

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition :

of :

MATTHEW SHEAHAN :

DECISION
DTA NO. 821350

for Redetermination of a Deficiency or for Refund of New York State and New York City Personal Income Tax under Article 22 of the Tax Law and the Administrative Code for the City of New York for the Year 1999.

Petitioner Matthew Sheahan, 119 Payson Avenue, Apt. 5-A, New York, NY 10034-2765, filed an exception to the order of the Administrative Law Judge dismissing the petition issued February 7, 2007. Petitioner appeared *pro se*. The Division of Taxation appeared by Daniel Smirlock, Esq. (John Matthews, Esq., of counsel).

Neither party filed a brief and oral argument was not requested.

After reviewing the entire record in this matter, the Tax Appeals Tribunal renders the following decision.

ISSUE

Whether the Division of Tax Appeals has subject matter jurisdiction to entertain the petition.

FINDINGS OF FACT

We find the following facts.

The petition in this matter appears to challenge a Notice of Deficiency dated February 25, 2004 (L023311320) asserting tax in the amount of \$1,288.00 plus penalty and interest for tax

year 1999. The petition indicates that a conciliation conference was held in the Division's Bureau of Conciliation and Mediation Services. The petition did not include a copy of the Notice of Deficiency or the Conciliation Order.

On October 6, 2006, a letter was sent by the office of Petition Intake in the Division of Tax Appeals to petitioner advising him that the petition was not in proper form in that it did not include a copy of the Conciliation Order in this matter. The Conciliation Order was not provided, instead petitioner provided a copy of the conferee's proposed consent to tax (unsigned). On December 4, 2006, a Notice of Intent to Dismiss Petition was sent to petitioner giving him another 30 days to respond with the necessary document. Petitioner did not respond to this notice.

On February 4, 2007, Administrative Law Judge Daniel J. Ranalli issued an Order Dismissing Petition for lack of jurisdiction. This exception followed.

OPINION

We affirm the order of the Administrative Law Judge.

The Tax Law provides with regard to the personal income tax that:

After ninety days from the mailing of a notice of deficiency, such notice shall be an assessment of the amount of tax specified in such notice, together with the interest, additions to tax and penalties stated in such notice, except only for any such tax or other amounts as to which the taxpayer has within such ninety day period filed with the [Division of Tax Appeals] a petition under section six hundred eighty-nine (Tax Law § 681[b]).

In the alternative, a taxpayer may also, within the same 90 period day period, file a request for a conciliation conference with the Bureau of Conciliation and Mediation Services ("BCMS") (*see*, Tax Law §§ 170[3-a], 2006[4]; 20 NYCRR 4000.3[c]). If a taxpayer first elects to file a request for conciliation with BCMS, the conciliation orders are binding upon the Department and

the taxpayer unless a petition is filed with the Division of Tax Appeals within 90 days after the conciliation order is issued (*see*, Tax Law § 170[3-a][e]; 20 NYCRR 4000.3[c], 4000.6[b]).

A proceeding in the Division of Tax Appeals is commenced by filing a petition challenging a statutory notice pursuant to such rules and regulations as may be provided by the Tax Appeals Tribunal (Tax Law §§ 2000, 2006[4]; 20 NYCRR 3000.1[k]). The rules of the Tax Appeals Tribunal for the Division of Tax Appeals require where a conciliation order has been issued, it must be attached to a petition for purposes of determining whether the petition is timely filed (20 NYCRR 3000.3[b][8]).

In this case, the conciliation order was not attached to the petition. Petitioner was notified that the petition was defective in that it did not include a copy of the conciliation order as required by section 3000.3(b)(8) of the Tribunal's regulations, and he was given 30 additional days to provide it. Petitioner did not respond to the notice or provide the requested copy that would enable the Division of Tax Appeals to determine the timeliness of the petition. Consequently, the Division of Tax Appeals is without jurisdiction to hear and determine this matter.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Matthew Sheahan is dismissed;
2. The order of the Administrative Law Judge is affirmed; and

3. The petition of Matthew Sheahan is dismissed with prejudice.

DATED:Troy, New York
September 27, 2007

/s/ Charles H. Nesbitt
Charles H. Nesbitt
President

/s/ Carroll R. Jenkins
Carroll R. Jenkins
Commissioner

/s/ Robert J. McDermott
Robert J. McDermott
Commissioner