

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
LAURA E. SMITH : DETERMINATION
 : DTA NO. 826200
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 2009. :

Petitioner, Laura E. Smith, filed a petition 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 2009.

On July 29, 2014, the Division of Tax Appeals issued to petitioner a Notice of Intent to Dismiss Petition pursuant to 20 NYCRR 3000.9(a)(4). On August 14, 2014, the Division of Taxation by Amanda Hiller, Esq. (Leo Gabovich, Law Clerk) submitted a letter agreeing with the proposed dismissal. On August 26, 2014, petitioner responded by cover letter submitting a copy of her income tax returns for the year 2009. Pursuant to 20 NYCRR 3000.5(d) and 3000.9(a)(4), the 90-day period for issuance of this determination commenced on August 26, 2014. After due consideration of the arguments submitted by the parties, Kevin R. Law, Administrative Law Judge, renders the following determination.

ISSUE

Whether the Division of Tax Appeals has subject matter jurisdiction to entertain the petition.

FINDINGS OF FACT

1. On April 1, 2014, the Division of Tax Appeals received a petition from petitioner, Laura E. Smith. The petition did not identify petitioner's social security number, the notice number being protested or the taxable years involved. In addition, petitioner failed to attach to the petition either a copy of the statutory notice or conciliation order being protested, nor did she sign the petition beneath a statement acknowledging that a wilfully false statement is a misdemeanor. The petition indicated that petitioner's representative was H&R Block in Delhi, New York. The petition did not indicate who specifically at H&R Block was representing her, nor was a power of attorney attached.

2. On April 14, 2014, the Division of Tax Appeals sent petitioner a letter indicating that the petition could not be processed as filed and detailed what information was required for further processing.

3. On July 15, 2014, Heather Scamardo of the Petition Intake, Review and Exception Unit of the Division of Tax Appeals telephoned petitioner to advise her the petition was defective and that it would be dismissed unless the omissions were rectified. Petitioner was offered assistance with filling out the petition but she declined since did not have a copy in front of her. Petitioner was instructed to call back when she had a copy in front of her so she could provide the missing information. On that same date, Ms. Scamardo also telephoned the H& R Block Office listed on the petition in an attempt to obtain a power of attorney and a properly completed petition.

4. On July 29, 2014, a Notice of Intent to Dismiss Petition was sent to petitioner giving her an additional 30 days to respond with the information missing from the petition.

5. On August 26, 2014, petitioner sent the Division of Tax Appeals copies of her 2009 federal and state income tax returns.

CONCLUSIONS OF LAW

A. A proceeding in the Division of Tax Appeals is commenced by filing 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]), pursuant to such rules and regulations as may be provided by the Tax Appeals Tribunal (Tax Law § 2006[4]).

B. The Tax Appeals Tribunal’s Rules of Practice and Procedure (Rules) at 3000.3(b) require that the petition contain the following:

- (1) the name, address and telephone number of the petitioner;
- (2) the name, address and telephone number of the petitioner's representative, if any;
- (3) the division, bureau or unit of the department which sent the statutory notice, the date of the notice, the tax article involved, and the nature of the tax;
- (4) if applicable, the taxable years or periods involved and the amount of tax in controversy;
- (5) separately numbered paragraphs stating, in clear and concise terms, each and every error which the petitioner alleges has been made by the division, bureau or unit (e.g. in issuing a notice of deficiency or in denying a refund application), together with a statement of the facts upon which the petitioner relies to establish each said error;
- (6) the relief sought by the petitioner;
- (7) the signature of the petitioner or the petitioner's representative 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;

(8) for the sole purpose of establishing the timeliness of the petition, a legible copy of the order of the conciliation conferee if issued; if no such order was previously issued, a legible copy of any other statutory notice being protested;

(9) the original or a legible copy of the power of attorney;

(10) an identifying number or numbers as prescribed by the commissioner of taxation and finance in the form of social security numbers, employer identification numbers or other numeric designations suitable for proper identification of the petitioner. . . .

C. In this case, despite being given numerous opportunities to correct her petition, petitioner responded to the notice of intent to dismiss with copies of her 2009 federal and state income tax returns. Even if it can be surmised from the returns that the petition involves personal income tax for the year 2009 and those returns contain petitioner's social security number printed thereon, the petition is still woefully inadequate as petitioner did not provide any of the other information requested of her that is required under the Rules. Petitioner's failure to correct the petition after having been given ample opportunity to do so leaves the Division of Tax Appeals without jurisdiction to hear and determine this matter (20 NYCRR 3000.3[d][2]; *Matter of Scott*, Tax Appeals Tribunal, May 29, 2008; *Matter of Francis*, Tax Appeals Tribunal, June 18, 2009; *Matter of Diop*, Tax Appeals Tribunal, August 21, 2014).

D. The petition of Laura E. Smith is hereby dismissed.

DATED: Albany, New York
October 30, 2014

/s/ Kevin R. Law
ADMINISTRATIVE LAW JUDGE