

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition :

of :

HUGES O'CSAY :

AND :

JUDITH RONDOS O'CSAY :

DECISION
DTA NO. 825500

for Redetermination of Deficiencies or for Refund :
of Personal Income Taxes under Article 22 of the :
Tax Law and the Administrative Code of the City :
of New York for the Years 2004 through 2008.

Petitioners, Huges O'Csay and Judith Rondos O'Csay, filed an exception to the order dismissing petition issued by the Supervising Administrative Law Judge on March 18, 2014. Petitioners appeared by Selig & Associates (David P. Selig, EA). The Division of Taxation appeared by Amanda Hiller, Esq. (Michelle M. Helm, Esq., of counsel).

Neither party filed 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 subject matter jurisdiction to consider the merits of the petition.

FINDINGS OF FACT

We find the following facts.

1. The petition in this matter challenges notices of additional tax due (Notice Nos.

L-038841964, L-038841965, L-038841961, L-038841953 and L-038841955), dated November 23, 2012, seeking payment of New York State and New York City personal income tax due for the tax years 2004 through 2008.

2. On February 5, 2103, petitioners filed their petition with the Division of Tax Appeals protesting the above-referenced notices of additional tax due. On February 12, 2013, the Petition Intake Unit of the Division of Tax Appeals sent a letter to petitioners, advising them that their petition was not complete and that it could not be processed further without additional information. The letter indicated, among other deficiencies, that the notice provided with the petition was not a statutory document. The letter gave petitioners ten days to respond, but they did not do so.

3. On June 7, 2013, a notice of intent to dismiss petition was issued to petitioners on the basis that petitioners had failed to serve a corrected petition as directed. The notice of intent gave petitioners an additional 30 days to cure the defects. On July 30, 2013, petitioners submitted documents in response to the notice of intent to dismiss petition. These documents included, among other items, copies of the notices of additional tax due under protest.

4. On September 9, 2013, the Division of Tax Appeals issued to petitioners a new notice of intent to dismiss petition. This notice of intent proposed dismissal on the basis that the notices of additional tax due under protest did not confer jurisdiction on the Division of Tax Appeals to consider the merits of the petition. Although allowed 30 days to submit written comments on the proposed dismissal, petitioners did not respond to this notice.

5. A corrected notice of intent to dismiss petition was issued on January 15, 2014 because two assessment numbers were inadvertently omitted from the September 9, 2013 notice.

Petitioners again were given 30 days to submit written comments, but did not respond.

6. On March 18, 2014, Supervising Administrative Law Judge Daniel J. Ranalli issued an order dismissing petition for lack of jurisdiction. This exception followed.

THE ORDER OF THE ADMINISTRATIVE LAW JUDGE

The Supervising Administrative Law Judge dismissed the subject petition because Tax Law § 173-a (2) specifically denies taxpayers the right to a hearing before the Division of Tax Appeals on notices of additional tax due.

ARGUMENTS ON EXCEPTION

The genesis of this matter is apparently a federal audit. In their exception, petitioners assert that, although notices of deficiency were issued at the federal level, petitioners have requested reconsideration of the federal audit and that such request is currently under consideration. Accordingly, petitioners contend that the Internal Revenue Service prematurely gave the Division of Taxation notice of federal changes to their income. Petitioners request that this Tribunal grant them a temporary stay of enforced collection actions by the Division of Taxation pending determination of their request to the Internal Revenue Service for audit reconsideration. Petitioners did not address Tax Law § 173-a (2), upon which the petition was dismissed.

OPINION

We affirm the order of the Administrative Law Judge.

Tax Law § 2006 (4) authorizes this Tribunal 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*” (emphasis added).

The Division of Tax Appeals is a forum of limited jurisdiction (*see* Tax Law § 2008; *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 Trib.*, 151 Misc 2d 326 [1991]). Our authority to adjudicate disputes is exclusively statutory (*id*). Therefore, absent legislative action, we cannot extend our authority to areas not specifically delegated to us.

In this case, petitioners sought to obtain a hearing with regard to notices of additional tax due. Tax Law § 173-a (2) provides that a notice of additional tax due “shall be construed as specifically denying and modifying the right to a hearing with respect to any such . . . notice of additional tax due for purposes of [Tax Law § 2006 (4)].” That provision further provides that “any . . . notice of additional tax due shall not be construed as a notice which gives a person the right to a hearing [in the Division of Tax Appeals].” Tax Law § 173-a (2) thus plainly denies petitioners a right to a hearing with respect to the subject notices of additional tax due.

Consequently, the Division of Tax Appeals is without jurisdiction to hear and determine this matter (*see Matter of Kyte*, Tax Appeals Tribunal, June 9, 2011).

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Huges O’Csay and Judith Rondos O’Csay is denied;
2. The order of the Supervising Administrative Law Judge is affirmed;
3. The petition of Huges O’Csay and Judith Rondos O’Csay is dismissed, with prejudice.

DATED: Albany, New York
December 11, 2014

/s/ Roberta Moseley Nero
Roberta Moseley Nero
President

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

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