

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

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In the Matter of the Petition :  
of :  
**DARRYL E. MOYLER** : DECISION  
for Redetermination of a Deficiency or for Refund of New : DTA NO. 830302  
York State Personal Income Tax under Article 22 of the :  
Tax Law for the Years 2014, 2016, and 2017. :

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Petitioner, Darryl E. Moyler, filed an exception to the determination of the Supervising Administrative Law Judge, issued on February 3, 2022. Petitioner appeared pro se. The Division of Taxation appeared by Amanda Hiller, Esq. (Jennifer Hink-Brennan, Esq., of counsel).

Petitioner filed a brief in support of his exception. The Division of Taxation filed a letter brief in opposition. Petitioner did not file a reply brief. Oral argument was not requested. The six-month period for issuance of this decision began on April 19, 2022, the due date for petitioner's reply brief.

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

***ISSUE***

Whether the petition should be dismissed based on lack of subject matter jurisdiction.

***FINDINGS OF FACT***

We find the facts as determined by the Supervising Administrative Law Judge, except that we have modified finding of fact 4 and footnote 1 and have added finding of fact 8. We

make these changes to reflect the record more fully. The Supervising Administrative Law Judge's findings of fact, the modified findings and the new finding appear below.

1. Petitioner, Darryl E. Moyler, filed a petition that was received by the Division of Tax Appeals on February 17, 2021. The envelope containing the petition does not bear a United States Postal Service postmark indicating when the petition was mailed.

2. The petition includes a copy of: (i) a notice of deficiency bearing assessment number L-046336741 issued by the Division of Taxation (Division) on June 19, 2017; (ii) a notice and demand for payment of tax due (notice and demand) bearing assessment number L-046485619, issued by the Division on May 26, 2017; and (iii) a notice and demand bearing assessment number L-048439120 issued by the Division on June 22, 2018.

3. The petition challenges the documents referenced in finding of fact 2.

4. Petitioner previously filed a petition in protest of notice numbers L-046336741 and L-048439120. That petition was dismissed with prejudice by determination in *Matter of Moyler* (Division of Tax Appeals, March 16, 2020 [DTA No. 829185]). Petitioner did not file a timely exception to that determination.

5. On October 8, 2021, Supervising Administrative Law Judge Herbert M. Friedman, Jr., of the Division of Tax Appeals, issued a notice of intent to dismiss petition (notice of intent) to petitioner, on the basis that assessment numbers L-048439120 and L-046336741 appeared to be the subject of a previous matter before the Division of Tax Appeals, and notice and demand L-046485619 does not provide appeal rights.

6. In response to the notice of intent to dismiss petition, the Division's representative submitted a letter on October 21, 2021 stating:

“[t]he Division is in receipt of the Notice of Intent to Dismiss the petition in the

above referenced matter. On March 16, 2020, the Division of Tax Appeals issued a Determination, DTA No. 829185, sustaining Assessment Nos. L-046336741, L-046485619, and L-048439120. Attached is a copy of the Determination. Therefore, the Division of Tax Appeals lacks jurisdiction over the merits and the Division is in agreement with the proposed dismissal.”

7. Petitioner submitted a response to the notice of intent stating in sum that he would like the aforementioned assessments issued from the Department of Taxation and Finance to be reviewed for accuracy. He also submitted a notice of exception to Administrative Law Judge’s determination for DTA No. 829185 and the instant matter, dated October 16, 2021, in an undated envelope that was received by the Division of Tax Appeals on October 22, 2021.<sup>1</sup> Finally, petitioner filed a draft stipulation for discontinuance of proceeding and referral of proceeding to Bureau of Conciliation and Mediation Services (BCMS) on October 27, 2021. This form was not executed by a representative for the Division.

8. The notice and demand bearing assessment number L-046485619 states that it was issued because “[y]ou made a math error and we computed that you owe additional tax.” The notice and demand bearing assessment number L-048439120 states that it was issued because “[t]he amended return you filed resulted in a balance due.”

***THE DETERMINATION OF THE SUPERVISING ADMINISTRATIVE LAW JUDGE***

The Supervising Administrative Law Judge determined that the Division of Tax Appeals lacked jurisdiction to consider petitioner’s protest in the present matter because: 1) the notice of deficiency bearing assessment number L-046336741 and the notice and demand bearing assessment number L-048439120 were the subject of a prior proceeding in the Division of Tax Appeals and may not be relitigated; and 2) as a notice and demand, the document bearing

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<sup>1</sup> By letter dated February 16, 2022 and received by the Tax Appeals Tribunal on February 23, 2022, petitioner withdrew his October 16, 2021 notice of exception.

assessment number L-046485619, does not provide administrative appeal rights. The Supervising Administrative Law Judge also found that the draft stipulation for discontinuance of proceeding and referral of proceeding to the BCMS was insignificant because it was not executed by a representative for the Division. The Supervising Administrative Law Judge thus dismissed the petition.

***ARGUMENTS ON EXCEPTION***

Petitioner's exception protests only the Supervising Administrative Law Judge's conclusion with respect to the stipulation for discontinuance of proceeding and referral of proceeding to the BCMS. Petitioner thus apparently requests that the present matter be referred to BCMS.

The Division asserts that the determination is in all respects proper.

***OPINION***

The Supervising Administrative Law Judge correctly dismissed the petition for lack of subject matter jurisdiction.

The Tax Appeals Tribunal must "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 [the Tax Law]" (Tax Law § 2006 [4]).

The jurisdiction of the Division of Tax Appeals and this Tribunal is limited to that conferred by the Legislature and may not be extended (*Matter of Hooper*, Tax Appeals Tribunal, July 1, 2010).

Petitioner's protest of the notice of deficiency bearing assessment number L-046336741 and the notice and demand bearing assessment number L-048439120 was previously dismissed with prejudice by a Division of Tax Appeals determination issued on March 16, 2020 (*see*

finding of fact 4). Petitioner did not timely file an exception with this Tribunal requesting a review of that determination (*id.*). Accordingly, the March 16, 2020 determination “finally decide[d] the matters in controversy” (Tax Law § 2010 [4]). Petitioner “cannot now attempt to relitigate the matters finally resolved in the previous litigation” (*Matter of American Home Assurance Co.*, Tax Appeals Tribunal, August 8, 2002; *see also Matter of Yim*, Tax Appeals Tribunal, October 7, 2021; *Matter of Mostovoi*, Tax Appeals Tribunal, May 23, 2019).

The petition also protests a notice and demand bearing assessment number L-046485619, issued because the correction of a math error resulted in additional tax. Such a notice and demand is authorized by Tax Law §§ 681 (d) and 692 (b). Tax Law § 173-a (2) provides that any authorized notice and demand issued under article 22 shall be construed as specifically denying and modifying the right to a hearing with respect to any such notice for purposes of Tax Law § 2006 (4). The Tax Law thus denies petitioner the right to a hearing in the Division of Tax Appeals with respect to the notice and demand bearing assessment number L-046485619.

As noted, the draft stipulation for discontinuance of proceeding and referral of proceeding to the BCMS was not executed by a representative of the Division. Our Rules of Practice and Procedure require the Division’s consent to suspend action on a filed petition and to refer the matter to BCMS (20 NYCRR 3000.3 [e]). The absence of a Division representative’s signature on the form plainly shows a lack of such consent. Accordingly, we may not accede to petitioner’s apparent request.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Darryl E. Moyler is denied;
2. The determination of the Supervising Administrative Law Judge is affirmed; and
3. The petition of Darryl E. Moyler is dismissed with prejudice.

DATED: Albany, New York  
October 13, 2022

/s/ Anthony Giardina  
Anthony Giardina  
President

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

/s/ Cynthia M. Monaco  
Cynthia M. Monaco  
Commissioner