

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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

Petitioner, Ronald Scott, filed a petition 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.

On July 30, 2007, the Division of Tax Appeals issued to petitioner a Notice of Intent to Dismiss Petition pursuant to 20 NYCRR 3000.9(a)(4). On August 9, 2007, the Division of Taxation by Daniel Smirlock, Esq. (John E. Matthews, Esq., of counsel) submitted a letter agreeing with the proposed dismissal. On August 14, 2007, petitioner, appearing pro se, submitted documents in opposition to dismissal. Pursuant to 20 NYCRR 3000.5(d) and 3000.9(a)(4), the 90-day period for issuance of this order commenced on August 14, 2007. After due consideration of the documents and arguments submitted by the parties, Winifred M. Maloney, Administrative Law Judge, renders the following order.

ISSUE

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

FINDINGS OF FACT

1. On May 21, 2007, the Division of Tax Appeals received a petition from petitioner, Ronald Scott, which appears to challenge a Notice of Deficiency (L-026040283-5) asserting penalty and interest in the amount of \$6,640.05 for the period ended September 30, 2003. The petition indicates that a conciliation conference was not requested. The petition did not include a copy of the Notice of Deficiency.

2. On June 14, 2007, the Petition Intake, Review and Exception Unit of the Division of Tax Appeals sent a letter to petitioner advising him that the petition was not complete in that it did not include a copy of the statutory notice in this matter. In response, instead of the Notice of Deficiency, petitioner provided 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 filed by him and Angela Scott.

3. 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 statutory notice.

4. On August 14, 2007, petitioner submitted documents in response to the Notice of Intent to Dismiss Petition. These documents included, among other things, a letter dated August 2, 2007 from Steven Sinatra, a Tax Compliance Agent II in the Division's Rochester District Office, concerning the responsible person assessment (L-026040283) issued to petitioner as a responsible person for Wesley Construction Co. and a copy of a Consolidated Statement of Tax Liabilities dated August 2, 2007 issued to petitioner reflecting the current balance due on the responsible person assessment (L-026040283). Petitioner did not submit a copy of the Notice of Deficiency in this matter.

CONCLUSIONS OF LAW

A. 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]).

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 a legible copy of the statutory notice being protested to be attached to a petition for purposes of determining whether the petition is timely filed (20 NYCRR 3000.3[b][8]).

C. In the instant matter, 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 statutory notice as required by section 3000.3(b)(8) of the Tax Appeals Tribunal's regulations, and he was given 30 additional days to provide it. However, petitioner failed to provide the requested copy of the statutory notice, i.e., the Notice of Deficiency, which would enable the Division of Tax Appeals to determine the timeliness of the petition. Accordingly, the Division of Tax Appeals lacks jurisdiction to hear and determine this matter.

D. The petition of Ronald Scott is hereby dismissed with prejudice.

DATED:Troy, New York
November 1, 2007

/s/ Winifred M. Maloney
ADMINISTRATIVE LAW JUDGE