

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petitions	:	
of	:	
CHARLES L. KYTE	:	DECISION
for Redetermination of Deficiencies or for Refund of	:	DTA Nos. 825337
New York State and New York City Personal Income	:	and 825338
Tax under Article 22 of the Tax Law and New York	:	
City Administrative Code for the Years 2004 and 2006.	:	

Petitioner, Charles L. Kyte, filed an exception to the order dismissing petition issued by the Administrative Law Judge on April 8, 2013. Petitioner appeared *pro se*. The Division of Taxation appeared by Amanda Hiller, Esq. (John E. Matthews, Esq., of counsel).

Neither party submitted a brief. Oral argument was not requested.

After reviewing the entire record in this matter, the Tax Appeals Tribunal renders the following decision.

ISSUE

Whether the Division of Tax Appeals has jurisdiction to consider this matter.

FINDINGS OF FACT

We find the following facts.

On November 20, 2012, two copies of a petition protesting notice or assessment numbers L029090305 and L-028891241-3 were received by the Division of Tax Appeals from petitioner

by facsimile transmission.¹ On November 21, 2012, a letter was sent by the Petition Intake Unit of the Division of Tax Appeals to petitioner, advising him that the petition was not complete because, among other reasons, the Division of Tax Appeals could not accept petitions submitted by facsimile. Petitioner was given 10 days to respond, but failed to do so. On January 9, 2013, a Notice of Intent to Dismiss Petition (Notice of Intent) was sent to petitioner, giving both parties 30 days to respond to the proposed dismissal. The Notice of Intent stated, that “[T]he petitions in this matter appear to have been filed on December 10, 2012 and December 11, 2012, respectively, by facsimile.” Petitioner did not respond.

On April 8, 2013, the Administrative Law Judge issued an Order Dismissing Petition because the petitions were not properly filed. Petitioner filed an exception to that Order.

OPINION

A proceeding in the Division of Tax Appeals is commenced by filing a petition with the Division of Tax Appeals (Tax Law § 2008). The Rules of Practice and Procedure of the Tax Appeals Tribunal (20 NYCRR 3000.3 [c]), require that petitions must be filed either in person or by mail addressed to:

Supervising Administrative Law Judge
State of New York
Division of Tax Appeals
Agency Building 1
Empire State Plaza
Albany, New York 12223

In this case, the petition was received by facsimile. Petitioner was notified that the

¹Although two copies of the same petition were received by the Division of Tax Appeals, two separate DTA numbers were assigned to the petition, as the petition protested two separate Division of Taxation notices or assessments.

petition was not in the proper form in that it was transmitted to the Division of Tax Appeals by facsimile and not delivered in person or by mail as required by section 3000.3 (c) of the Tribunal's regulations. Furthermore, petitioner was informed that failure to cure the defect could result in dismissal of the petition. Petitioner was given 10 days to respond to this notification but did not respond. Thereafter, on January 9, 2013, a Notice of Intent was issued, allowing both parties 30 days to respond to the proposed dismissal of the petition. The January 9, 2013 Notice of Intent proposing to dismiss the petitions addressed petitions allegedly transmitted to the Division of Tax Appeals by facsimile on December 10, 2012 and December 11, 2012. However, no such petitions are in the record. The petition in the record was transmitted to the Division of Tax Appeals by facsimile on November 20, 2012. Although petitioner chose not to respond to the January 9, 2013 Notice of Intent, petitioner was entitled to receive a Notice of Intent that accurately reflects the material facts contained in the record.

Therefore, we hereby rescind the order of the Administrative Law Judge dismissing the petitions and remand this matter for the issuance of an amended Notice of Intent and for such further proceedings required as a consequence thereof.

Accordingly, it is ORDERED, ADJUDGED and DECREED that this matter be remanded to the Division of Tax Appeals for appropriate action in accordance with this decision.

DATED: Albany, New York
October 17, 2013

/s/ Roberta Moseley Nero
Roberta Moseley Nero
President

/s/ James H. Tully, Jr.
James H. Tully, Jr.
Commissioner

/s/ Charles H. Nesbitt
Charles H. Nesbitt
Commissioner