

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition :
of :
FREDERICK RODRIGUEZ :
for Redetermination of Deficiencies or for Refund : DECISION
of Personal Income Taxes under Article 22 of the : DTA NO. 827513
Tax Law and the Administrative Code of the City :
of New York for the Year 2005. :

Petitioner, Frederick Rodriguez, filed an exception to the determination issued by the Supervising Administrative Law Judge on June 16, 2016. Petitioner appeared pro se. The Division of Taxation appeared by Amanda Hiller, Esq. (Christopher O'Brien, Esq., of counsel).

Petitioner did not file a brief in support of his exception. The Division filed a letter brief in opposition to the exception. Petitioner did not file a reply brief and his request for oral argument was denied. The six-month period in the issuance of this decision began on September 22, 2016, the date that petitioner's reply brief was due.

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 a notice of additional tax due (Assessment ID

L-031022956-6), dated November 24, 2008, notifying petitioner of additional New York State and New York City personal income tax due for the tax year 2005.

2. On February 29, 2016, petitioner filed a petition with the Division of Tax Appeals protesting the notice of additional tax due. Petitioner did not attach a copy of the notice of additional tax due to his petition. On March 2, 2016, the Petition Intake Section of the Division of Tax Appeals sent a letter to petitioner, advising him that his petition was not complete and that it could not be processed further without additional information. The letter indicated that a copy of the appropriate notice was not attached to the petition. The letter gave petitioner 30 days to respond. Petitioner responded by correspondence to the Division received on March 25, 2016, enclosing a copy of the notice of additional tax due. According to the notice, the additional tax due to New York was based upon a federal adjustment to income which was not reported to New York State and which resulted in an adjustment to petitioner's New York State and New York City earned income credits.

3. On May 4, 2016, a notice of intent to dismiss petition was issued to petitioner on the basis that the notice of additional tax due provided by petitioner was insufficient for conferring jurisdiction upon the Division of Tax Appeals to hear the merits of petitioner's protest. The notice of intent informed petitioner that the parties would have an additional 30 days to submit written comments on the proposed dismissal. On May 24 and June 7, 2016, respectively, petitioner submitted documents and correspondence in response to the notice of intent to dismiss petition. These documents included, among other items, copies of the notice of additional tax due, a notice and demand for payment of tax due dated January 12, 2009 and a consolidated statement of tax liabilities dated March 15, 2016, all of which set forth Assessment ID L-031022956-6.

4. On June 16, 2016 the Supervising Administrative Law Judge issued a determination dismissing the petition for lack of jurisdiction. This exception followed.

THE DETERMINATION OF THE SUPERVISING 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

This matter apparently originated with a federal audit that resulted in an audit change to petitioner's 2005 reportable income. In his exception, petitioner asserts that during the period at issue, he did not work and therefore could not have earned the wages that were imputed to him as a result of the federal audit and that subsequently became the basis for the proposed assessment. Petitioner requests that this Tribunal review the Division's determination that additional tax is due. Petitioner did not address Tax Law § 173-a (2), upon which the petition was dismissed.

The Division argues that Tax Law § 173-a (2) prevents the notice of additional tax due from being construed as a notice that confers jurisdiction on the Division of Tax Appeals and thus the Administrative Law Judge's dismissal of petitioner's petition was proper.

OPINION

We affirm the determination of the Supervising Administrative Law Judge.

This Tribunal is authorized pursuant to Tax Law § 2006 (4) 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."

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, petitioner sought a hearing with regard to a notice of additional tax due. According to the notice, the additional tax due resulted from federal adjustments to petitioner's reported income for tax year 2005. Tax Law § 659 provides that a taxpayer must report changes or corrections to federal taxable income, as corrected by the Internal Revenue Service, to the Division within 90 days after the final determination of such change or correction and either concede to the accuracy of the federal change or state a basis for asserting that the change or correction is erroneous. If the federal change or correction is not timely reported, as is the case here, the Division is authorized by Tax Law § 681 (e) to issue a notice of additional tax due. The Division may issue such notice at any time (Tax Law § 683 [c] [1] [C]).

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 such . . . 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 petitioner a right to a hearing with respect to the subject notice of additional tax due. The same provision also denies petitioner hearing rights with respect to a notice and demand of tax due (*id.*). 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 Frederick Rodriguez is denied;

2. The determination of the Supervising Administrative Law Judge is affirmed;
3. The petition of Frederick Rodriguez is dismissed, with prejudice.

DATED: Albany, New York
March 20, 2017

/s/ Roberta Moseley Nero
Roberta Moseley Nero
President

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

/s/ Dierdre K. Scozzafava
Dierdre K. Scozzafava
Commissioner