

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
BETH L. JOSEPHSON	:	ORDER DTA NO. 823122
for Review of a Denial of Innocent Spouse Relief under	:	
Under Article 22 of the Tax Law for the Years 2001, 2002	:	
and 2005.	:	

Petitioner, Beth L. Josephson, filed a petition for review of a denial of innocent spouse relief under Article 22 of the Tax Law for the years 2001, 2002 and 2005.

On July 17, 2009, the Division of Tax Appeals issued to petitioner a Notice of Intent of Dismiss Petition pursuant to 20 NYCRR 3000.9(a)(4) on the basis that the Division of Tax Appeals did not appear to have jurisdiction to hear the matter. Petitioner, appearing pro se, and the Division of Taxation, by Daniel Smirlock, Esq. (John E. Matthews, Esq., of counsel) submitted responses to the Notice of Intent to Dismiss Petition by August 18, 2009, which date commenced the 90-day period for issuance of this order (20 NYCRR 3000.5[d]; 3009.9[a][4]). After due consideration of the documents and arguments submitted by the parties and the pleadings and proceedings had herein, Joseph W. Pinto, Jr., Administrative Law Judge, renders the following order.

ISSUE

Whether the Division of Tax Appeals has jurisdiction to consider the issues raised in the petition.

FINDINGS OF FACT

1. On or about December 5, 2007, petitioner filed a form IT-285, Request for Innocent Spouse Relief, with the Division of Taxation pursuant to the provisions of Tax Law § 654, which incorporates the provisions of Internal Revenue Code (IRC) § 6015 relating to relief from joint and several liability on a joint return. The request sought relief from tax liabilities for the years 2001, 2002 and 2005, which petitioner claimed were directly related to her husband's income and not her own.

2. On or about May 5, 2008, the Division of Taxation issued to petitioner a Relief from Joint Liability Determination Letter in which it denied petitioner's request in its entirety. In addition to the specific reasons for denying the Request for Innocent Spouse Relief, the denial referred petitioner to Publication 89, Innocent Spouse Relief (and Separation of Liability and Equitable Relief).

3. Pursuant to the instructions for form IT-285 and Publication 89, petitioner filed a timely request for conciliation conference to protest the denial of relief. On or about March 27, 2009, the Bureau of Conciliation and Mediation Services issued an order sustaining the Division of Taxation's Denial of Relief. On or about June 29, 2009, petitioner filed a timely petition with the Division of Tax Appeals, protesting the Conciliation Order.

4. The Petition Intake Unit of the Division of Tax Appeals issued a Notice of Intent to Dismiss Petition with respect to the aforementioned petition. The notice stated as follows:

You are hereby notified of our intent to dismiss the petition in the above referenced matter.

The Division of Tax Appeals does not have the authority to grant equitable relief or to resolve controversies involving applications for deferred payment agreements.

After reviewing your petition, it does not appear that the Division of Tax Appeals has any jurisdiction over this matter. If you are aware of any circumstance which grants the Division of Tax Appeals jurisdiction, you should advise us of that circumstance.

Pursuant to § 3000.9(a)(4)(i) of the Rules of Practice and Procedure of the Tax Appeals Tribunal, the parties shall have thirty days from the date of this Notice to submit written comments on the proposed dismissal.

5. In response to the issuance of the notice of intent to dismiss petition, the Division submitted a letter, dated July 23, 2009, in which the Division of Taxation stated that it agreed with the intent to dismiss the petition because the relief requested was “outside the authority of the Division of Tax Appeals to grant.”

6. In response to the issuance of the Notice of Intent to Dismiss Petition, petitioner submitted a statement in opposition, dated August 17, 2009, which set forth the statutory basis for her right to a hearing. In addition, petitioner submitted copies of her request with supporting documentation; the Division of Taxation’s Denial of Request; the Conciliation Order; a letter from the conferee explaining the rationale for his order; copies of the relevant statutes; and Publication 89.

CONCLUSIONS OF LAW

A. Tax Law § 654(a) provides for relief from joint and several liability on joint returns and specifically incorporates the provisions of IRC § 6015 except where the provisions are inconsistent or modified by Tax Law § 654(b). One of the modifications provides that where IRC § 6015 refers to the Tax Court, the New York provision will read “division of tax appeals.”

B. IRC § 6015(e) provides that for an individual who requests equitable relief under that section, “in addition to any other remedy provided by law, the individual may petition the Tax Court (and the Tax Court shall have jurisdiction) to determine the appropriate relief.” (IRC §

6015[e][1][A].) When read in conjunction with the modifications provided by Tax Law § 654(b), the Division of Tax Appeals has jurisdiction to determine appropriate relief under the statute.

This conclusion is buttressed by the fact that petitioner was properly advised of her right to a BCMS conciliation conference and a hearing in the Division of Tax Appeals on several occasions: with the materials provided to her by the Division of Taxation with her Denial of Relief letter; with the materials provided to her with her Conciliation Order; and by the instructions contained in the instructions for form IT-285 (IT-285-I) and in Publication 89, which was specifically referenced in the Denial of Relief letter itself.

Although petitioner did not raise the issue of her liability as clearly as she did in her Request for Innocent Spouse Relief, form IT-285, and in her Statement of Response and Opposition to Notice of Intent to Dismiss Petition, it is concluded that it was her intent to continue to challenge her liability for the tax asserted and the Division of Tax Appeals has jurisdiction to hear the matter. However, to the extent the relief sought encompasses the terms and conditions of a deferred payment agreement this forum has no jurisdiction and will not entertain arguments with regard thereto.

C. Based on the record presented, the Notice of Intent to Dismiss Petition, dated July 17, 2009, is withdrawn and the Division of Taxation shall have 75 days from the date of this order to file an answer to petitioner's petition.

DATED: Troy, New York
October 29, 2009

/s/ Joseph W. Pinto, Jr.
ADMINISTRATIVE LAW JUDGE