

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition
of
STEPHANIE RICHARDSON
for Redetermination of a Deficiency or for Refund of New
York State Personal Income Tax under Article 22 of the
Tax Law for the Year 2019.

DECISION
DTA NO. 830333

Petitioner, Stephanie Richardson, filed an exception to the determination of the Administrative Law Judge issued on February 3, 2022. Petitioner appeared pro se. The Division of Taxation appeared by Amanda Hiller, Esq. (Michele Milavec, Esq., of counsel).

Petitioner did not file a brief in support of her 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 May 19, 2022, the date that the reply brief was due to be filed.

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

ISSUE

Whether the Supervising Administrative Law Judge properly dismissed the petition.

FINDINGS OF FACT

We find the facts as determined by the Supervising Administrative Law Judge except that we have modified findings of fact 2, 3, and 5 to reflect the record more fully. As so modified, the facts are set forth below.

1. Petitioner, Stephanie Richardson, filed a petition that was received by the Division of Tax Appeals on March 5, 2021. The envelope containing the petition bears a United States Postal Service shipping label indicating that the petition was mailed on March 3, 2021.

2. The petition neither includes nor identifies by identification number a statutory notice under protest. Nor does it indicate an amount under protest. It does indicate that the tax in question is personal income tax and that the year in question is 2019. Under the heading “Reason(s) for Dispute,” the petition indicates that petitioner “received a bill” from the Division that she “[does] not owe.” This section also states: “I do not owe this bill because I filed for my own daughter . . . that I take care of 100% of the time.”

3. On April 20, 2021, the Division of Tax Appeals sent a letter to petitioner identifying the items missing from the petition and advising that failure to correct it within 30 days may result in a dismissal. The letter to petitioner indicated the following items missing:

- i. The petition does not include the notice being challenged from the Department of Taxation and Finance that offers formal protest rights.
- ii. Page 3 of the petition was not included.
- iii. The petition was not signed.

The letter also provided petitioner with the name and telephone number of a Division of Taxation employee to contact if petitioner needed to obtain a copy of the statutory notice under protest.

4. Petitioner did not cure the deficiencies in the petition.

5. On October 8, 2021, the Division of Tax Appeals issued to petitioner a notice of intent to dismiss petition. The notice restated the defects in the petition and also stated that, as a result, the Division of Tax Appeals lacks jurisdiction over the petition. The notice also stated that the parties had thirty days to submit written comments on the proposed dismissal.

6. In response to the notice of intent to dismiss petition, the Division of Taxation's representative submitted a letter on October 28, 2021 stating:

“[t]he Division is in receipt of the Notice of Intent to Dismiss the petition in the above referenced matter. As the petition submitted was not in proper form, as required by 20 NYCRR 3000.3 and Tax Law § 2008, because the petitioner neglected to include a copy of the statutory notice or conciliation order issued to petitioner, the petition filed was missing pages, and the petition was not signed, the Division agrees with the proposed dismissal.”

7. Petitioner did not submit a response to the notice of intent to dismiss petition.

THE DETERMINATION OF THE SUPERVISING ADMINISTRATIVE LAW JUDGE

The Supervising Administrative Law Judge observed that the subject petition did not include or identify a protested statutory notice and was unsigned, contrary to the requirements of the Tax Law and the Tax Appeals Tribunal Rules of Practice and Procedure (Rules). The Supervising Administrative Law Judge further observed that petitioner failed to correct such defects despite having been requested to do so. He concluded that the Division of Tax Appeals lacks jurisdiction in the present matter and dismissed the petition accordingly.

ARGUMENTS ON EXCEPTION

Petitioner's exception appears to continue to object to the same asserted liability as it refers to “fil[ing] for my daughter” and asserts that “the child is in my care at all times.” Included with the exception is a copy of a notice of deficiency issued to petitioner dated December 7, 2020. The notice bears assessment ID L-051556671 and asserts a balance due of \$709.91 for tax year 2019.

In its letter brief, the Division of Taxation indicates that, due to the additional information provided by petitioner in her exception, it now has notice of the matter in controversy. The Division of Taxation agrees with the determination, unless this Tribunal determines that

petitioner has corrected the deficiencies in the petition with the additional information provided in the exception.

OPINION

The Division of Tax Appeals is “responsible for providing the public with a just system of resolving controversies with [the Division of Taxation] and to ensure that the elements of due process are present with regard to such resolution of controversies” (Tax Law § 2000). This is done through the administrative hearing process, which begins with a taxpayer filing a petition, and includes the review of such petition and the providing of an administrative hearing regarding the issues raised in such petition (Tax Law § 2000).

A taxpayer may file a petition “protesting any written notice of the division of taxation which has advised the petitioner of a tax deficiency, a determination of tax due, a denial of a refund . . . or any other notice which gives a person the right to a hearing” (Tax Law § 2008 [1]). The Tax Appeals Tribunal must provide a petitioner “a hearing as a matter of right . . . 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 administrative hearing process is subject to “such rules, regulations, forms and instructions as the tribunal may prescribe” (*id.*).

The “rules, regulations, forms and instructions” at issue concern the form of a petition filed with the Division of Tax Appeals. As stated in the determination, the petition was dismissed because it did not include a copy of or identify the protested statutory notice and was unsigned. The Rules require the signature of the petitioner (or representative) on the petition and also require that a legible copy of the statutory notice under protest be attached to the petition (20 NYCRR 3000.3 [b] [7, 8]). The petition form also contains an entry for the challenged “notice/assessment number(s)” (*see* form TA-100 [6/17]).

Under our Rules, when a petition is not in proper form, the Supervising Administrative Law Judge must “promptly return it to the petitioner together with a statement indicating the requirements with which the petition does not comply, and extend to the petitioner an additional 30 days within which to file a corrected petition” (20 NYCRR 3000.3 [d] [1]). If the petitioner fails to make corrections as directed within the time prescribed, the Supervising Administrative Law Judge “will issue a determination dismissing the petition” (20 NYCRR 3000.3 [d] [2]).

These Rules were followed in the present matter. Specifically, the April 20, 2021 letter identified the items missing from the petition and advised petitioner that failure to make corrections within 30 days could result in a dismissal (finding of fact 3). About six months later, petitioner having failed to correct the identified errors, the Division of Tax Appeals issued the October 8, 2021 notice of intent to dismiss petition (finding of fact 5). The notice of intent advised that the basis for the proposed dismissal was petitioner’s failure to correct the petition (*id.*). Despite having been granted thirty days to respond to the notice of intent to dismiss, petitioner again did not respond (finding of fact 7) and the Supervising Administrative Law Judge issued a determination dismissing the petition.

Consistent with our charge to provide the public with a fair system that comports with due process requirements (Tax Law § 2000), we expect the Supervising Administrative Law Judge to exercise appropriate discretion in dismissing defective petitions pursuant to 20 NYCRR 3000.3 (d) (2) (*Matter of Leslie*, Tax Appeals Tribunal, April 22, 2015). For example, as we have previously indicated, it would likely be inappropriate to dismiss a petition merely for failure to list the organization within the Division that sent the statutory notice at issue as required under 20 NYCRR 3000.3 (b) (3) or to provide the petitioner’s telephone number as required under 20 NYCRR 3000.3 (b) (1) (*id.*; *see also Matter of Buyrite Motors, Inc.*, Tax Appeals Tribunal,

February 18, 1993). However, where the failure to comport with the Rules and the instructions raises a substantial question as to the facial validity of the petition, dismissal pursuant to 20 NYCRR 3000.3 (d) (2) is appropriate (*id.*).

The defects here raise such substantial questions and, accordingly, dismissal was appropriate. Specifically, the lack of a statutory notice precludes the Division of Tax Appeals from making a facial determination of jurisdiction over the petition. Our jurisdiction is limited to that conferred by the Legislature and may not be extended (*Matter of Hooper*, Tax Appeals Tribunal, July 1, 2010). As a petition protesting a statutory notice must be filed within statutory time limits (Tax Law §§ 2006 [4], 2008 [2]), the date of the notice enables the Division of Tax Appeals to determine, facially, whether the petition is timely and thus within our jurisdiction. Additionally, some notices issued by the Division do not give rise to hearing rights in the Division of Tax Appeals (*see e.g.*, Tax Law § 173-a). The requirement to provide a copy of the statutory notice under protest also enables the Division of Tax Appeals to efficiently process such non-jurisdictional petitions separately from petitions over which the Division of Tax Appeals has jurisdiction. Further, the lack of a statutory notice, or at least a notice or assessment number, causes the petition, even liberally construed, to fail to fulfill its purpose, which “is to give the parties [i.e., the Division of Taxation] and the Division of Tax Appeals fair notice of the matters in controversy and the basis for the parties’ respective positions” (20 NYCRR 3000.4 [a]).

Petitioner’s failure to sign the petition as required also raises a question as to its facial validity. The signature ensures, at least facially, that the petition is being filed by the named petitioner (or authorized representative). Additionally, the Rules and the petition form require such a signature “beneath a statement that the petition is made with knowledge that a willfully

false representation is a misdemeanor punishable under section 210.45 of the Penal Law” (20 NYCRR 3000.3 [b] [7]; form TA-100 [06/17]). Such an acknowledgement encourages truth and discourages falsity in the filing of petitions.

In reaching our conclusion in this matter we have determined that petitioner may not cure her failures below by providing a copy of the protested statutory notice with her exception. “We have held that a fair and efficient hearing process must be defined and final, and that the acceptance of evidence after the record is closed is not conducive to that end . . . [citations omitted]” (*Matter of Ippolito*, Tax Appeals Tribunal, August 23, 2012, *confirmed* 116 AD3d 1176 [3rd Dept 2014]). In accordance with this principle, we have long and consistently maintained a policy against considering evidence that was not made part of the record below (*see e.g. Matter of Boniface*, Tax Appeals Tribunal, June 30, 2022; *Matter of Shi Ying Tan*, Tax Appeals Tribunal, October 16, 2014; *Matter of Schoonover*, Tax Appeals Tribunal, August 15, 1991).

Finally, we note that petitioner may not be entirely without recourse here. She may pay the disputed liability and file a timely claim for a refund (Tax Law § 687 [a]). If the refund claim is denied, she may timely file a petition in the Division of Tax Appeals to contest the denial (Tax Law § 689 [c]).

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

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

DATED: Albany, New York
November 17, 2022

/s/ Anthony Giardina
Anthony Giardina
President

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

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