

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
VALERIE JENKINS	:	DETERMINATION
	:	DTA NO. 824708
for Redetermination of a Deficiency or for Refund of	:	
Personal Income Tax under Article 22 of the Tax Law	:	
for the Year 2010.	:	

Petitioner, Valerie Jenkins, filed a petition for revision of a determination or for refund of personal income tax under Article 22 of the Tax Law for the year 2010.

On May 9, 2012, the Division of Taxation, by its representative, Mark F. Volk, Esq. (Michele W. Milavec, Esq., of counsel), filed a motion seeking dismissal of the petition pursuant to Tax Law § 2006(5)(ii), 20 NYCRR 3000.5 and 20 NYCRR 3000.9(a)(1)(ii) and (vi) upon the grounds that the Division of Tax Appeals does not have jurisdiction of the subject matter of the petition, that the petition does not state a cause for relief and that there is no justiciable issue remaining in this matter. Accompanying the motion was the affirmation of Michele W. Milavec, Esq., dated May 8, 2012, and annexed exhibits supporting the motion. Petitioner, appearing pro se, had until June 7, 2012 to respond to the Division's motion (Tax Law § 3000.5[b]), and the 90-day period for issuance of this determination commenced on such date. Petitioner has filed correspondence, ostensibly in response to the motion, commencing on or about May 24, 2012 and continuing to the present. After due consideration of the Milavec affirmation, annexed exhibits, and all pleadings and proceedings had herein, Dennis M. Galliher, Administrative Law Judge, renders the following determination.

ISSUE

Whether the petition in this matter is properly subject to dismissal.

FINDINGS OF FACT

1. Petitioner, Valerie Jenkins, timely filed a New York State Resident Income Tax Return (Form IT-150) for the year 2010. On her return, petitioner claimed a refund in the amount of \$120.00, consisting of two items:

- a) a New York City school tax credit in the amount of \$63.00, and
- b) a New York Real Property Tax Credit in the amount of \$57.00, reported at line 42 of Form IT-150 and at line 33 of Form IT-214 (Claim for Real Property Tax Credit).

2. The Division of Taxation (Division) issued to petitioner an Account Adjustment Notice - Personal Income Tax, dated April 19, 2011. The explanation and computation sections of this notice reveal that:

- a) the Division allowed the \$63.00 school tax credit, but forwarded this amount to the Internal Revenue Service (IRS) as an offset in payment against an outstanding Federal liability owed by petitioner, and
- b) the Division disallowed the \$57.00 real property tax credit claimed by petitioner.

3. The Division issued to petitioner a notice of denial, dated June 17, 2011, disallowing petitioner's claimed real property tax credit.

4. On October 6, 2011, the Division of Tax Appeals received from Ms. Jenkins a petition challenging the Division's June 17, 2011 notice denying her claimed real property tax credit. The petition and its several attachments, as well as several subsequent augmenting filings, reflect various additional matters as challenged, including IRS matters, a New Jersey matter (apparently a domestic relations matter), contributory negligence (of an unspecified nature) and other items.

The petition, as filed, seeks a refund in the amount of \$222 billion. The basis by which this sum was determined is unclear.

5. The only document that was both issued by the Division of Taxation and appended to the petition is the June 17, 2011 notice of refund denial in the amount of \$57.00.

6. On January 18, 2012, an answer opposing the petition and in support of the Division's refund denial was filed with the Division of Tax Appeals.

7. On or about May 3, 2012, the Division advised petitioner, via a Taxpayer Liability Period Summary Account Statement, of its reconsidered decision to allow the \$57.00 claimed real property tax credit for the year 2010. In turn, the Division issued to petitioner a check dated May 29, 2012 in the amount of \$57.00 representing payment of the claimed real property tax credit.

8. The Division brings the subject motion seeking dismissal of the petition on the basis that petitioner has been granted the relief she requested in her petition, thus leaving nothing in controversy and no justiciable issue or cause of action within the jurisdiction of and upon which relief may be granted by the Division of Tax Appeals.

9. Petitioner has responded to the motion with multiple, essentially repetitive submissions, none of which addresses the Division's motion in a manner by which petitioner's position with respect thereto might be discerned.

CONCLUSIONS OF LAW

A. The Division has moved for dismissal of the petition pursuant to Tax Law § 2006(5) and 20 NYCRR 3000.5 and 3000.9(a)(1), most specifically upon the basis that the Division of Tax Appeals lacks jurisdiction of the subject matter of the petition (20 NYCRR 3000.9[a][1][ii])

and that the petition fails to state a cause for relief (20 NYCRR 3000.9[a][1][vi]) because there is no longer a justiciable issue in controversy.

B. Section 2006(4) of the Tax Law requires the Tax Appeals Tribunal:

[t]o provide a hearing as a matter of right, to any petitioner upon such petitioner's request, pursuant to such rules, regulations, forms and instructions as the tribunal may prescribe, *unless a right to such a hearing is specifically provided for, modified or denied by another provision of this chapter.* (Emphasis added.)

C. Tax Law § 2008(1), in turn, 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 notice of determination of tax due, *a denial of a refund or credit application . . .*, of any other notice which gives a person the right to a hearing in the division of tax appeals under this chapter or other law (Emphasis added.)

D. 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]). 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).

E. Petitioner, in response to the Division's motion, submitted a significant amount of correspondence, including repeated copies of portions of previously submitted correspondence. These submissions include pleadings and other documents apparently related to proceedings or matters involving courts and adjudicatory (or regulatory) bodies other than the Division of Tax Appeals. Unfortunately, these responses do not in any discernable manner address the Division's

denial of petitioner's claimed real property tax credit. Petitioner has thus effectively failed to respond to the sole item initially at issue in this proceeding and has, therefore, conceded that no question of fact requiring a hearing exists with respect thereto (*see Kuehne & Nagel v. Baiden*, 36 NY2d 539, 544, 369 NYS2d 667, 671 [1975]; *John William Costello Assoc. v. Standard Metals*, 99 AD2d 227, 472 NYS2d 325 [1984], *appeal dismissed* 62 NY2d 942 [1984]). In addition, petitioner has submitted no argument or evidence to contest the facts alleged in the Milavec affirmation as filed and supported by the documents supplied therewith. Consequently, those facts may be deemed admitted and, accordingly, upon such facts an order of dismissal in favor of the Division may be granted in this matter.

F. The petition pending in this matter was filed in response to the Division's June 17, 2011 notice denying petitioner's claimed real property tax credit in the amount of \$57.00. A copy of this denial notice was attached to the petition, and the Division of Tax Appeals clearly has jurisdiction to address the petition to the extent it challenges the Division's denial of petitioner's claim for credit (Tax Law § 2008[1]; § 2006[4]). The petition also references and appears to challenge numerous other matters and proceedings (*see* Findings of Fact 4 and 9). There is no apparent basis, nor has petitioner pointed to any basis, upon which the jurisdiction of the Division of Tax Appeals could be construed as extending to any of the many other matters included in the petition or referenced in subsequent correspondence filed by petitioner. Consequently, to the extent the petition challenges matters beyond the subject matter jurisdictional authority granted to the Division of Tax Appeals, there is simply no basis by which those challenged matters may be addressed herein. Accordingly, the Division of Taxation's motion for dismissal based on lack of jurisdiction of the subject matter of the petition per Tax Law § 2006(5)(ii) and 20 NYCRR 3000.9(a)(1)(ii) shall be granted.

G. As set forth above, the Division of Tax Appeals clearly does have subject matter jurisdiction to address a challenge to the Division's denial of a taxpayer's claim for credit or refund (Tax Law § 2008[1]). However, subsequent to the filing of the petition in this matter, the Division of Taxation reconsidered its denial, agreed to grant the claimed credit, and effected this decision by adjusting petitioner's Taxpayer Liability Period Summary Account Statement and issuing to petitioner a check in the amount of the claimed credit (*see* Finding of Fact 7). As the result of this action by the Division, petitioner has been afforded the relief she sought in her petition (insofar as the Division is authorized to address the matters raised in the petition). In turn, there no longer remains any justiciable matter at issue that is within the jurisdictional grant of authority of the Division of Tax Appeals, and the petition is properly subject to dismissal for failure to state a cause for which relief may be granted in this forum (Tax Law 2006[5][vi]; 20 NYCRR 3000.9[a][1][vi]). Accordingly, the Division's motion for dismissal on this basis shall be granted.

H. The Division of Taxation's motion for dismissal of the petition is granted, and the petition of Valerie Jenkins is hereby dismissed with prejudice.

DATED: Albany, New York
August 16, 2012

/s/ Dennis M. Galliher

ADMINISTRATIVE LAW JUDGE