NEW YORK CITY TAX APPEALS TRIBUNAL

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| In the Matter of | : | ORDER |
| SAMUEL D. FRIEDMAN | : | TAT (E) 03-21 (UB)<br>TAT (E) 03-22 (UB)<br>TAT (E) 03-23 (UB) |
| Petitioner. | : | |

Samuel D. Friedman ("Petitioner") timely filed an Exception to a Determination of an Administrative Law Judge ("ALJ") dated June 8, 2006 ("ALJ Determination"), which sustained (1) notices of disallowance issued by the New York City Department of Finance (the "Department") denying refunds of New York City Unincorporated Business Tax ("UBT") for tax years 1992 and 1993 and (2) notices of determination issued by the Department asserting UBT deficiencies for tax years 1994 through 2000.

Upon the Memorandum of Law in Opposition to the Application of the Rule of Necessity submitted on behalf of Petitioner dated November 7, 2006; the Brief of the Commissioner of Finance of the City of New York ("Respondent") on the Rule of Necessity, dated November 8, 2006; the Reply Brief of Petitioner on the Rule of Necessity, dated November 20, 2006; and the Reply Brief of Respondent on the Rule of Necessity, dated November 21, 2006, the Tribunal issued an Order, dated April 30, 2007, which placed this matter on hold sine die "until such time as a court of competent jurisdiction issues an order compelling [the Tribunal] to proceed or providing for an alternative solution, or until such time as circumstances otherwise permit the Tribunal to proceed" ("Adjournment Sine Die Order").

The Adjournment Sine Die Order was the result of the recusal of two of the three Tribunal Commissioners at the time, including Commissioner Robert J. Firestone, because of their prior representations relating to this matter.[1] Section 169.d of the New York City Charter provides that upon the request of any party, the Tribunal is required to review en banc a determination of an administrative law judge, and that "not less than two votes [i.e., two Commissioners] shall be necessary to take any action".

In the Adjournment Sine Die Order, the Tribunal specifically noted that either Petitioner or Respondent could pursue an Article 78 proceeding in the nature of mandamus or prohibition pursuant to NY Civil Practice Laws and Rules § 7803(1) or (2). To date, neither party has done so. Pursuant to the Adjournment Sine Die Order, "[c]ircumstances otherwise permit[ting] the Tribunal to proceed" include a composition of Commissioners on the Tribunal where at least two of the three Commissioners need not be recused from hearing this matter. See generally Adjournment Sine Die Order.

As of September 2024, there are now two Commissioners on the Tribunal who need not be recused from this matter.[2] Accordingly, on July 17, 2025, the Tribunal sent the parties a letter notifying them that "[c]ircumstances now permit the Tribunal to proceed with this matter" and requested that the parties provide their availability for oral argument. The parties requested, and the Tribunal granted, a series of adjournment

[1] Petitioner and Respondent both moved for recusal.
[2] The Mayor of the City of New York appoints Commissioners to the Tax Appeals Tribunal pursuant to Section 168 of the New York City Charter.

requests for the parties to explore a possible resolution of this matter; however, no resolution was reached.

On February 3, 2026, Petitioner's counsel submitted a letter to the Tribunal contending both that the case should be dismissed on the grounds that the Tribunal's delay in hearing the case denied the taxpayer due process and the doctrine of laches applies, and that the ALJ Determination was wrong on both the facts and the law. Petitioner's counsel stated in the letter, "No New York Life insurance agent, other than Mr. Friedman, has ever been subject to UBT on his income from policies written for his employer. Nor are we aware of any UBT audit of any other insurance agent either before or in the 20 years since the ALJ issued her determination in this matter".[3]

On February 26, 2026, Petitioner filed a Notice of Motion and Motion to Dismiss the Notices of Determination and Grant Petitioner's Claim for Refund by Default Judgment, as well as a supporting memorandum and affidavit. On March 25, 2026,

[3] Petitioner understandably does not raise the laches doctrine in his Motion to Dismiss the Notices of Determination and Grant Petitioner's Claim for Refund by Default Judgment. "It is settled that the equitable doctrine of laches may not be interposed as a defense against the State when acting in a governmental capacity to enforce a public right or protect a public interest" Matter of Cortlandt Nursing Home v. Axelrod, 66 N.Y.2d 169, 178 n. 2, 495 N.Y.S.2d 927, 486 N.E.2d , *cert. denied* 476 U.S. 1115, 106 S.Ct. 1971, 90 L.Ed.2d 655. (Ct. of Appeals 1985). Moreover, the doctrine of laches has no application when plaintiffs allege a continuing wrong. See Matter of Burke v. Sugarman, 35 N.Y.2d 39, 45, 358 N.Y.S.2d 715, 315 N.E.2d 772 (Ct. of Appeals 1974).

Petitioner contends that Petitioner is the only taxpayer to have ever been audited and subject to UBT on his income from policies written for his employer. If true, then arguably Petitioner has benefited from the passage of time and information collected over a 20-year period to be able to make this point.

Respondent filed Respondent's Memorandum of Law in Opposition to Petitioner's Motion to Dismiss. There was no oral argument on Petitioner's motion.

Petitioner is represented by Joseph Lipari, Esq. of Roberts & Holland LLP and Respondent is represented by Adam C. Dembrow, Esq., Assistant Corporation Counsel, New York City Law Department.

Petitioner contends that he is entitled to the relief sought because the Tribunal's delay in hearing this matter has deprived Petitioner of due process and fundamental fairness, and he has been irreparably harmed. Respondent contends that there is no basis for dismissing the notices of determination and reversing the denial of Petitioner's refund claim because, unlike the cases Petitioner relies upon, here "there is an extremely good explanation" for the delay: "the legal and ethical need for two unbiased commissioners to hear the exception".

Respondent points out that the Court of Appeals has said that "[a] court should be extremely reluctant to hold agency inaction unreasonable where the delay is attributable to a lack of resources" and that, "[w]hile the length of the delay in processing a complaint is certainly relevant to the determination whether a particular respondent has suffered substantial prejudice from that delay, the mere passage of time normally will not constitute substantial prejudice in the absence of some showing of actual injury to the respondent". Matter of Cortlandt Nursing Home v. Axelrod, 66 N.Y.2d 169, 181, 495 N.Y.S.2d 927, 486 N.E.2d 785, *cert. denied* 476 U.S. 1115, 106 S.Ct. 1971, 90 L.Ed.2d

655) (Ct. of Appeals 1985); Matter of Sarkisian Bros. v. State Div. of Human Rights, 48 N.Y.2d 816, 818, 424 N.Y.S.2d 125, 399 N.E.2d 1146 (Ct. of Appeals 1979).

Petitioner on the one hand acknowledges that the two recused Commissioners "had direct [previous] involvement in the matter"[4] but on the other hand contends that the notices of determination should be dismissed and the denial of Petitioner's refund claim should be reversed "due to continued and unwarranted delay of the proceedings" and "on the ground that the almost 20 year delay…has deprived Petitioner of due process and fundamental fairness". Petitioner contends that the lack of resolution resulted in a lack of clarity for Petitioner for later tax periods, particularly because the unresolved issues in this case resurface in notices of determination for subsequent years.

Petitioner cites to Matter of Harry Heller v. Chu, 111 A.D.2d 1007, 490 N.Y.S.2d 326, *appeal dismissed* 66 N.Y.2d 696, 496 N.Y.S.2d 424, 487 N.E.2d 281 (App. Div. 3d Dept. 1985), for the "principle that 'under certain circumstances a delay may be so excessive as to be "contrary to fundamental notions of fairness" and may "constitute substantial prejudice, even in the absence of some showing of actual injury."' Id. at 327". While Petitioner states that in that case, "[t]he lengthy delay was itself held to be prejudicial to the petitioner", as Respondent points out, Petitioner may be missing that it was the absence of an explanation for the delay which led the court to annul the determination:

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[4] Petitioner not only acknowledges the conflicts of interest that led to the recusals in the first place but also states in his Memorandum of Law, "It is understood that the situation arose through the fault of none of the parties to this matter or the Tribunal".

> "We are deeply disturbed by the delay which has characterized this matter. *Without explanation*, it took the Tax Commission 12 years to schedule and hold a hearing and to file an answer. It took another four years before the Tax Commission issued a determination following the hearing. Such inordinate, *unexplained delay* cannot pass scrutiny. We recognize that the time periods imposed on administrative agencies are merely directory (<u>see</u>, <u>e.g.</u>, <u>Matter of Geary v. Commissioner of Motor Vehicles of State of N.Y.</u>, 92 A.D. 2d 38, 40, 459 N.Y.S.2d 494 aff'd. 59 N.Y.2d 950, 466 N.Y.S.2d 304, 453 N.E.2d 533) and that, where a party suffers substantial prejudice, unreasonable delay by an administrative agency does not deprive the agency of jurisdiction. An unreasonable delay can, however, constitute an erroneous exercise of discretion (<u>see</u>, <u>e.g.</u>, <u>Matter of Erdos v. New York State Dept. of Educ.</u>, 105 A.D.2d 504, 481N.Y.S.2d 457). The inordinate, *unexplained delay* by the Tax Commission in this case cannot pass scrutiny for it constitutes such an erroneous exercise of discretion.
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> *In the absence of an explanation* from the Tax Commission for the extensive delay present in this case, we conclude that the 12 to 16–year delay in scheduling and holding a hearing, filing an answer and issuing a determination constitutes an erroneous exercise of discretion which requires annulment of the determination." (emphasis added).

<u>Matter of Harry Heller v. Chu</u>, 111 A.D.2d 1007, 1008-1009.

Petitioner apparently cites to <u>In the Matter of the Petition of E. George Badcock, III.</u>, DTA No. 819742 (Jan. 12, 2006) for the proposition that a 12-year delay in holding a conciliation conference after the petitioner had filed a petition may appropriately lead to the cancellation of the assessment because 12 years is "excessive" and "not normal" delay. As with <u>Matter of Harry Heller v. Chu</u>, however, the Tribunal in that case focused on the fact that there was "no reasonable explanation in the record for the inordinate and excessive delay". Moreover, the Tribunal noted that "there is no evidence in the record to even suggest that petitioner was in any way responsible for any part of the delay".

While Petitioner argues that "[a]ll of the delays were made through no fault of Petitioner", as noted in the Adjournment Sine Die Order, Petitioner had the opportunity to pursue an Article 78 proceeding anytime since April 30, 2007, but declined to do so.

Petitioner also argues that he has been irreparably harmed, contending that in the event the Exception is denied and Petitioner wishes to challenge the assessment by way of an Article 78 proceeding, he will be required to pay or bond the full amount of tax and interest exceeding $3,000,000 because of the "20 year period of delay". Petitioner, on the flip side, may benefit from interest on UBT overpayments if Petitioner is ultimately successful. N.Y.C. Admin Code §11-528(a). Taxpayers, in any event, generally can eliminate or reduce the running of interest at any time pursuant to N.Y.C. Admin. Code §11-530(c).

Here, as we noted in the Adjournment Sine Die Order and as both Petitioner and Respondent acknowledge, our delay in being able to hear this case was the result of conflicts of interest that led to the recusal of two of the three Commissioners necessary for the Tribunal to be able to hear this case. Once two unconflicted Commissioners were able to hear this case following Mayoral appointment the Tribunal resumed to do so.

Petitioner has neither established irreparable harm in this case (particularly where Petitioner chose not to pursue an Article 78 proceeding, did not take steps to mitigate interest risk, and has the benefit of hindsight in now being able to make certain arguments based on 20 years of additional data) nor shown that in these circumstances the harm alleged should change the outcome under the law.

Therefore, we deny Petitioner's Motion to Dismiss the Notices of Determination and Grant Petitioner's Claim for Refund by Default Judgment.[5]

IT IS SO ORDERED.

Dated: April 13, 2026
New York, NY

/s/
Neil Schaier
President and Commissioner

/s/
Vlad Frants
Commissioner

[5] We have considered all the other arguments of the Parties and find them unpersuasive.