

STATE OF NEW YORK
DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
AUGUSTINE F. UDO	:	ORDER
	:	DTA NO. 850584
for an Award of Costs Pursuant to Article 41 of the Tax	:	
Law for the Year 2005.	:	

Petitioner, Augustine F. Udo, appearing pro se, filed an application for an award of costs pursuant to article 41 of the Tax Law on May 7, 2026.¹

The Division of Taxation, appearing by Amanda Hiller, Esq. (Peter B. Ostwald, Esq., of counsel) filed a response to the application for an award of costs on June 22, 2026. By permission, petitioner was given until July 1, 2026 to file a reply, which date began the 90-day period for issuance of this order.

Based upon petitioner's application for costs, the Division of Taxation's response to the application, petitioner's reply thereto, the small claims determination, issued on March 30, 2026, and all pleadings and proceedings had herein, Winifred M. Maloney, Administrative Law Judge renders the following order.

ISSUE

Whether petitioner is entitled to an award of costs pursuant to Tax Law § 3030.

¹ Petitioner failed to send a copy of the application to the Division of Taxation. On May 22, 2026, the Division of Tax Appeals forwarded the application to the Division of Taxation. Its response to the application was due by June 22, 2026.

FINDINGS OF FACT

1. Petitioner, Augustine F. Udo, timely filed form IT-201, New York resident income tax return, for the year 2005, that was accepted as filed. The Division of Taxation (Division) issued a notice, assessment number L-029914083, for tax year 2005, to petitioner. The record does not contain any information regarding the assessment date and the amount due on the same.

2. On October 15, 2008, a tax warrant, identification number E120110131W0092, was entered against petitioner's assets in New York County by the New York State Commissioner of Taxation and Finance in the amount of \$120,531.38. The tax warrant related to assessment number L-029914083 for tax year 2005.

3. On April 14, 2020, petitioner filed form IT-201X, New York State amended resident income tax return, for the year 2005 (amended return), reducing the amounts of total income reported and corresponding tax liabilities due for tax year 2005 and seeking a refund of \$63.00.

4. On October 7, 2021, the Division issued an account adjustment notice - personal income tax, which stated that the Division adjusted petitioner's amended return and determined that he was not entitled to a refund.

5. On January 3, 2022, the Division issued a second account adjustment notice - personal income tax (notice), for the year 2005. It contained the same language as set forth in the October 7, 2021, account adjustment notice.

6. On January 10, 2022, the Division issued a notice to vacate tax warrant and release lien to petitioner. The tax warrant was vacated with the New York County Clerk on January 24, 2022. The tax warrant was vacated because the assessment upon which it was docketed was cancelled.

7. On February 8, 2022, the Division issued five refund checks, for a total amount of \$301.25, to petitioner as follows:

Check number	Amount
28455280	\$65.72
28455281	\$71.40
28455282	\$68.42
28455283	\$64.22
28455284	\$31.49

The Division did not explain why it issued the refund checks.

8. On April 21, 2022, petitioner requested a conciliation conference with the Division's Bureau of Conciliation and Mediation Services (BCMS) in protest of the notice.

9. On April 14, 2023, BCMS issued a conciliation order, CMS number 000340247, sustaining the notice.

10. On July 3, 2023, petitioner filed a petition challenging the conciliation order. In his petition, petitioner elected to have the proceeding conducted in the small claims unit.

11. A small claims hearing was held before Presiding Officer Juan Cartagena, in New York, New York, on November 25, 2025, at which petitioner appeared pro se and the Division appeared by Amanda Hiller, Esq. (Kimberly Anderson).

12. At the hearing, petitioner submitted documentation that New York State received payments in the amount of \$5,209.49 in partial satisfaction of the warrant.

13. The presiding officer determined that petitioner's claim should be reviewed pursuant to Tax Law § 697 (d) that provides as follows:

“Special refund authority. - - Where no questions of fact or law are involved and it appears from the records of the tax commission that any moneys have been erroneously or illegally collected from any taxpayer or other person, or paid by such taxpayer or other person under a mistake of facts, pursuant to the provisions of this article, the tax commission at any time, without regard to any period of limitations, shall have the power, upon making a record of its reasons therefor in writing, to cause such moneys so paid and being erroneously and illegally held to be refunded and to issue therefor its certificate to the comptroller.”

The presiding officer also determined that the record established that the tax warrant was vacated and cancelled. Therefore, the presiding officer concluded that the moneys paid on the warrant were erroneously collected and petitioner was entitled to relief under the special refund authority provided in Tax Law § 697 (d). The presiding officer further concluded that petitioner was entitled to a refund in the amount of \$5,209.49, less previous payments in the amount of \$301.25. The small claims determination reflecting the presiding officer’s conclusions was issued on March 30, 2026 and became final on such date.

14. Petitioner filed an application for costs (application) on May 7, 2026. In his application, petitioner asserted that the application was late because his ability to gather and submit the application was complicated by ill health and a hospital procedure. In his application, petitioner claimed “reasonable administrative costs” in the total amount of \$25,805.80 comprised of: \$20,400.00 for his own time at 15 hours per year from 2020 through 2025, totaling 90 hours, for the direct appeal and 10 hours per year from 2005 through 2019, totaling 150 hours for a total of 240 hours at \$85.00 per hour to reflect his finance-professional background, the complexity of the work, medical health related disruption and his pro se status; a total of \$5,250.00 for tax preparer services purportedly paid by petitioner from 2005 through 2019 to a tax preparer “to review the underlying bond-warrant and tax-garnishment issues, analyze the impact on the **2005-year tax treatment**, and advise on steps necessary to preserve the taxpayer’s position” at an

approximate cost of \$350.00 per year; and \$155.80 for out-of-pocket expenses that were listed as follows:

“Schedule A - Out-of-Pocket Expenses

Date	Description	Cost
November 25, 2025	Subway fare to hearing (2 trips at \$2.90 each)	\$5.80
‘As incurred’	Printing and copying (est.)	\$50.00
‘As incurred’	Communications (phone/internet-related, est.)	\$100.00
Total Out-of-Pocket Expenses		\$155.80”

Assuming the application would be granted in whole or in part, petitioner requested that the amount awarded be paid directly to him, separate from and in addition to the refund ordered by the small claims determination, dated March 30, 2026.

15. On June 22, 2026, the Division submitted the affirmation of Peter B. Ostwald, Esq., in opposition to petitioner’s application. In his affirmation, Mr. Ostwald averred that the application was filed beyond the 30-day filing period because the small claims determination in this matter was issued on March 30, 2026 and, to be timely, the application must have been filed by April 29, 2026. Therefore, he asserted that the application must be denied. Mr. Ostwald averred that petitioner’s application consisted of three pages of vague assertions and unsupported estimates of expenses purportedly incurred by petitioner that did not include detailed invoices of the purported expenses and the application did not include any statements or evidence addressing the perquisite that petitioner’s net worth was less than two million dollars at the time the petition was filed. Mr. Ostwald further averred that since petitioner’s application was untimely, he provided no evidence of detailed invoices and no evidence of his net worth within 30 days of the

final judgment, petitioner failed to satisfy the statutory requirements and was not a prevailing party within the meaning of Tax Law § 3030.

16. In his reply, petitioner claimed that the filing irregularity arose in connection with illness and a medical procedure previously explained and provides good cause for any filing delay that the Division characterized as fatal. Petitioner further claimed that his application should be considered on its merits, and any issue concerning form, detail or timing should not defeat relief where the record established petitioner prevailed on the underlying refund claim and incurred expenses in securing that result.

CONCLUSIONS OF LAW

A. Tax Law § 3030 (a) provides, generally, as follows:

“In any administrative or court proceeding which is brought by or against the commissioner in connection with the determination, collection, or refund of any tax, the prevailing party may be awarded a judgment or settlement for:

(1) reasonable administrative costs incurred in connection with such administrative proceeding within the department, and

(2) reasonable litigation costs incurred in connection with such court proceeding.”

B. A prevailing party is defined by Tax Law § 3030 (c) (5) (A), in pertinent part, as follows:

“[A]ny party in any proceeding to which [Tax Law § 3030 (a)] applies (other than the commissioner or any creditor of the taxpayer involved):

(i) who (I) has substantially prevailed with respect to the amount in controversy, or (II) has substantially prevailed with respect to the most significant issue or set of issues presented, and

(ii) who (I) within thirty days of final judgment in the action, submits to the court an application for fees and other expenses which shows that the party is a prevailing party and is eligible to receive an award under this section, and the amount sought, including an itemized statement from an attorney or expert witness representing or appearing in behalf of the party stating the actual time expended and the rate at which fees and other expenses were computed . . . and

(II) is an individual whose net worth did not exceed two million dollars at the time the civil action was filed”

C. Tax Law § 3030 provides for an award of costs to a prevailing party. To establish that it is a prevailing party, a petitioner must file an application within 30 days of the final judgment in the matter and must establish, as relevant herein, his net worth at the time the civil action was filed was less than two million dollars (*see* Tax Law § 3030 [c] [5] [A] [ii]). Petitioner’s application was late. Petitioner filed the application on May 7, 2026. To be timely, the application was required to be filed by April 29, 2026. In addition, the application contained no statement or proof that petitioner’s net worth did not exceed two million dollars at the time the civil action was filed.

Since petitioner’s application was untimely and did not include a statement regarding his net worth, petitioner failed to meet the requirements of Tax Law § 3030 (c) (5) (A) (ii). Therefore, petitioner has not established that he is a prevailing party. Accordingly, petitioner is not entitled to costs.

D. Augustine E. Udo’s application for an award of costs is denied.

DATED: Albany, New York
September 24, 2026

/s/ Winifred M. Maloney
ADMINISTRATIVE LAW JUDGE