Revisiting *Mahoney-Buntzman v. Buntzman*: As Absolute as It Is Thought To Be?

By Lee Rosenberg, Editor-in-Chief

You are in a conference with the court or opposing counsel and you allege the other party has unreported/hidden cash, when the magic words are spoken: "They signed joint tax returns, your client is bound by the income set forth—*Mahoney-Buntzman*!"[1] We hear this (and say it) all the time. But is it always true? We know that the court is not bound to accept the income set forth on the tax returns,[2] but what about the litigants? What about matters other than income? The answer is, facts (as usual) matter, and there is ample authority for the argument to be made against the application of *Mahoney-Buntzman* where circumstances permit.

The Court of Appeals' decision in *Mahoney-Buntzman*, modifying the Second Department,[3] approved of the trial court's analysis[4] as to the use of estoppel in determining that the husband could not alter the characterization of his stock interest from marital property to separate property due to the representations in the tax return.[5]

> . . . the trial court properly exercised its discretion when it classified the money received by husband pursuant to the settlement agreement as marital property, given the fact that husband made representations that the money was business income for tax purposes. A party to litigation may not take a position contrary to a position taken in an income tax return (*see Meyer v. Insurance Co. of Am.*, 1998 WL 709854, 1998 U.S. Dist LEXIS 15863 [S.D.N.Y. 1998]; *Naghavi v. New York Life Ins. Co.*, 260 A.D.2d 252, 688 N.Y.S.2d 530 [1st Dep't 1999]; *Zemel v. Horowitz*, 11 Misc.3d 1058[A], 2006 N.Y. Slip Op 50276[U], [Sup Ct, N.Y. County 2006]). Here, husband does not dispute that, in accordance with his settlement agreement, he reported the $1,800,000 in settlement proceeds as business income on his federal income tax return, in which he swore that the representations contained within it were true. We cannot, as a matter of policy, permit parties to assert positions in legal proceedings that are contrary to declarations made under the penalty of perjury on income tax returns.

Elements

The underlying cases cited by the Court of Appeals, *Meyer v. Insurance Co. of Am.*, 1998 WL 709854, 1998 U.S. Dist LEXIS 15863 [S.D.N.Y. 1998]; *Naghavi v. New York Life Ins. Co.*, 260 A.D.2d 252, 688 N.Y.S.2d 530 [1st Dep't1999]; and *Zemel v. Horowitz*, 11 Misc.3d 1058[A], 2006 N.Y. Slip Op. 50276[U], [Sup Ct, N.Y. County 2006]), however, demonstrate the strict limitations of the holding and the elements needed to apply estoppel:

i. inconsistent affirmative declarations of fact taken by a party;

ii. without explanation;

iii. to the prejudice of the adverse party

are the common points between the matters in which the courts have invoked the doctrine of estoppel to prevent parties from accepting the benefits of a transaction or statute and then subsequently taking an inconsistent position to avoid the corresponding effects.

The *Mahoney-Buntzman* trial court[6] provides analysis,

> As Zemel, Ginor, Naghavi and other cases make clear (*see Meyer v. Insurance Co. of America, supra*; *Matter of Davidson, supra*), it is the act of obtaining the benefit of a tax law provision or regulation by the making of a representation in a tax return, a document executed with the same effect as the taking of an oath, which works to bind a party to the representation made therein, and to prevent him from assuming a position contrary to that representation in a later dispute, "simply because his or her interests have changed" (*Festinger v. Edrich*, 32 A.D.3d 412, 820 N.Y.S.2d 302 [2d Dep't 2006]; *see Matter of Davidson, supra*, 947 F.2d, at 1297; *see also Kaneb Services, Inc. v. FSLIC*, 650 F.2d 78,81 [5th Cir.1981] ["It is recognized that under the doctrine of equitable estoppel a party with full knowledge of the facts, which accepts the benefits of a transaction, contract, statute, regulation, or order may not subsequently take an inconsistent position to avoid the corresponding obligations or effects"]). Thus, courts have consistently applied the quasi-estoppel doctrine

> in those circumstances because our judicial system "cannot tolerate" litigants who play "fast and loose with the courts'" (*Ford Motor Credit Co. v. Colonial Funding Corp.*, 215 A.D.2d 435,436 [2d Dep't 1995] [internal citations omitted]). Moreover, in their application of that doctrine, they have eschewed defendant's proposed approach of considering the intent of the parties which led to the reporting of the information for income tax purposes (*see Zemel v. Horowitz, supra*; *Estate of Ginor v. Landsberg, supra*; *Matter of Davidson, supra*). And in this case, so shall this Court. (footnotes omitted).

The underlying notion of the binding nature of the tax returns per *Meyer* is that "IRS regulations require that a tax return contain, or be verified by, a signed declaration by the taxpayer that it is made under the penalties of perjury. *See, e.g.*, 26 U.S.C. § 6065 ("any return, declaration, statement, or other document required to be made under any provision of the internal revenue laws or regulations shall contain or be verified by a written declaration that it is made under the penalties of perjury") . . . "[7] The ultimate holding in *Meyer* is, however, not all encompassing when the facts do not fall within the elements of estoppel. In looking at the insurance company position on a claimed disability, the court in *Chan v. Hartford Life Ins. Co.*,[8] compared the circumstances with those in *Meyer*,

> To support this estoppel argument, Hartford cites *Meyer v. Ins. Co. of Am.*, No. 97 Civ. 4678, 1998 WL 709854 (S.D.N.Y. Oct. 9, 1998) (Peck, M.J.), and *Naghavi v. New York Life Ins. Co.*, 688 N.Y.S.2d 530 (App. Div., 1st Dep't 1999).[9] In Meyer, the court found that the plaintiff was "bound by her sworn representations in her tax return" and that her estate would be "estopped from now taking a position inconsistent with [her] representations to the IRS." 1998 WL 709854, at 10 (citing cases). In that case, however, the claimant had in the past declared a business deduction for losses, indicating she was involved in a trade or business. The court held that her estate was therefore prevented from claiming that she was totally disabled during the relevant time period. *Id.* at 9-10 & n.9. Chan, in contrast, simply has reported earned income. In fact, according to Chan's memorandum, ABC was changed, at Chan's urging, from a C-corporation to an S-corporation, Chan was a passive shareholder, and "[t]he plaintiff and the other shareholders have been paid on a K-1 basis for sometime [sic]." (Memorandum of Law in Opposition to Defendant's Motion for Summary Judgment (Opp.) at 20-21.) In fact, the Meyer court specifically addressed K-1 filings, and found that the plaintiff's K-1 filings did not necessarily indicate actual participation, but could be based on the participation of the taxpayer's spouse, and therefore explicitly did not base estoppel on those filings. 1998 WL 709854, at 12-13.

Naghavi, likewise, does not shed much light on the estoppel issue. Naghavi dealt with a plaintiff who was required under the disability policy in question to have "earned income," defined as an amount "reportable for personal federal income tax purposes," in an amount of over $16,000 per year. 688 N.Y.S.2d at 530-31. Although the plaintiff argued that his actual income was more than this minimum, his reported income was less, and the court held that he would be bound by the representations on his income tax returns. *Id.* at 531. Chan's filings, however, do not implicate a specific definition in the Hartford policy, and Naghavi is not directly applicable to her situation.

Hartford argues that changes to ABC's corporate form and the nature of Chan's earnings are outside the scope of the administrative record, and therefore are not to be considered on this motion. (R. at 5 (quoting *Piscottano v. Metro. Life Ins. Co.*, 118 F.Supp.2d 200, 210 (D.Conn.2000) (confining scope of court's review to administrative record).) Even if one considers Chan's assertions regarding her income as well as the social security report, the exact nature of her 1999 income and the timing of any corporate changes remain unclear. In fact, Hartford requested Chan's tax forms for 1999 and 2000, although the forms were apparently sent to Chan directly, and Hartford eventually made its decision without reviewing them. (App. at 37 (Letter of 2/25/02 from Workin to Katz Regarding Termination of Benefits).) As a result, *without more information regarding her income, Chan is not estopped from arguing that she was not working during the time in question.* (emphasis added).

Defenses and Applicability

The court in *Am. Mfrs. Mut. Ins. Co. v. Payton Lane Nursing Home, Inc.*,[10] also provides limitations and defenses to the use of the estoppel argument,

> Judicial estoppel aims to 'preserve the sanctity of the oath by demanding absolute truth and consistency in all sworn positions' and to 'protect judicial integrity by avoiding the risk of inconsistent results in two proceedings.' *Negron v. Weiss*, No. 06–CV–1288, 2006 WL 2792769, at *3 (E.D.N.Y. Sept. 27, 2006) (quoting Bates, 997 F.2d at 1038). *However, the application of judicial estoppel is highly fact-specific. See, e.g., United States v. West Prods., Ltd.*, 168 F.Supp.2d 84, 88–89 (S.D.N.Y.2001) (summarizing cases). *Within the Second Circuit, the "application of judicial estoppel is limited to situations where the risk of inconsistent results threatens the integrity of the judicial process." Simon, 128 F.3d at 72–73. In other words, the previous purported inconsistent statement must have a material effect on the outcome of the subsequent proceeding. Judicial estoppel does not apply "if the statements or positions in question can be reconciled in some way . . ."* Negron, 2006 WL 2792769, at *4 (*citing* Simon, 128 F.3d at 72–73). *Similarly, the doctrine does not apply if the initial statement was the result of a good faith mistake or an unintentional error. Id.* (emphasis added)

Bearing in mind that there are defenses to the applicability of estoppel, the perpetration of fraud by one spouse will also serve to preclude binding the other spouse. Consider, *Rubin v. Rubin*,[11]

> Another defense to equitable estoppel, one that has significantly delayed disposition of the summary judgment motion, is Polly's alleged fraud, premised on the well-settled rule that, absent fraud, a person who signs a document, here the Form 706, is conclusively presumed to know its contents and to assent to it, even if he fails to read it (*Metzger v. Aetna Ins. Co.*, 227 N.Y. 411 [1920]; *Johns–Manville Sales Corp. v. Stone*, 5 A.D.2d 110 [1st Dept 1957]). To the extent that Richard argues that estoppel should not apply because he and Robert were unaware that the larger Robinson painting was included in the inventory of Stephen's estate, because of Polly's fraud, this is a potentially viable defense.

The filing of joint tax returns does not automatically preclude arguments against the use of estoppel. And, particularly in the age of electronic filing, how often do both spouses actually sign the e-filing authorizations?[12] Does an email to the accountant suffice and would it bind the non-emailing spouse? In 2020's *PH-105 Realty Corp v. Elayaan*,[13] the First Department held, "tax estoppel" to apply where the "defendants' acts in filing corporate tax returns for the years 2010 through 2014, signed by defendant Elayan, which contained factual statements that plaintiff Jaber had a 75% ownership interest in Edgewater during that time period, and precludes defendants from taking a position contrary to that in this litigation." But, noted that the defendant signed the returns and failed to assert any basis for not crediting the statements.

This contingency was reiterated in *Platt as co-trustees of Platt Fam. Artwork Tr. v. Michaan*,[14]

> Under the doctrine of tax estoppel, "a party to litigation may not take a position contrary to a position taken in an income tax return." *Mahoney-Buntzman v. Buntzman*, 12 N.Y.3d 415, 422, 881 N.Y.S.2d 369, 909 N.E.2d 62 (2009). It is undisputed that Timo represented on tax documents that Louise's and Thomas' estate "owned" the Tiffany art that each decedent possessed at the times of their deaths. According to Plaintiffs, this was done to avoid estate tax proceedings with the IRS. It is also undisputed that these representations are inconsistent with the litigation position Plaintiffs take in the instant case. Doc. 156 ¶ 51 ("Plaintiffs take the position in this litigation that Tiffany artwork 'passed outside' Thomas Platt's estate even though, for tactical reasons, they stipulated that the artwork could be considered as part of the Estate to avoid expensive and lengthy disputes with federal and state tax authorities.").
>
> However, the doctrine of tax estoppel is only applicable when "the party seeking to contradict the factual statements as to ownership in the tax returns *signed the tax returns, and has failed to assert any basis for not crediting the statements.*" (emphasis in original)

Tax filings which have been substantially amended and referenced unsigned documents, have been held not to support an estoppel finding.[15]

> Defendant cites no support for his implicit position, that tax filings containing sworn statements that have been substantively altered by amendment can serve as the basis for tax estoppel, and no other record evi-

dence supports his theory that the transfer was a distribution to him. Defendant's reliance on the K–1 schedules is unavailing because those forms were not signed, and thus cannot serve as a basis for tax estoppel (e.g. *Tradesman Program Mgrs., LLC v. Doyle*, 202 A.D.3d 456, 457, 163 N.Y.S.3d 10 [1st Dep't 2022]).

Even on signing the returns, however, a party may find a way out – if the argument is credible. In the recent *Graham Ct. Owners Corp. v. Memminger*, 81 Misc. 3d 1248(A), 204 N.Y.S.3d 921 (N.Y. Civ. Ct. 2024) the lower court looked to appellate authority.

> In *Matter of Ansonia Assocs. L.P. v Unwin*, 130 AD3d 453 (1st Dept 2015), the Appellate Division, First Department found that the tenant's "position that the apartment is her primary residence" was "logically incompatible" with and "contrary to declarations made under the penalty of perjury on income tax returns." (Unwin, 130 AD3d at 454 [internal citations and quotation marks omitted]; *see also Mahoney-Buntzman v. Buntzman*, 12 NY3d 415, 422 ["A party to litigation may not take a position contrary to a position taken in an income tax return."] [internal citation omitted].)
>
> *Notwithstanding the foregoing, other courts have relied on testimonial evidence which outweighed the absence or contradictory nature of information provided on income tax returns.* In *631 Edgecombe, LP v. Walker*, 69 Misc 3d 145 (A), 2020 NY Slip Op. 51395 (U) (App Term, 1st Dept 2020), the Appellate Term, First Department found that "[t]he absence of certain other documentation, such as respondent's tax returns and cell phone records, is not dispositive, since the court accepted his excuse for failing to produce such records, i.e., he lacked assets and did not file tax returns, and there is a preponderance of credible personal testimony." (Walker, 2020 NY Slip Op. 51395 [U], 1 [internal quotation marks and citations omitted].) In *300 E. 34th St. Co. v. Habeeb*, 248 AD2d 50 (1st Dept 1997), the Appellate Division, First Department held under the facts and circumstances of that case that "while documentation, or the absence thereof, might be a significant factor in evaluating primary residency, especially in the case of the dubious credibility of witnesses, it would not be a dispositive factor especially when there is a preponderance of credible personal testimony." (Habeeb, 248 AD2d at 55 [internal citations omitted]; *see also 111 Realty Co. v. Sulkowska*, 21 Misc 3d 53, 54 [App Term, 1st Dept 2008] ["A tenant's declaration of residence on a tax-related document, while one of many factors to be considered in determining primary residence, is not dispositive as a matter of law, especially in the context of a motion for summary judgment."] [internal quotation marks and citations omitted].) (emphasis added)

The Fourth Department in *Robert Owen Lehman Found., Inc. v. Israelitische Kultusgemeinde Wien*,[16] also found estoppel to be inapplicable where there is no "affirmative assertion."

> [T]ax estoppel' is applied where a party's subsequently-adopted litigation position flatly contradicts express assertions previously made in tax filings . . ., but the omission of an asset leaves all questions in regard to it open" (*Angiolillo v. Christie's, Inc.*, 185 A.D.3d 442, 443, 127 N.Y.S.3d 105 [1st Dep't 2020]; *see Matter of Elmezzi*, 124 A.D.3d 886, 887, 3 N.Y.S.3d 62 [2d Dep't 2015]). Here, tax estoppel does not prevent plaintiff from contending that it owns the artwork because plaintiff did not affirmatively assert in its tax return that it did not own the artwork; it simply did not list the artwork in a schedule of gifts that it received in 2016.

Estoppel has also be held not to apply to issues of "marital status" as provided in *S.F. v. J.S.*,[17]

> Defendant is not aided by the holding in *Mahoney-Buntzman v. Buntzman* (12 NY3d 415 [2009]), which found that a party is estopped from taking a position on an issue of fact that was contrary to information provided in tax filings. The holding in *Mahoney-Buntzman* does not apply to the question of marital status, which is a complex mix of fact and law (*see In re Tran*, 2014 WL 2216162 [Surrogate's Court, Ny Cty 2014][holding it inappropriate to estop party on issue of marital status, or for the Court to determine marital status, merely because a party filed taxes as "single" for 11 years]). This Court will not determine the parties' marital status based on the parties filing as single for one year, or based on the parties having mistakenly filled out other paperwork.

The First Department in *Spalter v. Spalter*,[18] has affirmed marital status as being a "mixed question of law and fact" precluding the application of tax estoppel. But the doctrine has been applied in *G.P. v. S.S.*,[19] to the legitimacy of a child born during the marriage where parentage is nevertheless suspect.

> The issue before the Court is whether or not this Court should grant the husband[] a DNA test for the subject child, born during the parties' marriage and entitled to a presumption of legitimacy, based upon an unsubstantiated and uncorroborated allegation of an extramarital affair on the part of the mother.2 In effect, the Court—under it's duty as parens patriae (*see generally Spath v. Willis*, 71 AD2d 489 (3d Dep't 1980)), which duty this Court will not abrogate—must intervene to determine whether or not it is in the best interests of the child (not the parents) to order such testing. Implicit in that question is a secondary question: whether or not the Court must conduct a hearing to determine whether it is in the child's best interests to order a DNA test with respect to same. For the reasons that follow in this Decision and Order, the Court answers both questions in the negative.
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> . . . The Court has reviewed the parties' jointly filed 2019 income tax return. It is undisputed that the parties jointly claimed the child on their tax returns, and listed the Child as their "daughter" on their jointly filed income tax return. A party to litigation may not take a position contrary to a position taken in an income tax return. *Mahoney-Buntzman v. Buntzman*, 12 NY3d 415 (2009). IRS regulations require that a tax return contain, or be verified by, a signed declaration by the taxpayer that it is made under the penalties of perjury. *Meyer v. Insurance Co. of America*, 1998 U.S. Dist. LEXIS 15863, 1998 WL 709854 (U.S. District Court Southern District 1998). Since it is undisputed that the parties filed a joint tax return wherein the subject Child was claimed thereon as a "daughter", the Court likewise relies upon same.

In the recent *L.K.F. v. M.T.F.*,[20] the court declined to apply *Mahoney-Buntzman* where *both* parties asserted claims contrary to the tax returns on a separate property/appreciation issue.

> This Court certainly recognizes the Court of Appeals holding in *Mahoney-Buntzman v. Buntzman*, which provides, *inter alia*, that a party to litigation may not take a position contrary to a position taken in an income tax return. *Mahoney-Buntzman v. Buntzman*, 12 NY3d 415 (2009). However, the parties pre-and-post-commencement income tax returns are conflicting (to some degree) in this regard, so the Court declines to apply the principles of *Mahoney-Buntzman* to *both parties, as, to some degree, they both have effectively taken inconsistent positions* (*see* infra).
>
> . . . As reiterated herein, but as argued by the Husband within the context of any claim to appreciation, the Court rejects the Husband's argument that the Wife's tax filings are, in effect, dispositive that the Wife undertook active involvement in XXXX. Indeed, while the parties' own tax returns from 2020 and (initially) the Wife's (nonamended) tax return from 2021 reflect nonpassive income, the Court cannot ignore that the parties' *jointly filed* income tax returns - which were all prepared by the Husband - from 2016, 2017, 2018 and 2019 reflected passive income from XXXX. In fact, the parties *jointly* represented on double the amount of tax returns - prepared by the Husband himself - that the income from XXXX was passive as opposed to nonpassive. It is for this reason that the Court declines to extend *Mahoney-Buntzman* to both of these parties (*see supra*). The saying comes to mind: what's good for the goose is good for the gander. Put a different way, while the Husband argues that the Wife, in effect, should be bound by her tax filings representing her income from XXXX as nonpassive in 2020 and 2021, the Court, with equal vigor, could have applied that concept to the Husband, who represented that the Wife's income from XXXX was passive in years 2016, 2017, 2018 and 2019. The Court therefore does not buy into the Husband's argument that the income from XXXX was nonpassive, thus making it subject to a claim of appreciation. The Court also vetoes the Husband's argument that he is a "layperson"; his status as a layperson does not excuse his representations and certifica-

tions to the taxing authorities. (emphasis in original)

Income

But what about income?? Knowledge is key and facts/credibility come into play. This is especially true where business income is reported in some form on the parties' joint returns. The Third Department in *Susko v. Susko*[21] (citing, *inter alia*, to the Third Department's prior determination in *Harrington v. Harrington*[22]) addressed the husband's under-reporting of business income and reversed the lower court's declination to impute income where a joint return had been signed by the wife upon her assertion that he had failed to report his true business income on his tax returns,

> A court is not bound by a parent's representations of his or her financial condition and may impute income when the record supports a finding that the parent has underreported earnings from a 1021 business (*see Pfister v. Pfister*, 146 A.D.3d 1135, 1137, 47 N.Y.S.3d 140 [2017]; *Matter of Rubley v. Longworth*, 35 A.D.3d at 1130, 825 N.Y.S.2d 839) or has voluntarily reduced his or her income (*see Matter of Kelly v. Bovee*, 9 A.D.3d 641, 641–642, 779 N.Y.S.2d 656 [2004]). Here, the Support Magistrate gave some credit to the mother's assertion that the father had failed to report his true business income on his tax returns, stating that "there certainly could be some merit in this contention," but nevertheless declined to impute business income to the father, stating that the mother had signed joint tax returns during the marriage that were "similar to [the father's] 2017 return." This determination has no support in the record. No joint tax returns were admitted into evidence, and there was no testimony as to the amounts of business income reported in the joint returns.[] In any event, "the [mother] did not waive her right to challenge the [father's] claims regarding his annual income simply because she had previously signed joint tax returns" that reported a lower income (*Harrington v. Harrington*, 93 A.D.3d 1092, 1093–1094, 941 N.Y.S.2d 320 [2012])., 181 A.D.3d 1016, 1020–21, 118 N.Y.S.3d 810, 816–17 (3rd Dept 2020).

In *Al E. v. Joann E.*,[23] the court considered the wife's lack of involvement in the preparation of the husband's business tax returns and the income which was then reported on the joint returns and found that she was not bound by those returns.

> Clearly, the expenses detailed by the parties, the value of the marital assets and the limited extent of liabilities, including no credit card debt reported by plaintiff, reveal plaintiff's income and/or access to funds is greater than reported. The Court will not, at this time, accept plaintiff's argument that defendant, who has not been a principal source of financial support for the family in many, many years by plaintiff's own affidavit is bound by the joint tax returns for the purposes of determining pendente lite support where the parties' respective representations regarding the monthly expenses are almost identical. Additionally, plaintiff does not assert that defendant was, in any way, involved in the preparation of the business tax returns that resulted in his personal reported income.

The Second Department in *Rosenberg v. Rosenberg*,[24] while not specifically addressing the estoppel issue but imputing income to both parties, held,

> A court is not bound by a party's account of his or her own finances, and where a party's account is not believable, the court is justified in finding a true or potential income higher than that claimed'" (*Elsayed v. Edrees*, 141 A.D.3d 503, 505, 35 N.Y.S.3d 411, quoting *Matter of Thomas v. DeFalco*, 270 A.D.2d 277, 278, 703 N.Y.S.2d 530). "'*This is particularly true when . . . the record supports a finding that the appellant's reported income on his [or her] tax return is suspect*" (*Matter of Maharaj-Ellis v. Laroche*, 54 A.D.3d 677, 677, 863 N.Y.S.2d 258, quoting *Matter of Westenberger v. Westenberger*, 23 A.D.3d 571, 571, 806 N.Y.S.2d 665). Here, the court's imputation of income to both the plaintiff and the defendant was a provident exercise of discretion (*see Elsayed v. Edrees*, 141 A.D.3d at 505, 35 N.Y.S.3d 411; *Taylor v. Taylor*, 140 A.D.3d 944, 947, 34 N.Y.S.3d 127). (emphasis added)

Conclusion

Given the elements required for a tax estoppel assertion and the court's discretion – particularly when it comes to the determination of income – the immediate reaction to fall beneath the sword of the *Mahoney-Buntzman* argument would appear premature. Certainly, the threat of report to a taxing authority upon proof of unreported or under-reported income is one which practitioners and litigants should take very seriously. But, where there is a defense to the "tax-estoppel" argu-

ment, it should be made. After all – one never knows when a settlement may "mysteriously" materialize.

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Endnotes

1. *Mahoney-Buntzman v. Buntzman*, 12 N.Y.3d 415, 422, 909 N.E.2d 62 (2009).
2. *See e.g., Gardner v. Gardner*, 228 A.D.3d 1074 (3rd Dep't 2024); *Rosenberg v. Rosenberg*, 145 A.D.3d 1052 (2nd Dep't 2016).
3. 51 A.D.3d 732 (2nd Dep't 2008).
4. 13 Misc. 3d 1216(A) (Sup. Ct. Westchester County 2006).
5. Characterization of property is an extremely viable use of estoppel more so than income.

   See, for example, Winship v. Winship, 115 A.D.3d 1328 (4th Dep't 2014), where the court foreclosed the husband from asserting a separate property/inheritance claim related to a business entity, in light of the contrary prior affirmative representations made on the parties' joint tax returns. The *Winship* parties' joint tax returns filed throughout the marriage reflected depreciation of the business entity's property and equipment and further identified the husband as proprietor, thereby demonstrating that the husband was at least part owner of the business during the marriage. Accordingly, the ourt precluded the husband's contrary position, adverse to the wife, that he inherited the business from his father prior to the commencement of the divorce.

   Also, see *Matter of Chimsanthia*, 200 A.D.3d 450 (1st Dep't 2021), "The tax forms utterly refute petitioners' factual allegations that, in consideration for his interest in the Amagansett property, Joseph Scott, Jr. paid respondents more than $410,000 in his lifetime as an advance on the sale of his Woodbine property (*see Goshen v. Mutual Life Ins. Co. of N.Y.*, 98 N.Y.2d 314, 326, 746 N.Y.S.2d 858, 774 N.E.2d 1190 [2002]). Since petitioners are precluded from arguing that there was an oral agreement that Joseph Scott, Jr. would pay respondents' decedents consideration for the Amagansett property, they cannot allege that a constructive trust should be imposed on the property (*see Panetta v. Kelly*, 17 A.D.3d 163, 165, 792 N.Y.S.2d 455 [1st Dep't 2005], lv dismissed 5 N.Y.3d 783, 801 N.Y.S.2d 803, 835 N.E.2d 663 [2005]). The application of the tax estoppel doctrine prevents, as a matter of law, petitioners from establishing an essential element of a claim for a constructive trust: a promise by respondents' decedents to Joseph Scott, Jr. regarding the Amagansett property."

   Hughes v. Hughes, 198 A.D.3d 1170, 1172, 156 N.Y.S.3d 444, 446–47 (3rd Dep't 2021) "By claiming the lottery winnings as income on their joint tax returns, the husband and the wife necessarily represented that such winnings were not a gift. Therefore, Supreme Court properly determined that the lottery winnings were not a gift to the wife, so they were not her separate property but were marital property subject to equitable distribution."

   In *One Double Nine Dashing LLC v. New York City Loft Bd.*, 211 A.D.3d 540 (1st Dep't 2022), leave to appeal denied, 41 N.Y.3d 907 (2024), "tenants' deductions of their rent as business expenses in their personal and S–Corporation tax returns precluded them from claiming that they were occupying the unit as their primary residence."
6. *Id.*
7. *Meyer v. Ins. Co. of Am.*, No. 97 CIV. 4678 (AJP), 1998 WL 709854 (S.D.N.Y. Oct. 9, 1998).
8. No. 02 CIV. 2943 (LMM), 2004 WL 2002988, (S.D.N.Y. Sept. 8, 2004).
9. Also cited in *Mahoney-Buntzman*. Endnote added by author and not in original.
10. 704 F. Supp. 2d 177, 193–94 (E.D.N.Y. 2010).
11. 33 Misc. 3d 1214(A) (Sur. Ct. NY County 2011).
12. *See Coven v. Neptune Equities, Inc.*, 198 A.D.3d 643 (2nd Dep't 2021), "Although the appellants contend that the decision to provide Schedule K–1s to Walter stemmed from Siegel's legal advice, which they maintain was erroneous, the appellants did not contest from the time of Stanley's death in 2011 until Walter's death in 2016, that Walter had inherited the shares in Neptune (*see Kun v. Fulop*, 71 A.D.3d at 834, 896 N.Y.S.2d 462; cf. *Hunt v. Hunt*, 222 A.D.2d 759, 760, 634 N.Y.S.2d 804). Further, Staci, as a corporate officer of Neptune, *authorized the electronic filing of those tax returns*." (Emphasis added).

    Coven v. Neptune Equities, Inc., 198 A.D.3d 643, 645–46, 155 N.Y.S.3d 178, 181 (2nd Dep't 2021).
13. 183 A.D.3d 492 (1st Dep't 2020).
14. 695 F. Supp. 3d 420, 444 (S.D.N.Y. 2023), appeal dismissed subnom.
15. *United Hay, LLC v. Harounian*, 213 A.D.3d 443 (1st Dep't 2023).
16. 197 A.D.3d 865 (4th Dep't 2021).
17. 80 Misc. 3d 1218(A) (Sup. Ct. N.Y. County 2023).
18. 224 A.D.3d 419 (1st Dep't 2024).
19. 78 Misc. 3d 1221(A) (Sup. Ct. Nassau County 2023).
20. 82 Misc. 3d 1223(A) (Sup. Ct. Nassau County 2024). Also, a decision of note in this issue and published in its entirety herein. The matter is being appealed.
21. 181 A.D.3d 1016 (3rd Dep't 2020).
22. 93 A.D.3d 1092 (3rd Dep't 2012).
23. 55 Misc. 3d 1212(A) (Sup. Ct. Kings County 2017).
24. 145 A.D.3d 1052 (2nd Dep't 2016).