

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition

of

ROBIN MORGENWECK

for Revision of a Deficiency or for Refund of
New York State Personal Income Tax under Article :
22 of the Tax Law for the Year 2009.

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DECISION
DTA NO. 825934

Petitioner, Robin Morgenweck, filed an exception to the small claims determination of the Presiding Officer issued on October 2, 2014. Petitioner appeared pro se. The Division of Taxation appeared by Amanda Hiller, Esq. (Justine Clarke Caplan, Esq., of counsel).

On November 26, 2014, the Tax Appeals Tribunal (Tribunal) issued a notice of intent to dismiss exception on the ground that the Tribunal lacks jurisdiction to consider an exception filed in a small claims matter. The parties were given until December 31, 2014 to respond with comments. Petitioner responded on December 8, 2014 and the Division of Taxation responded on December 17, 2014, which date began the six-month period for the issuance of this decision.

On its own motion, after reviewing the determination of the Presiding Officer, the exception and the responses of petitioner and the Division of Taxation to the Tribunal’s notice of intent to dismiss exception, the Tax Appeals Tribunal renders the following decision.

ISSUE

Whether the Tax Appeals Tribunal has jurisdiction to review the exception filed by petitioner.

FINDINGS OF FACT

We find the following facts.

Petitioner, Robin Morgenweck, filed a petition with the Division of Tax Appeals. As indicated in her petition, petitioner elected to have her case heard as a small claims matter. Following a small claims hearing, the Presiding Officer issued a small claims determination on October 2, 2014. The determination denied the petition and sustained a notice of deficiency dated March 6, 2013.

Petitioner filed an exception to the small claims determination in which she continues to argue the merits of her petition. Specifically, petitioner continues to argue that the facts and circumstances of her case justify the cancellation of interest assessed in the notice of deficiency. By letter, dated November 26, 2014, the Tribunal acknowledged receipt of petitioner's exception and issued a notice of intent to dismiss on the ground that the Tribunal lacks jurisdiction to consider an exception filed in a small claims matter. The parties were given until December 31, 2104 to respond and both did so.

OPINION

Tax Law § 2012 provides, in pertinent part, as follows:

“The final determination of the presiding officer in the small claims unit shall be conclusive upon all parties and shall not be subject to review by any other unit in the division of tax appeals, by the tax appeals tribunal or by any court of the state. However, the tax appeals tribunal may order a rehearing upon proof or allegation of misconduct by the presiding officer of the small claims proceeding.”

Similarly, section 3000.13 (h) (2) of our Rules of Practice and Procedure (20

NYCRR 3000.13 [h] [2]) provides, in pertinent part, as follows:

“Effect of determination. The final determination of the presiding officer shall be conclusive upon all parties and shall not be subject to review by any other unit in the Division of Tax Appeals or by the tribunal. However, on the motion of either party, the tribunal may order a rehearing upon proof or allegation of misconduct by the presiding officer.”

As provided above, small claims determinations of presiding officers are conclusive upon all parties and are not subject to review by this Tribunal. Here, the Presiding Officer's final

determination was issued on October 2, 2014. Accordingly, petitioner's exception is precluded by Tax Law § 2012 and this Tribunal lacks jurisdiction to review petitioner's exception.

Tax Law § 2012 does allow us to order a rehearing in a small claims matter where there are allegations or proof of misconduct by a presiding officer. As we held in *Matter of Insulpane Indus.* (Tax Appeals Tribunal, July 12, 1990), the misconduct which Tax Law § 2012 addresses is a presiding officer's objectionable behavior, as opposed to a potential error by that individual in an analysis of the facts or the law. In the instant matter, petitioner did not direct any charge of misconduct at the Presiding Officer. Rather, petitioner continues to assert that the Division has displayed "misconduct" throughout the entire process and that such "misconduct" warrants abatement of interest. Absent any showing of misconduct by the Presiding Officer within the meaning of Tax Law § 2012, there is no basis upon which to order a rehearing.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

On the Tax Appeals Tribunal's own motion, the exception of Robin Morgenweck is dismissed with prejudice as of this date.

DATED: Albany, New York
June 11, 2015

/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