

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
AGNIESZKA ZAPYTOWSKA	:	DETERMINATION
for Redetermination of a Deficiency or for Refund of	:	DTA NO. 827863
New York State and New York City Personal Income	:	
Tax under Article 22 of the Tax Law and the New York	:	
City Administrative Code for the Year 1999.	:	

Petitioner, Agnieszka Zapytowska, filed a petition for redetermination of a deficiency or for refund of New York State and New York City personal income tax under Article 22 of the Tax Law and the New York City Administrative Code for the year 1999.

On October 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). The parties were granted 30 days to respond to the proposed dismissal. On November 21, 2016, the Division of Taxation, by Amanda Hiller, Esq. (Mary Hurteau, Esq., of counsel), submitted a letter in support of dismissal. On November 23, 2016, petitioners, appearing by Isaac Sternheim and Co. (Isaac Sternheim, CPA), filed a letter 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 on November 28, 2016. After due consideration of the documents submitted, Kevin R. Law, Administrative Law Judge, renders the following determination.

ISSUE

Whether petitioner is 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 petitioner, Agnieszka Zapytowska, a Notice of Additional Tax Due (Assessment ID# L-029359634-2), seeking payment of personal income tax due for the tax year 1999.

2. The notice, dated November 5, 2007, 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.”

3. On September 26, 2016, petitioner filed a petition with the Division of Tax Appeals protesting the Notice of Additional Tax Due. The petition alleges that petitioner never received a copy of the notice and that the amount asserted due should have been discharged in a bankruptcy proceeding. A copy of the notice was not attached to the petition.

4. On October 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 No. L-029359634-2, issued on November 5, 2007. This notice is insufficient to confer jurisdiction upon the Division of Tax Appeals to consider the merits of the petition.”

5. Petitioner’s letter in opposition to dismissal states that a copy of the notice was not attached to the petition as petitioner never received a copy of said notice.

6. The Division’s letter in support of dismissal states that petitioner is not entitled to a hearing in the Division of Tax Appeals because the notice petitioned is a notice of additional tax due, which does not confer jurisdiction upon the Division of Tax Appeals. Along with the letter, the Division submitted a copy of the Notice of Additional Tax Due.

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). 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 it, 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 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 , applicable to notices and demands and notices of additional tax due, specifically provides 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 or a notice and demand.

E. The Notice of Additional Tax Due in this matter is based upon petitioner's failure to report federal audit changes to New York State for the year in question. Tax Law § 173-a specifically precludes petitioner from obtaining a hearing with respect to the subject Notice of Additional Tax Due. Petitioner's allegation that she failed to receive the Notice of Additional Tax Due is of no consequence as a Notice of Additional Tax Due can be issued at any time where a taxpayer fails to file a report of final federal audit changes with the Division as is the case here. The Division's response to the Notice of Intent to Dismiss Petition provided petitioner with a copy of the Notice of Additional Tax Due so there is no resulting prejudice to petitioner; in either situation hearing rights do not attach.

F. The petition of Agnieszka Zapytowska is hereby dismissed.

DATED: Albany, New York
February 16, 2017

/s/ Kevin R. Law
ADMINISTRATIVE LAW JUDGE