

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
PC TOUCH SERVICES INC.	:	ORDER
	:	DTA NO. 824703
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	:	
October 1, 2010 through December 31, 2010.	:	

Petitioner, PC Touch Services Inc., 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 October 1, 2010 through December 31, 2010.

Pursuant to 20 NYCRR 3000.9(a)(4), the Division of Tax Appeals issued a Notice of Intent to Dismiss Petition, dated December 8, 2011, on the grounds that the Division of Tax Appeals lacks jurisdiction of the subject matter of the petition. The Division of Taxation, by its representative, Mark F. Volk, Esq. (John E. Matthews, Esq., of counsel), submitted a letter dated December 13, 2011 in support of the proposed dismissal. On December 15, 2011, petitioner, appearing by its president, submitted a response in opposition to the proposed dismissal.

Pursuant to 20 NYCRR 3000.5(d), the 90-day period for issuance of this determination commenced on December 15, 2011. Based upon the petition, the letter submitted by the Division of Taxation and petitioner's response, Arthur S. Bray, 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. The Division of Taxation (Division) issued to petitioner, PC Touch Services, Inc., a Notice and Demand for Payment of Tax Due dated February 18, 2011 (Assessment # L-035429062-6), in the amount of \$179.96 plus penalty and interest for a balance due of \$181.51. The computation section of the notice stated that the Division had compared the tax withheld as reported on petitioner's quarterly return for the quarter ending December 31, 2010 to all of the payments applied to that quarter and concluded that petitioner owed the amount shown due because the return was unpaid. This section also stated that penalty was imposed for late payment of the tax shown on the return and that interest was imposed for late payment or underpayment.

2. On October 28, 2011, the Division sent petitioner a Response to Taxpayer Inquiry concerning Assessment number L-035429062 and protest number K-120142683-4. The letter explained that the Division was unable to accept an amended Form NYS-45-X (Amended Quarterly Combined Withholding, Wage Reporting, and Unemployment Insurance Return) for the fourth quarter of 2010 because the amount of the annual tax withheld reported on that return did not match the amount of tax withheld during 2010. The Division stated that in order to make an adjustment to its records, petitioner would need to submit a Form NYS-45-X or a Form NYS-45ATT (Quarterly Combined Withholding, Wage Reporting, And Unemployment Insurance Return - Attachment) with the correct figures. Since this was not done, the assessment was

sustained.

3. On November 2, 2011, petitioner filed a petition with the Division of Tax Appeals challenging Assessment number L-035429062 and protest identification number K-120142683-4. Petitioner averred: that the Commissioner of Taxation and Finance (Commissioner) failed to understand that its implementation of new technology can lead users to make mistakes, that the failure of the Commissioner to listen to the user of its computer systems led it to collect tax, penalty and interest for the same period from two different taxpayers, and that the Commissioner plays the “run-around” to avoid giving the appropriate refund to taxpayers.

4. On December 8, 2011, the Division of Tax Appeals issued a Notice of Intent to Dismiss Petition, which stated, in pertinent part:

The instant petition appears to have been filed on November 2, 2011 in protest of both a Response to Taxpayer Inquiry, dated October 28, 2011, and a Notice and Demand for Payment of Tax due, issued on February 18, 2011. Neither of the two notices constitutes a statutory document and therefore, neither is sufficient to confer jurisdiction upon the Division of Tax Appeals to consider the merits of the petition.

SUMMARY OF THE PARTIES' POSITIONS

5. According to petitioner, the Notice of Intent to Dismiss Petition is erroneous because the Commissioner of Taxation and Finance disregarded the Tax Law. First, petitioner submits that obtaining a refund should have been as simple as filing the Form NYS-45-X. However, the refund was denied in the Response to Taxpayer Inquiry. Second, petitioner received a Notice of Taxpayer Rights, which provided a telephone number that was not in service. When petitioner reached Division personnel, through a phone number found by other means, he was transferred multiple times. No one knew about a claim for refund form. Petitioner maintains that the

Commissioner did not abide by the Tax Law or the regulations and therefore its petition should not be dismissed.

6. The Division submitted a letter stating that it is in agreement with the proposed dismissal because there is no jurisdiction to review the documents protested.

CONCLUSIONS OF LAW

A. The Division of Tax Appeals is an adjudicatory body of limited jurisdiction whose powers are confined to those expressly conferred in its authorizing statute (*Matter of Scharff*, Tax Appeals Tribunal, October 4, 1990, *revd on other grounds sub nom Matter of New York State Dept. of Taxation & Fin. v. Tax Appeals Tribunal*, 151 Misc 2d 326 [1991]). Therefore, in the absence of legislative action, this forum cannot extend its authority to disputes that have not been specifically delegated to it (*Matter of Hooper*, Tax Appeals Tribunal, July 1, 2010.)

B. The Division of Tax Appeals is authorized to “provide a hearing as a matter of right, to any petitioner upon such petitioner’s request . . . unless a right to such a hearing is specifically provided for, modified or denied by another provision of this chapter” (Tax Law § 2006[4]).

C. The petition appears to challenge both the Notice and Demand, dated February 18, 2011, and the Response to Taxpayer Inquiry, dated October 28, 2011. Upon review, it is concluded that, regardless of which document is being challenged, this matter must be dismissed because the Division of Tax Appeals lacks jurisdiction to review either document.

D. With respect to the Response to Taxpayer Inquiry, Tax Law § 2008(1) provides:

All proceedings in the division of tax appeals shall be commenced by the filing of a petition with the division of tax appeals protesting any written notice of the division of taxation which has advised the petitioner of a tax deficiency, a determination of tax due, a denial of a refund or credit application . . . or any other notice which gives a person the right to a hearing in the division of tax appeals under this chapter or other law.

E. The Response to Taxpayer Inquiry was an informal document explaining why the amended NYS-45-X was not accepted by the Division. It is not a document giving petitioner a right to a hearing. As a result, the Division of Tax Appeals is without jurisdiction to hear and determine this matter (*see Matter of Pacori*, Tax Appeals Tribunal, November 20, 2008 [in response to a Notice of Intent to Dismiss Petition based upon the failure to include a copy of the Notice of Deficiency with the petition, petitioner's offer of a Response to Taxpayer Inquiry resulted in a dismissal of the petition]).

F. With regard to the notice and demand, Tax Law § 173-a[2][c] provides:

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.

As set forth above, the right to a hearing based upon a notice and demand is specifically denied by Tax Law § 173-a(2)(c) (*Matter of Chait*, Tax Appeals Tribunal, April 22, 2010).

G. The petition of PC Touch Services Inc. is dismissed.

DATED: Troy, New York
February 9, 2012

/s/ Arthur S. Bray
ADMINISTRATIVE LAW JUDGE