

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition :  
of :  
**THE STUART-CURTIS FAMILY TRUST** : ORDER  
for Redetermination of a Deficiency or for Refund of : DTA NOS. 850386  
New York State and New York City Personal Income : AND 850388  
Taxes under Article 22 of the Tax Law and the :  
Administrative Code of the City of New York for the :  
Years 2011 through 2014. :

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In the Matter of the Petition :  
of :  
**RONALD CURTIS** :  
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 :  
Years 2012 through 2014. :

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Petitioner, The Stuart-Curtis Family Trust, 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 years 2011 through 2014.

Petitioner, Ronald Curtis, 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 years 2012 through 2014.

A formal hearing via videoconference was scheduled before Barbara J. Russo,

Administrative Law Judge, on September 3, 2025, and commenced at approximately 11:16 a.m. Petitioners appeared by Ballon Stoll P.C. (Vano I. Haroutunian, Esq., of counsel). The Division of Taxation appeared by Amanda Hiller, Esq. (Kathleen D. Chase, Esq., of counsel).

At the commencement of the hearing, the Division of Taxation made a motion for a default determination against petitioners for their refusal to participate in the hearing. Petitioners did not oppose the motion for a default determination. Administrative Law Judge Russo issued default determinations against petitioners on October 16, 2025.

Petitioners made a written application, filed on February 12, 2026, that the default determinations be vacated pursuant to 20 NYCRR 3000.15 (b) (3). The Division of Taxation filed a response by March 16, 2026, which date commenced the 90-day period for the issuance of this order.

Based upon a review of the written application and all documents submitted in connection with these matters, Donna M. Gardiner, Supervising Administrative Law Judge, renders the following order.

***ISSUE***

Whether petitioners' application to vacate the default determinations issued should be granted.

***FINDINGS OF FACT***

1. On January 11, 2023, petitioners, The Stuart-Curtis Family Trust and Ronald Curtis, filed petitions with the Division of Tax Appeals protesting conciliation orders issued to them, dated November 10, 2022.

2. A conciliation order, CMS number 000317865, sustained a notice of deficiency, assessment number L-051032060, issued to petitioner, The Stuart-Curtis Family Trust, asserting New York State and New York City personal income taxes for the years 2011 through 2014.

3. A conciliation order, CMS number 000317864, sustained a notice of deficiency, assessment number L-051026749, issued to petitioner, Ronald Curtis, asserting New York State and New York City personal income taxes for the years 2012 through 2014.

4. At the time the petitions were filed, petitioners were represented by Ballon Stoll Bader & Nadler, P.C. (Norman R. Berkowitz, Esq., of counsel).

5. On December 4, 2024, the Hearing Support Unit of the Division of Tax Appeals sent a letter to the parties that informed them that these matters were assigned to Administrative Law Judge Russo and that an initial prehearing conference call was scheduled for December 17, 2024.

6. On December 17, 2024, Administrative Law Judge Russo conducted the prehearing conference call. During this call, the parties chose to proceed with a virtual hearing to take place on March 21, 2025. Administrative Law Judge Russo provided deadlines for the initial submission of documents and concluding with rebuttal documents and hearing memoranda to be submitted to her by March 11, 2025.

7. On February 26, 2025, Vano I. Haroutunian, Esq., sent a letter to Administrative Law Judge Russo to inform her that, due to a serious medical condition impacting Mr. Berkowitz, Mr. Haroutunian was the newly appointed representative for petitioners with respect to their petitions filed with the Division of Tax Appeals. Mr. Haroutunian requested a 90-day adjournment of the hearing, scheduled for March 21, 2025, so that he could prepare for the hearing.

8. Administrative Law Judge Russo granted petitioners' adjournment request and, on March 7, 2025, a prehearing conference call was held for the parties to select a mutually

convenient date for the hearing. The parties agreed to a two-day hearing, to be held on June 26 and 27, 2025, and she created a new schedule for the submission of documents.

9. On June 6, 2025, Mr. Haroutunian sent a letter requesting an adjournment of the hearing scheduled for June 26 and 27, 2025. The basis for this adjournment was that petitioner, Ronald Curtis, was currently in the midst of divorce proceedings and that the documents to support petitioners' position were in the custody of his then-wife. Administrative Law Judge Russo denied this adjournment request stating that petitioners were previously granted an adjournment to provide them with time to prepare for the hearing.

10. On June 16, 2025, petitioners' representative sent another letter to Administrative Law Judge Russo stating that, two days after she denied petitioners' adjournment request, petitioners' former representative passed away and asking that his adjournment request be reconsidered.

11. On June 17, 2025, a prehearing conference call was held to discuss the reconsideration of petitioners' adjournment request. During that call, Administrative Law Judge Russo granted petitioners' request for an adjournment and the parties agreed to hearing dates of August 19 and 20, 2025. Administrative Law Judge Russo stated that no further adjournments would be granted to petitioners.

12. After the conference call was completed, the representative for the Division of Taxation contacted the Hearing Support Unit to state that its witness was unavailable for the August hearing dates.

13. On June 18, 2025, a prehearing conference call was held to select new hearing dates. During this call, the parties selected to have the hearing on September 3 and 4, 2025.

14. On September 3, 2025, the parties appeared at the virtual hearing. Shortly after going on the record, petitioners' representative requested another adjournment because he was not in possession of documents that he claimed were requested in a subpoena.

15. In response to this oral request for another adjournment, the Division's representative stated that, in the 11 years that have elapsed since the beginning of the audit, and through the many requests for information made for records by the Division, nothing was ever produced. The Division's representative argued that this latest request for an adjournment based on the inability to provide documents was simply a delay tactic.

16. Administrative Law Judge Russo denied the adjournment request and stated that petitioners failed to establish that any subpoenas were served in these matters. Administrative Law Judge Russo stated that petitioner Ronald Curtis should have been made available as a witness in this case to testify to the relevant facts.

17. After the ruling was made to deny the adjournment request, the hearing continued and the Division entered its jurisdictional documents into the record and presented its statement of the issues. When it was time for petitioners to present their statement of the issues, petitioners' representative stated, in pertinent part, as follows:

“my client has instructed me to advise the tribunal that he would not be able to have any chance to prepare a defense and he would not have the opportunity to participate in today's proceedings since he has not, you know, despite his efforts and our firm's efforts, he has not been able to obtain [documents] due to the circumstances that I have described.

Accordingly, my client has respectfully asked me not to participate in today's proceeding, understanding that, you know, a decision will be made concerning this hearing. And that, you know, that decision will be made without his participation, without their participation in the hearing.”

18. In response, the Division made a motion for a default determination based upon petitioners' refusal to participate in the hearing. Administrative Law Judge Russo asked

petitioners' representative if he understood that failing to participate would likely result in a default determination. Petitioners' representative responded, "[t]hank you, Judge. My client has asked me not to participate; therefore, I do not oppose [the Division's] motion."

Administrative Law Judge Russo asked him, "[s]o, you are not opposing the motion for a default determination; [i]s that correct?" and petitioners' representative responded, "[t]hat is correct, in light of the court's decision not to grant an adjournment. And the answer is yes." The hearing was then concluded.

19. On October 16, 2025, Administrative Law Judge Russo issued default determinations against petitioners, denying the petitions in these matters.

20. On February 12, 2026, petitioners' application to vacate the default determinations was filed with the Division of Tax Appeals. In his letter, petitioners' representative reiterated the facts as set forth above and restated that he made several requests for an adjournment of the September 3, 2025, hearing based upon petitioners' inability to obtain the documentation and secure a necessary witness. Specifically, petitioners argue that their decision to not participate in the hearing was not willful, but due to their inability to adequately present their case based upon the administrative law judge's wrongful denial of their adjournment request.

Petitioners failed to submit any documentation that established facts to demonstrate a reasonable excuse for their failure to appear or to establish a meritorious case.

21. In its response to the motion to vacate the default determinations, the Division included the affirmation of Kathleen D. Chase, Esq., an attorney employed in the Division's Office of Counsel, dated March 13, 2026, accompanied by 31 attached exhibits that highlight the request for documents made by the Division over the years and correspondence from petitioners' former representative that all consistently state that petitioners were unable to access any of the

documents requested by the Division during the audit. The Division argues that petitioners have not presented a valid excuse for their conscious decision not to participate in the scheduled hearing, on September 3, 2025, nor have they submitted any evidence of a meritorious case.

### ***CONCLUSIONS OF LAW***

A. As provided in the Rules of Practice and Procedure of the Tax Appeals Tribunal (Rules):

“[i]n the event a party or the party’s representative does not appear at a scheduled hearing and an adjournment has not been granted, the administrative law judge shall, on his or her own motion or on the motion of the other party, render a default determination against the party failing to appear” (20 NYCRR 3000.15 [b] [2]).

The Rules further provide that, “[u]pon written application to the supervising administrative law judge, a default determination may be vacated where the party shows an excuse for the default and a meritorious case” (20 NYCRR 3000.15 [b] [3]).

B. Petitioners’ representative did appear at the hearing on September 3, 2026, yet stated that he was instructed not to participate. The Division made a motion for a default determination, and petitioners did not oppose the motion. On October 16, 2025, default determinations were issued to petitioners.

C. Once the default determinations were issued, it was incumbent upon petitioners to show an acceptable excuse for not attending the hearing and that they had a meritorious case (*see* 20 NYCRR 3000.15 [b] [3]; *Matter of Estruch*, Tax Appeals Tribunal, May 20, 2010).

In this case, petitioners made a conscious decision that they would not participate in the hearing based upon their contention that their latest adjournment request was improperly denied by the administrative law judge. Petitioners assert that they were effectively prevented from obtaining the documentation needed to support their case. This argument is rejected.

Section 3000.15 (b) (1) of the Rules states, in pertinent part, that: “[a]t the written request of either party, made on notice to the other party and received 15 days in advance of the scheduled hearing date, an adjournment may be granted where good cause is shown.” There is no dispute that petitioners’ latest adjournment request was made orally, at the commencement of the hearing. For these reasons, the administrative law judge properly denied petitioners’ request.

As set forth in the facts above, petitioners requested their first adjournment, on February 26, 2025, asking for a 90-day adjournment of the hearing and such request was granted. Subsequently, due to the death of petitioners’ former representative, petitioners requested another adjournment, which was granted. At that time, Administrative Law Judge Russo stated that petitioners would not be granted any more adjournments. The hearing date was adjourned a third time due to a request from the Division. At the commencement of the hearing, on September 3, 2025, petitioners made yet another request for an adjournment, which was denied. Petitioners argue that this denial was improper and prevented them from proceeding with the hearing.

Petitioners failed to establish any basis for further adjournments in these matters. Although petitioners continue to assert that they were unable to obtain the documents needed to effectively challenge the notices of deficiency issued to them, they failed to demonstrate any meaningful effort to obtain pertinent documents. Petitioners argue that they served subpoenas that were not complied with. However, they presented no evidence that subpoenas were served on any person or that any action was taken to enforce the alleged subpoenas. Also, as stated by the Division, petitioners have been asked to provide documentation for years and petitioners have continuously maintained that they cannot obtain the documents. Petitioners have presented

no argument or evidence to explain why another adjournment would result in a successful effort to secure documentation. Clearly, petitioners have failed to establish any basis for granting this latest adjournment request and it is determined that the administrative law judge properly denied the request (*see Matter of Golub*, Tax Appeals Tribunal, September 8, 2005; *Matter of Campbell*, Tax Appeals Tribunal, January 13, 2000). Therefore, the denial of petitioners' adjournment request is no excuse for their default.

D. Furthermore, petitioners have not established a meritorious case. "In order to meet the meritorious case criterion for vacatur, petitioner must make a prima facie showing of legal merit, and may not rely on conclusory statements unsupported by the facts" (*Matter of Gordon*, Tax Appeals Tribunal, January 29, 2015; *see Matter of Tasty Sub, LLC*, Tax Appeals Tribunal, September 15, 2022). Petitioners' application consisted of unsworn statements and they failed to include any evidence to meet their burden of establishing a meritorious case. As a result, petitioners' application fails on this prong as well.

E. The application of The Stuart-Curtis Family Trust and Ronald Curtis to vacate the default determinations, dated October 16, 2025, is denied.

DATED: Albany, New York  
June 11, 2026

/s/ Donna M. Gardiner  
SUPERVISING ADMINISTRATIVE LAW JUDGE