

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition :
of :
MICHAEL CHAIT : DECISION
for Redetermination of a Deficiency or for Refund of : DTA NO. 823175
Personal Income Tax under Article 22 of the Tax Law :
for the Year 2006. :

Petitioner, Michael Chait, filed an exception to the order of the Administrative Law Judge dismissing the petition issued November 13, 2009. Petitioner appeared *pro se*. The Division of Taxation appeared by Daniel Smirlock, Esq. (John Matthews, Esq., of counsel).

Neither party filed a brief and petitioner's request for oral argument was denied.

After reviewing the entire record in this matter, the Tax Appeals Tribunal renders the following decision. Commissioner Tully took no part in the consideration of this matter.

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 and Demand dated November 29, 2007 (L-029476254-2) asserting tax in the amount of \$5,705.00 plus penalty and interest for tax year 2006. Although the petition indicates that a conciliation conference was held in the Division's Bureau of Conciliation and Mediation Services (BCMS), the petition did not include a

copy of the Notice and Demand or the Conciliation Order. By letter dated August 18, 2009, the Division of Tax Appeals was advised by BCMS that a Conciliation Order Dismissing Request had been issued to petitioner on July 3, 2009, but was rescinded on August 18, 2009 as the Notice and Demand issued to petitioner did not provide petitioner with formal protest rights.

On September 30, 2009, a Notice of Intent to Dismiss Petition was sent to petitioner allowing him 30 days to submit written comments on the proposed dismissal. Petitioner did not respond to this notice.

On November 13, 2009, 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.

With regard to notices and demands, the Tax Law provides that:

Provisions of law which authorize the issuance of a notice and demand for an amount without the issuance of a notice of determination for such amount, including any interest or penalties related thereto, shall be construed as specifically denying and modifying the right to a hearing with respect to any such notice and demand for purposes of subdivision four of section two thousand six of this chapter in cases of mathematical or clerical errors or failure to pay the tax due shown on the return or for any stamps purchased, and any interest or penalties related thereto. Any such notice and demand shall not be construed as a notice which gives a person a right to a hearing under article forty of this chapter. (Tax Law § 173-a[c]).

The Tax Appeals Tribunal has the power to provide a hearing as a matter of right to any petitioner pursuant to such rules and regulations as may be provided by the Tax Appeals Tribunal unless a right to a hearing is specifically provided for, modified or denied by another provision of this chapter (*see*, Tax Law § 2006[4]). In this case, petitioner sought to obtain a hearing in regard to a notice and demand for which a right to a hearing was specifically denied by Tax Law

§ 173-a(c). 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 Michael Chait is dismissed;
2. The order of the Administrative Law Judge is affirmed; and
3. The petition of Michael Chait is dismissed with prejudice.

DATED: Troy, New York
April 22, 2010

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

/s/ Charles H. Nesbitt
Charles H. Nesbitt
Commissioner