

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
RYAN AND WRICHA PRADHAN	:	ORDER
	:	DTA NO. 828595
for Redetermination of a Deficiency or for Refund of New	:	
York State and New York City Personal Income Tax under	:	
Article 22 of the Tax Law and the Administrative Code of the	:	
City of New York for the Years 2014 and 2015.	:	

Petitioners, Ryan and Wricha Pradhan, filed a petition for redetermination of a deficiency or for refund of New York State and New York City Personal Income Tax under article 22 of the Tax Law and the Administrative Code of the City of New York for the years 2014 and 2015.

Petitioners, appearing by Jhonatan Mondragon, EA, brought a motion dated September 21, 2020 seeking an order extending the time for the submission of briefs, affidavits and other proofs in this matter pursuant to 20 NYCRR 3000.23. On October 20, 2020, the Division of Taxation, by Amanda Hiller, Esq. (Christopher O'Brien, Esq., of counsel), filed a response to petitioners' motion. The 90-day period for issuance of this order commenced on October 21, 2020. Based upon the motion papers and documents submitted therewith, and all pleadings and documents submitted in connection with this matter, Barbara J. Russo, Administrative Law Judge, renders the following order.

ISSUE

Whether petitioners' motion seeking an extension of time for the submission of briefs, affidavits and other proofs in this matter after the record was closed should be granted.

FINDINGS OF FACT

1. Petitioners filed a petition challenging an assessment for personal income tax for tax year 2014 and a refund denial for tax year 2015, received by Division of Tax Appeals on February 13, 2018.

2. On October 10, 2018, the Division of Taxation (Division) filed its answer to the petition.

3. On January 6, 2020, the parties signed a consent to have the controversy determined on submission and waived the right to a hearing.

4. By letter dated January 7, 2020, a submission schedule was established by the undersigned administrative law judge setting forth the following due dates: filing of the Division's documents by February 18, 2020; filing of petitioners' documents and brief by March 31, 2020; filing of Division's brief by May 12, 2020; and filing of petitioners' reply brief by June 10, 2020. The parties were further instructed in said letter that documents and briefs not filed in accordance with this schedule would be returned to the filing party and if a party needed an extension of time for filing, they must make a request to the administrative law judge in writing within the time limits prescribed for filing the brief or documents and provide a good cause basis for the request.

5. By letter dated February 12, 2020, the Division requested an extension of time to file its documents. In response to the Division's request, by letter from the undersigned dated February 13, 2020, the submission and briefing schedule was revised as follows: filing of Division's documents due by March 4, 2020; filing of petitioners' documents and brief due by April 15, 2020; filing of Division's brief due by May 27, 2020; and filing of petitioners' reply brief due by June 25, 2020.

6. The Division timely filed its documents on March 2, 2020.

7. Petitioners did not file any documents or brief or request an extension of time to do so within the established deadlines.

8. By letter dated May 18, 2020, the Division requested an extension of time to file its brief. By letter dated May 20, 2020, the undersigned granted the Division's request and the Division was given until July 1, 2020 to file its brief. Petitioners' time to file a reply brief, was, in turn, extended to August 6, 2020.

9. On June 11, 2020, petitioners sent a letter to the Division requesting the Division's audit guidelines.

10. The Division timely filed its brief on June 29, 2020.

11. Petitioners did not file a reply brief or request an extension of time to file within the established deadlines.

CONCLUSIONS OF LAW

A. Petitioners seek an order "granting an indefinite extension of time" for the submission of briefs, affidavits and other proofs in this matter pursuant to 20 NYCRR 3000.23. Petitioners argue that that an extension should be granted due to the COVID-19 crises and contend that the deadline for the filing of papers, including briefs, affidavits and other documents has been tolled by the Governor's Executive Order 202 and subsequent extensions.

20 NYCRR 3000.12 provides that after receipt of written consent from both parties to have the controversy determined on submission, the administrative law judge assigned to the case shall establish a schedule for submission of all documentary evidence and briefs. A schedule was established by the administrative law judge in this matter for the submission of documents and briefs, with April 15, 2020 set as the final date for petitioners' submission of

documents and brief (*see* finding of fact 5), and August 6, 2020 set as the final date for the filing of petitioners' reply brief (*see* finding of fact 8). Petitioners did not file any documents or briefs in accordance with the established schedule.

20 NYCRR 3000.23 (b) provides, in part that:

“[t]he tribunal administrative law judges or presiding officers may, on its or their own motion, or on the motion of any party, order a continuance, extension or time or adjournment for good cause, provided no statutory prohibition exits.”

When the administrative law judge established the submission schedule, the parties were instructed that documents and briefs not filed in accordance with the schedule would be returned to the filing party and if a party needed an extension of time for filing, they must make a request to the administrative law judge in writing within the time limits prescribed for filing the brief or documents and provide a good cause basis for the request (*see* finding of fact 4). Petitioners did not request an extension of time to file documents or briefs within the established deadlines. Petitioners failed to timely file documents or briefs and failed to timely request extensions for such filings. Accordingly, the record was closed for the submission of petitioner's documents as of April 15, 2020, and the time for the filing of petitioners' brief and reply brief expired on April 15, 2020 and August 6, 2020, respectively.

While petitioners argue that they were unable to obtain records and that their representative, Jhonatan Mondragon, was unable to work with petitioners and had office staffing issues due to the COVID-19 pandemic, petitioners have failed to show why they could not merely have sent a letter to the Division of Tax Appeals requesting an extension of time for the submission of documents and/or briefs within the established timeframe. Indeed, petitioners' representative was able to send a letter to the Division during the ongoing pandemic (*see* finding of fact 9), which shows that he could simply have sent a timely request for extension to the

Division of Tax Appeals. Petitioners failed to make any timely request for extension, and it was not until the filing of the motion herein on September 21, 2020, well after the record was closed and the deadline for briefs had passed, that petitioners made such request. Accordingly, petitioners have failed to establish good cause for an extension.

B. Furthermore, it is well established that new evidence may not be introduced after the record is closed (*see Matter of Schoonover*, Tax Appeals Tribunal, August 15, 1991). Since petitioners did not timely request an extension of time within the timeframe established for the submission of documents, the record was closed on April 15, 2020. It is improper to extend the time for the submission of documents after the record has already closed.

C. Petitioners argue that the deadline for the filing of papers, including briefs, affidavits and other documents has been tolled by the Governor's Executive Order 202 and subsequent extensions. Executive Order 202.8, dated March 7, 2020, provided, in part, as follows:

“In accordance with the directive of the Chief Judge of the State to limit operations to essential matters during the pendency of the COVID-19 health crises, any specific time limit for the commencement, filing, or service of any legal action, notice, motion, or other process or proceeding, as prescribed by the procedural laws of the state, including but not limited to the criminal procedure law, the family court act, the civil practice law and rules, the court of claims act, the surrogate's court procedure act, and the uniform court acts, or by any other statute, local law, ordinance, order, rule or regulation, or part thereof, is hereby tolled from the date of this executive order until April 19, 2020.”¹

The language of the Executive Order that states “[i]n accordance with the directive of the Chief Judge of the State to limit operations to essential matters” indicates that such provisions do not apply to administrative procedures by the Division of Tax Appeals, as such procedures are not governed by the Chief Judge of the State (*see* Judiciary Law § 211; Tax Law §§ 2004, 2006).

¹ Executive order 202.60 subsequently extended the date to October 4, 2020.

Moreover, the Tax Appeals Tribunal has noted that the Executive Order does not apply to matters before the Division of Tax Appeals (*see* www.dta.ny.gov [stating “neither the Tribunal nor DTA has the authority to waive statutory deadlines. As such, any petition, exception, or request for an extension of time to file an exception must be filed (postmarked or put in the custody of an authorized delivery carrier) by the current statutory deadline. However, until further notice, the Tribunal and DTA will grant *timely* extension requests for the filing of briefs and answers”] [emphasis added]). As such, petitioners’ motion for an extension of time to submit documents and briefs, made after the record was closed and beyond the deadline for filing briefs, must be denied.

D. Based upon the foregoing, petitioners’ motion seeking an order extending the times for the submission of briefs, affidavits and other proofs in this matter is denied. The determination will be issued in due course.

DATED: Albany, New York
January 14, 2021

/s/ Barbara J. Russo
ADMINISTRATIVE LAW JUDGE