

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
ANTHONY TAYLOR	:	
AND DAIL MOSES-TAYLOR	:	DETERMINATION
	:	DTA NO. 827103
for Redetermination of a Deficiency or for Refund of Personal Income Tax under Article 22 of the Tax Law for the Years 2007 through 2009.	:	

Petitioners, Anthony Taylor and Dail Moses-Taylor, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 2007 through 2009.

Pursuant to 20 NYCRR 3000.9(a)(4), the Division of Tax Appeals issued to petitioners a Notice of Intent to Dismiss Petition, dated August 7, 2015, on the ground that the Division of Tax Appeals lacks jurisdiction over this matter. By letter dated September 3, 2015, the date by which the parties were allowed to submit responses to the notice of intent was extended to October 23, 2015.

On September 3, 2015, the Division of Taxation, by its representative, Amanda Hiller, Esq. (Linda Harmonick) submitted a letter in support of the proposed dismissal. Petitioners, appearing pro se, filed a response on October 23, 2015, which commenced the 90-day period for issuance of this determination. After due consideration of the documents and arguments submitted, Winifred M. Maloney, Administrative Law Judge, renders the following determination.

ISSUE

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

FINDINGS OF FACT

1. Based upon their failure to report audit changes made by the Internal Revenue Service (IRS) to their 2007 federal income tax return within 90 days of such final federal determination, the Division of Taxation (Division) issued to petitioners, Anthony Taylor and Dail Moses-Taylor, a Notice of Additional Tax Due (Notice No. L-038212804-2), dated June 26, 2012, seeking payment of personal income tax for the year 2007, pursuant to Tax Law §§ 659 and 683(c).
2. Based upon their failure to report audit changes made by the IRS to their 2008 and 2009 federal income tax returns within 90 days of such final federal determinations, the Division issued to petitioners notices of additional tax due for the years 2008 and 2009, numbers L-042121575-7 and L-042121576-6, respectively, dated November 5, 2014, seeking payments of personal income tax for such years, pursuant to Tax Law §§ 659 and 683(c).
3. On July 2, 2015, petitioners filed a petition with the Division of Tax Appeals protesting the three notices of additional tax due. In their petition, petitioners claim that their challenge of the federal audit changes made by the IRS for the years 2007, 2008 and 2009 is not completed, and New York State should halt all collection activities until the United States Tax Court proceedings are completed.
4. On August 7, 2015, the Division of Tax Appeals issued to petitioners a Notice of Intent to Dismiss Petition. The notice of intent provided, in relevant part, as follows:

“Pursuant to sections 681(b) and 689(b) of the Tax Law, the protest of a statutory notice that has been issued to a taxpayer under Article 22 of the Tax Law is commenced by the timely filing of a petition with the Division of Tax Appeals

(20 NYCRR 3000.3[c]). Such petition must include a copy of a statutory notice under protest (*see* 20 NYCRR 3000.3[b][8]). With respect to Article 22 of the Tax Law, this requirement will be satisfied by the petitioner's provision of a copy of either a notice of deficiency or a refund denial (*see* Tax Law § 681; 20 NYCRR 3000.1[k]). In addition, Tax Law § 173-a(2) specifically provides, inter alia, that a taxpayer is not entitled to a hearing before the Division of Tax Appeals with respect to the issuance of a notice of additional tax due.

The petition in this matter appears to have been filed in protest of Notices of Additional Tax Due, Assessment Nos. L-038212804, L-042121575, and L-042121576 issued June 26, 2012 and November 5, 2014, respectively. These notices are insufficient to confer jurisdiction upon the Division of Tax Appeals to consider the merits of the petition.”

CONCLUSIONS OF LAW

A. Tax Law § 2006 sets forth the functions, powers and duties of the Tax Appeals Tribunal including, in relevant part at subsection four thereof, as follows:

“To provide a hearing as a matter of right, to any petitioner upon such petitioner's request, pursuant to such rules, regulations, forms and instructions as the tribunal may prescribe, *unless a right to such hearing is specifically provided for, modified or denied by another provision of this chapter.*” (Emphasis added.)

B. Tax Law § 659 provides that where a taxpayer's federal taxable income is changed or corrected by the Internal Revenue Service the taxpayer must report such change or correction to the Division of Taxation within 90 days after the final determination of such change or correction and either concede the accuracy of the federal change or state the taxpayer's basis for asserting that the change or correction is erroneous. If the federal change or correction is not reported within the 90-day period, the Division is authorized by Tax Law § 681(e) to issue a notice of additional tax due. Furthermore, where a taxpayer fails to report the federal change or correction as required, such a notice may be issued at any time (*see* Tax Law § 683[c][1][C]).

C. Tax Law § 173-a (as added by L 2004, ch 60, §8, eff August 20, 2004), applying to notices and demands and notices of additional tax due issued on or after December 1, 2004,

amended the Tax Law to specifically state that a taxpayer shall not be entitled to a hearing before the Division of Tax Appeals with respect to, inter alia, the issuance of a notice of additional tax due.

D. In this matter, the Division issued three notices of additional of tax due for the years at issue. The first Notice of Additional Tax Due (Notice No. L-038212804-2), based upon petitioners' failure to report federal audit changes to New York State for the year 2007, was issued against petitioners on June 26, 2012. The second and third notices of additional tax due (Notice Nos. L-042121575-7 and L-042121576-6), based upon petitioners' failure to report federal audit changes to New York State for the years 2008 and 2009, respectively, were issued against petitioners on November 5, 2014. Tax Law § 173-a applies to notices of additional tax due issued on or after December 1, 2004. Accordingly, such provision serves, as a matter of law, to preclude petitioners from obtaining a hearing with respect to the subject notices of additional tax due that were issued after December 1, 2004.

E. The petition of Anthony Taylor and Dail Moses-Taylor is hereby dismissed.¹

DATED: Albany, New York
December 10, 2015

/s/ Winifred M. Maloney
ADMINISTRATIVE LAW JUDGE

¹ Petitioners may not be entirely without recourse in this matter. That is, petitioners may pay the disputed amounts of tax sought by the Division via the notices of additional tax due and thereafter file claims for refund. If such claims for refund are denied, petitioners may then proceed with a timely petition for a hearing to contest the refund denials.