

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

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In the Matter of the Petition	:	
of	:	
<b>RONALD SCOTT</b>	:	DECISION
		DTA NO. 821718
for Redetermination of a Deficiency or for Refund of New York State Personal Income Tax under Article 22 of the Tax Law for the Period Ended September 30, 2003.	:	

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Petitioner, Ronald Scott, filed an exception to the order of the Administrative Law Judge dismissing the petition issued November 1, 2007. Petitioner appeared *pro se*. The Division of Taxation appeared by Daniel Smirlock, Esq. (John E. Matthews, Esq., of counsel).

Petitioner filed a letter in lieu of a formal brief in support. The Division of Taxation did not file a brief in opposition. 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 (L026040283-5) asserting a tax in the amount of \$6,640.05 for the period ended September 30, 2003.

On June 14, 2007, a letter was sent by the Petition Intake Unit in the Division of Tax Appeals to petitioner, advising him that the petition was not complete in that it did not include a

copy of the Notice of Deficiency. In response, petitioner provided to the Division of Tax Appeals, a copy of an ATC Collection Notice Payment Document issued to him and a copy of an Amended Resident Income Tax Return (Form IT-201-X) for the year 1997. On July 30, 2007, a Notice of Intent to Dismiss Petition was sent to petitioner giving him an additional 30 days to respond with the necessary Notice of Deficiency. On August 14, 2007 petitioner submitted documents in response to the Notice of Intent to Dismiss Petition. These documents included a letter concerning the responsible person assessment issued to petitioner as a responsible person for Wesley Construction Co. and a copy of a Consolidated Statement of Tax Liabilities issued to petitioner reflecting the current balance due on the responsible person assessment. Petitioner did not submit a copy of the Notice of Deficiency.

On November 1, 2007, the Administrative Law Judge 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 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 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 a conciliation conference 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 Practice and Procedure of the Tax Appeals Tribunal require that where a statutory notice 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 Notice of Deficiency was not attached to the petition. Petitioner was notified that the petition was defective in that it did not include a copy of the Notice of Deficiency as required by section 3000.3(b)(8) of the Tribunal's regulation, and he was given 30 additional days to provide it. Petitioner did not 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 Ronald Scott is dismissed;
2. The order of the Administrative Law Judge is affirmed; and

3. The petition of Ronald Scott is dismissed with prejudice.

DATED: Troy, New York  
May 29, 2008

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

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

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