

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
PAUL P. ANDRIS	:	DETERMINATION
for Redetermination of a Deficiency or for Refund of	:	DTA NO. 826029
Personal Income Tax under Article 22 of the Tax Law	:	
for the Year 2009.	:	

Petitioner, Paul P. Andris, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 2009.

Pursuant to 20 NYCRR 3000.9(a)(4), the Division of Tax Appeals issued a Notice of Intent to Dismiss Petition, dated April 4, 2014, on the grounds that the Division of Tax Appeals lacks jurisdiction of the subject matter of the petition because the petition was not filed in protest of a statutory notice. The Division of Taxation, by its representative, Amanda Hiller, Esq., (Leo Gabovich) submitted a letter, dated April 21, 2014, in support of the proposed dismissal.

Petitioner, appearing pro se, submitted his response by its due date of May 5, 2014, which commenced the 90-day period to issue this determination. Based upon the pleadings in this matter and the responses filed by the Division and petitioner, Catherine M. Bennett, Administrative Law Judge, renders the following determination.

ISSUE

Whether Division of Tax Appeals has subject matter jurisdiction over the petition filed in this matter.

FINDINGS OF FACT

1. The Division of Taxation (Division) issued to petitioner, Paul P. Andris, a Notice of Additional Tax Due, dated April 23, 2013, which assessed personal income tax for the year 2009 in the amount of \$40.55, plus interest.

2. On December 31, 2013, Division of Tax Appeals received a petition challenging the foregoing notice.

3. On April 4, 2014, the Division of Tax Appeals issued a Notice of Intent to Dismiss Petition, which stated:

You are hereby notified of our intent to dismiss the petition in the above referenced matter.

Pursuant to § 173-a(2) of the Tax Law, a Notice of Additional Tax Due does not give the petitioner the right to a hearing. Therefore, the Division of Tax Appeals lacks jurisdiction to consider the merits of a petition that is filed in protest of a Notice of Additional Tax Due.

In this case, the petitioner filed a petition in protest of a Notice of Additional Tax Due, Assessment No. L-039260772, issued on April 23, 2013. Since no hearing rights exist to protest the Notice of Additional Tax Due, the Division of Tax Appeals lacks jurisdiction to consider the merits of this petition.

Pursuant to 20 NYCRR 3000.9(a)(4) of the Rules of Practice and Procedure of the Tax Appeals Tribunal, a party shall have thirty (30) days from the date of this Notice to submit written comments on the proposed dismissal.

4. Petitioner maintained that the notice of intent to dismiss the petition should be rejected, citing two grounds: a) that the Division of Tax Appeals has misinterpreted Tax Law § 173-a(2), thereby abrogating petitioner's rights for equal protection under New York law; and b) petitioner had been explicitly instructed that he would have the opportunity to present evidence in a hearing before an impartial administrative law judge, referencing the Notice of Taxpayer Rights mailed to petitioner. Petitioner concedes that Tax Law § 173-a(2) refers to claims by New

York State “without the issuance of a notice of deficiency,” but asserts that he did receive a notice of deficiency, therefore this section of the Tax Law has been improperly applied to him.

5. The Division submitted a letter stating that it agreed with the proposed dismissal.

CONCLUSIONS OF LAW

A. The Division of Tax Appeals is an adjudicatory body of limited jurisdiction whose powers are confined to those expressly conferred in its authorizing statute (*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]). Therefore, in the absence of legislative action, this forum cannot extend its authority to disputes that have not been specifically delegated to it (*Matter of Hooper*, Tax Appeals Tribunal, July 1, 2010).

B. In this matter, the petition challenges a Notice of Additional Tax Due dated April 23, 2013. Petitioner mistakenly identifies this notice as a notice of deficiency based upon the mere fact that the body of the notice contains the word “deficiency,” ignoring the fact that the title of the specific document issued impacts the rights that flow therefrom to petitioner. Furthermore, the reference made by petitioner to his right to a hearing before the Division of Tax Appeals conveniently omits the qualifier, “*in some cases*, you may timely file a **formal protest** . . .” (emphasis added). This is simply not one of those cases.

C. Upon review of the documents and arguments, it is concluded that this proceeding must be dismissed because the Division of Tax Appeals lacks subject matter jurisdiction. The Tax Appeals Tribunal is authorized 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” (Tax Law § 2006[4]). In this instance, the right to a hearing is specifically denied. Tax Law § 173-a(2) provides that a notice of

additional tax due “shall not be construed as a notice which gives a person the right to a hearing. . .” Accordingly, the Division of Tax Appeals is without authority to proceed (*see Matter of Chait*, Tax Appeals Tribunal, April 22, 2010).¹

D. The petition of Paul P. Andris is dismissed.

DATED: Albany, New York
July 10, 2014

/s/ Catherine M. Bennett
ADMINISTRATIVE LAW JUDGE

¹ Petitioner may not be entirely without recourse in this matter. That is, petitioner may pay the disputed tax sought by the Division’s Notice of Additional Tax Due and thereafter file a claim for refund (Tax Law § 689[c]). If such claim for refund is denied, petitioner may then proceed with a timely petition for a hearing to contest the refund denial (Tax Law § 2008[1]).