

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
MARIA QUINTERO	:	ORDER
	:	DTA NO. 823886
for Redetermination of a Deficiency or for Refund of	:	
New York State Personal Income Tax under Article 22	:	
of the Tax Law for the Year 2008.	:	

Petitioner, Maria Quintero, 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 year 2008.

On January 4, 2011, the Division of Tax Appeals issued to petitioner a Notice of Intent to Dismiss Petition pursuant to 20 NYCRR 3000.9(a)(4). On January 12, 2011, the Division of Taxation, by Daniel Smirlock, Esq. (John E. Matthews, Esq., of counsel) submitted a letter agreeing with the proposed dismissal of the petition. On January 17, 2011, petitioner, appearing pro se, submitted a letter 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 February 4, 2011. After due consideration of the documents and arguments submitted, Dennis M. Galliher, Administrative Law Judge, renders the following order.

ISSUE

Whether the petition filed in this matter should be dismissed for failure to include sufficient information to allow the matter to proceed.

FINDINGS OF FACT

1. Petitioner, Maria Quintero, filed a request for a conciliation conference with the Division of Taxation's (Division) Bureau of Conciliation and Mediation Services (BCMS). A conciliation conference was held on May 12, 2010. Thereafter, a Conciliation Order (CMS No. 236593), dated July 9, 2010, was issued to petitioner. This order, which denied petitioner's request for revision of a refund denial under Article 22 of the Tax Law, referenced the subject matter of the conference as "Refund Denial Notice dated November 19, 2009."

2. On September 28, 2010, petitioner filed a petition with the Division of Tax Appeals seeking an administrative hearing to review the aforementioned Conciliation Order.

3. On January 4, 2011, the Petition Intake, Review and Exception Unit of the Division of Tax Appeals issued to petitioner a Notice of Intent to Dismiss Petition. The Notice of Intent to Dismiss Petition indicated that the petition, as filed, was not in the proper form to allow for further action thereon, and advised that unless petitioner served a corrected petition within 30 days thereafter, the petition would be dismissed.

4. Previous correspondence issued to petitioner by the Division of Tax Appeals included a letter dated October 26, 2010 setting forth a number of items of missing information that were to be supplied by petitioner in order to complete the petition and allow for the matter to proceed. This missing information, identified by a check-list of items numerically matched to items on the Division of Tax Appeals petition form, included among other things information required to be set forth in the caption section of such form (petitioner's name, tax law article, year or period in issue, taxpayer identification number and notice or assessment number), as well as a statement of errors alleged and facts asserted by petitioner. This letter further advised that a properly

completed power of attorney was to be submitted if petitioner wished to continue to be represented by the person listed as her representative.¹

5. The Division of Taxation responded to the Notice of Intent to Dismiss Petition by a January 10, 2011 letter from its representative, John E. Matthews, Esq., indicating agreement that the petition was not in proper form and should therefore be dismissed.

6. Petitioner responded to the Notice of Intent to Dismiss Petition by a letter dated January 17, 2011 indicating the year in question to be 2008, and identifying the source (at-home beautician) and amount (approximately \$824.00 per month) of income in question. This letter further asserts that petitioner has all documents in reference to the claim that her son is her dependent.

CONCLUSIONS OF LAW

A. Where a petition filed with the Division of Tax Appeals is not in the form required the same shall be promptly returned to the petitioner, accompanied by a statement indicating the requirements with which the petition does not comply and advising that the petitioner has an additional 30 days within which to file a corrected petition (20 NYCRR 3000.3[d][1]). If a petitioner fails to timely serve a corrected petition thereafter, a determination shall be issued dismissing the petition (20 NYCRR 3000.3[d][2]).

B. In this instance, the petition was deemed not in proper form for lack of certain information, as described, and on January 4, 2011 a Notice of Intent to Dismiss Petition was issued subject to the 30-day period within which the parties were afforded the opportunity to

¹ The petition indicates Carlos H. Bueno, EA, as petitioner's representative, but only the first page of the related power of attorney form appointing Mr. Bueno was attached to the petition. The petition, as well as petitioner's response to the Notice of Intent to Dismiss Petition, was filed in envelopes bearing the return address letterhead of Joseph Podhorcer, CPA. The relationship, if any, between Mr. Bueno and Mr. Podhorcer, as pertaining to petitioner is not specified.

respond to the proposed dismissal. Review of the parties' responses, including the additional information supplied by petitioner in her January 17, 2011 letter, in conjunction with the information provided on the petition, as filed, and as set forth on the Conciliation Order attached thereto, provides sufficient basis to allow for the petition to be accepted and forwarded to the Division of Taxation's Office of Counsel for the preparation and filing of an answer thereto.²

C. The Notice of Intent to Dismiss Petition, dated January 4, 2011, is hereby rescinded, the petition is accepted, and the Division of Taxation shall file its answer to the petition within 75 days of the date of this order.

DATED: Troy, New York
April 14, 2011

/s/ Dennis M. Galliher
ADMINISTRATIVE LAW JUDGE

² The information supplied, taken together, indicates this matter likely involves the denial of a refund request premised upon the claim of an earned income credit and/or dependent care credit. The absence of an assessment number is reflective of the fact that this matter involves a refund claim and not an assessment of tax. Finally, if petitioner wishes to appear by an authorized representative as this matter proceeds, it will be necessary for petitioner to submit a properly completed power of attorney for such representative.