

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
HAKEEM MOHAMED	:	ORDER
for Redetermination of a Deficiency or for Refund of	:	DTA NO. 850280
New York State and New York City Personal Income	:	
Taxes under Article 22 of the Tax Law and the	:	
Administrative Code of the City of New York for the	:	
Year 2021.	:	

Petitioner, Hakeem Mohamed, filed a petition for redetermination of a deficiency 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 of the City of New York for the year 2021.

The Division of Taxation, by its representative, Amanda Hiller, Esq. (Colleen McMahon, Esq., of counsel), brought a motion on June 3, 2024, seeking summary determination in the above-referenced matter pursuant to Tax Law § 2006 (6) and section 3000.9 (b) of the Rules of Practice and Procedure of the Tax Appeals Tribunal. Petitioner, appearing pro se, did not file a response by July 3, 2024, which date commenced the 90-day period for the issuance of this order.

Based upon the motion papers and all pleadings and documents submitted in connection with this matter, Jennifer L. Baldwin, Administrative Law Judge, renders the following order.

ISSUE

Whether the Division of Taxation has established that no material and triable issues of fact exist such that summary determination may be granted in its favor.

FINDINGS OF FACT

1. Petitioner, Hakeem Mohamed, filed form IT-201, New York State resident income tax return, for tax year 2021 (2021 return). The 2021 return is signed by petitioner and dated April 5, 2022. In relevant part, petitioner reported “[w]ages, salaries, tips, etc.” of \$2,918.00 and “[b]usiness income or loss” of \$13,254.00. The 2021 return included in the Division of Taxation’s (Division’s) motion papers does not include copies of federal form W-2, wage and tax statement, and federal schedule C, profit or loss from business, supporting these amounts. Petitioner did not report any “[u]nemployment compensation” on line 14 of the return. After certain adjustments, deductions, credits and withholdings, petitioner reported that he owed \$234.00 in tax. Petitioner paid the amount he self-assessed by electronic funds withdrawal.

2. The Division’s motion papers include a statement of proposed audit change, dated July 26, 2022 and bearing assessment ID L-056619896, for tax year 2021 (statement) asserting that petitioner owes tax in the amount of \$307.00, plus interest. The statement explained that the Division changed petitioner’s 2021 return to include unemployment compensation he received from New York State. Specifically, the statement explained that:

“There is a discrepancy between our records and the amount of Unemployment Compensation you reported on your New York State 2021 Income Tax return. As a result, we changed your federal adjusted gross income to include the Unemployment Compensation you received from New York State. We used the amount that the New York State Department of Labor reported to us on Form 1099-G.

The total amount of Unemployment Compensation you received is taxable to New York State under New York State Tax Law. While you may be eligible to exclude a portion of your Unemployment Compensation on your federal tax return, there is no exclusion for New York State.

If you do not agree with the amount of Unemployment Compensation reported to us, you should get a copy of your 1099-G. Go to the New York State Department of Labor’s 1099-G website at on.ny.gov/1099-G. Follow the instructions on that page to get a copy of your 1099-G.

That website also has a section labeled ‘Disagree with your 1099-G information?’ From that section, you can get a form to fill out and send to the Department of Labor explaining why you think the 1099-G is not correct. If you get a corrected 1099-G from the Department of Labor, send us a copy of the corrected Form 1099-G.

If you believe you may be the victim of Unemployment Compensation fraud or identity theft, contact the Department of Labor at <https://dol.ny.gov/report-fraud>, and then send us a copy of the corrected Form 1099-G.

The following amounts were reported to us by the New York State Department of Labor:

MOHAMED-H	\$ 5,870.00
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Since your federal adjusted gross income was increased, we have adjusted or disallowed any New York State deductions or credits that are based on federal adjusted gross income.

We adjusted your household credit based on our changes.

Based on the information provided, we have adjusted or disallowed your New York earned income credit(s).

We allowed the appropriate NYC school tax credit (rate reduction amount).

We have given credit for tax withheld by NYS Department of Labor in the amount of \$ 147.00.

Interest is due on the underpayment of tax from the due date of the return to the date the tax is paid in full. Interest is required under section 684(a) of the Tax Law.

Need help understanding this notice? Call us at 518-599-6837.”

3. On September 12, 2022, the Division issued a notice of deficiency, bearing assessment ID L-056619896 (notice), asserting that petitioner owes tax in the amount of \$307.00, plus interest, for tax year 2021. The notice explained that “[y]ou have not paid the balance due from the original notice we sent to you on 7/26/2022. That previous notice contains a detailed computation of what you owe.”

4. Petitioner filed a timely petition with the Division of Tax Appeals on October 3, 2022. In section V of the petition, petitioner references the notice. In section VII, petitioner indicates that the amount of tax determined and the amount of tax contested is \$316.42. In section VIII of the petition, petitioner states the following:

“1. The Notice of deficiency states that ‘You received this notice because: You have not paid the amounts due stated in the notice we previously issued.’ But I never received any previous notice.

2. I have paid all taxes due on my 2021 income tax return. I have had it withdrawn directly from my savings account at CHASE BANK. Please see attached statement from Chase Bank.”

5. Accompanying the Division’s motion is the affirmation of Colleen McMahan, Esq., dated May 31, 2024, with attached exhibits. In her affirmation, Ms. McMahan asserts that “even if the Petitioner did not receive the Statement of Proposed Audit Changes [sic], that does not constitute an error on the Commissioner of Taxation and Finance and is accordingly moot.” Ms. McMahan also asserts that “while it is true the Petitioner has paid the amounts he self-assessed, Petitioner has failed to pay the amounts in the Notice that he is protesting, and according [sic], his argument is moot with respect to the validity of the Notice.” Therefore, according to Ms. McMahan, “[a]s there are no material issues of fact and the Petition fails to state a cause for relief, the Division is entitled to Summary Determination in the instance [sic] case as a matter of law.”

CONCLUSIONS OF LAW

A. As noted, the Division brings a motion for summary determination under Tax Law § 2006 (6) and section 3000.9 (b) of the Rules of Practice and Procedure of the Tax Appeals Tribunal (Rules). A motion for summary determination “shall be granted if, upon all the papers

and proof submitted, the administrative law judge finds that it has been established sufficiently that no material and triable issue of fact is presented” (20 NYCRR 3000.9 [b] [1]).

B. Section 3000.9 (c) of the Rules provides that a motion for summary determination is subject to the same provisions as a motion for summary judgment pursuant to CPLR 3212. “The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case” (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985], citing *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). As summary judgment is the procedural equivalent of a trial, it should be denied if there is any doubt as to the existence of a triable issue or where the material issue of fact is “arguable” (*Glick & Dolleck v Tri-Pac Export Corp.*, 22 NY2d 439, 441 [1968]; *Museums at Stony Brook v Village of Patchogue Fire Dept.*, 146 AD2d 572, 573 [2d Dept 1989]). If material facts are in dispute, or if contrary inferences may be drawn reasonably from undisputed facts, then a full trial is warranted and the case should not be decided on a motion (*Gerard v Inglese*, 11 AD2d 381, 382 [2d Dept 1960]).

C. It appears that the basis for the Division’s motion for summary determination is that petitioner did not state a cause for relief in his petition.¹ Whether such basis supports summary determination aside, there remains issues of fact such that a hearing is required. Petitioner reported more than \$16,000.00 of income on his 2021 return. The Division’s motion papers do not include a form W-2 or schedule C supporting the reported amounts. As a result, it cannot be determined whether the \$5,870.00 of unemployment compensation the Division alleges petitioner failed to include, was in fact included in his income, albeit on the wrong line of his

¹ Petitioner claims that he did not receive the statement, which is the only document from the Division that explained to him why he allegedly owed more tax than he self-assessed on his 2021 return. It is unclear how petitioner could adequately state a cause for relief when he did not know why he was assessed in the first instance.

2021 return. In addition, the statement itself contemplates issues of fact by raising the possibility that petitioner did not receive unemployment compensation but instead was the victim of fraud or identity theft. Therefore, the Division has failed to make a prima facie showing of entitlement to summary determination as a matter of law.

D. The Division of Taxation's motion for summary determination is denied, and a hearing will be scheduled in due course.

DATED: Albany, New York
September 19, 2024

/s/ Jennifer L. Baldwin
ADMINISTRATIVE LAW JUDGE