maloney appears, at its core, to revolve around one issue and that is that Judge Maloney, in denying petitioner’s requests for an adjournment of the hearing and to compel discovery, has demonstrated prejudice against him. The remainder of Mr. Petito’s allegations are so outrageous as to not warrant discussion and will not be addressed.

C. With respect to petitioner’s request for discovery, as Judge Maloney explained in her letter denying petitioner’s requests, the Rules of Practice of the Tax Appeals Tribunal at 20 NYCRR 3000.5(a) specifically prohibit any discovery procedures. Judge Maloney was completely within the law in denying petitioner’s request. As for showing prejudice against petitioner in denying the request, quite the contrary, she actually assisted petitioner in presenting his case by directing that the Division’s attorney submit the Division’s evidence for petitioner’s review a month prior to the scheduled hearing. There is, therefore, no merit whatsoever to petitioner’s claim and the motion must be denied. The hearing will proceed as scheduled on September 20, 2016 with Judge Maloney presiding.

D. The motion of petitioner, John J. Petito, CPA, PLLC, for recusal of the administrative law judge is denied.

DATED: Albany, New York
September 12, 2016

/s/ Daniel J. Ranalli
SUPERVISING ADMINISTRATIVE LAW JUDGE