

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
ARTHUR G., JR., AND AMANDA NEVINS : DETERMINATION
for Redetermination of a Deficiency or for Refund of : DTA NO. 827609
New York State Personal Income Tax under Article 22 :
of the Tax Law for the Year 2008. :

Petitioners, Arthur G., Jr., and Amanda Nevins, 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 2008.

On June 27, 2016, the Division of Tax Appeals issued to petitioner a Notice of Intent to Dismiss Petition pursuant to 20 NYCRR 3000.9(a)(4). In response to a request for additional time, the parties were granted until September 12, 2016 to respond to the proposed dismissal. On July 18, 2016, the Division of Taxation, by Amanda Hiller, Esq. (Mary Hurteau, Esq.), submitted a letter in support of dismissal. On September 9, 2016, petitioners, appearing pro se, submitted an affirmation and documents in opposition to dismissal. Pursuant to 20 NYCRR 3000.5(d) and 3000.9(a)(4), the 90-day period for issuance of this determination commenced September 12, 2016. After due consideration of the documents submitted, Kevin R. Law, Administrative Law Judge, renders the following determination.

ISSUE

Whether petitioners are entitled to a hearing in the Division of Tax Appeals with respect to a Notice of Additional Tax Due.

FINDINGS OF FACT

1. The Division of Taxation (Division) issued to petitioners, Arthur G., Jr., and Amanda Nevins, a Notice of Additional Tax Due (Assessment ID# L-024124741-1), seeking payment of personal income tax due for the tax year 2008.

2. The notice, dated November 5, 2014, provides, in part, as follows:

“Our records indicate that the Internal Revenue Service (IRS) made changes to your federal return. Section 659 of the New York State Tax Law requires that federal audit changes be reported to the New York State Tax Department within 90 days of the final federal determination.

A search of our files indicates that you did not report these changes to New York State.

* * *

Business income reported on your New York return has been corrected to include the IRS adjustment.”

3. On April 28, 2016, petitioner filed a petition with the Division of Tax Appeals protesting the Notice of Additional Tax Due. Also attached to the petition was a Notice and Demand for Payment of Additional Tax Due dated January 7, 2016 bearing the same assessment identification number as that appearing on the Notice of Additional Tax Due.

4. On June 27, 2016, the Division of Tax Appeals issued to petitioner a Notice of Intent to Dismiss Petition. The notice of intent provided, in relevant part, as follows:

“Pursuant to §§ 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 the 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 a notice of additional tax due and a notice and demand.

The petition in this matter appears to have been filed in protest of a Notice of Additional Tax Due, Assessment L-042124741-1, issued on November 5, 2014. The petition in this matter also appears to have been filed in protest of a Notice and Demand for Payment of Tax Due, issued January 7, 2016. These notices are insufficient to confer jurisdiction upon the Division of Tax Appeals to consider the merits of the petition.”

5. Petitioners' papers in opposition to dismissal allege that it was never necessary for petitioners to file a report of federal audit changes because although their income was increased, the change had no affect on their New York tax liability. Petitioners contend that Tax Law §§ 173-a, 659 and 681 were not intended to bar a taxpayer from filing petition where the federal change has no affect on New York tax liability.

CONCLUSIONS OF LAW

A. The Division of Tax Appeals is a forum of limited jurisdiction (Tax Law § 2008; *Matter of Scharff*, Tax Appeals Tribunal, October 4, 1990, *revd on other grounds sub nom New York State Department of Taxation and Fin. v. Tax Appeals Tribunal*, 151 Misc 2d 326, 573 NYS2d 140). Its power to adjudicate disputes is exclusively statutory (*id*). The Tax Appeals Tribunal has the power to provide a hearing as a matter of right to any petitioner pursuant to such rules and regulations as may be provided by the Tax Appeals Tribunal, unless a right to a hearing is specifically provided for, modified or denied by another provision of law (*see* Tax Law § 2006 [4]).

B. 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]).

C. 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.

D. Tax Law § 173-a , applying to notices and demands and notices of additional tax due, specifically provides th at 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 or a notice and demand.

E. The Notice of Additional Tax Due in this matter, is based upon petitioners’ failure to report federal audit changes to New York State for the year in question. Tax Law § 173-a specifically preclude petitioners from obtaining a hearing with respect to the subject Notice of Additional Tax Due. Petitioners’ arguments to the contrary are rejected as there are no exceptions for taxpayers who, on their own accord, determine there is no New York tax liability. Contrary to petitioners’ line of argumentation, Tax Law § 659 requires the report to be filed wherein the determination of New York tax liability can be ascertained. Petitioners, having previously filed a 2008 New York State personal income tax return, were obligated to notify the Division of subsequent federal audit changes regardless of whether they believed there was a

New York State tax affect. For these same reasons, there are no hearing rights on the ensuing notice and demand for payment of tax due.

F. The petition of Arthur G., Jr., and Amanda Nevins is hereby dismissed.¹

DATED: Albany, New York
December 1, 2016

/s/ Kevin R. Law
ADMINISTRATIVE LAW JUDGE

¹Petitioners are not entirely without recourse in this matter as they may pay the disputed tax and thereafter file a claim for refund. If such claim for refund is denied, petitioners may then proceed with a timely petition for a hearing to contest the refund denial.