

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
INGRID GORDON-PATTERSON	:	DETERMINATION
for Redetermination of a Deficiency or for Refund of	:	DTA NO. 827917
New York State Personal Income Tax under Article	:	
22 of the Tax Law for the Years 2012 through 2015.	:	

Petitioner, Ingrid Gordon-Patterson, filed a petition for redetermination of a deficiency or for refund of New York State personal tax under Article 22 of the Tax Law for the years 2012 through 2015.

On February 3, 2017, the Division of Tax Appeals issued to petitioner a notice of intent to dismiss petition pursuant to 20 NYCRR 3000.9(a)(4). On March 3, 2017, the Division of Taxation, by Amanda Hiller, Esq. (Mary Hurteau, Esq., of counsel), filed a letter in support of dismissal. Petitioner did not respond to the notice of intent to dismiss petition. Pursuant to 20 NYCRR 3000.5(d) and 3000.9(a)(4), the 90-day period for issuance of this determination began on March 5, 2017. After due consideration of the Division of Taxation's response to the notice of intent to dismiss petition, and upon all pleadings and proceedings had herein, Dennis M. Galliher, Administrative Law Judge, renders the following determination.

ISSUE

Whether the petition in this matter should be dismissed for lack of jurisdiction.

FINDINGS OF FACT

1. Petitioner, Ingrid Gordon-Patterson, filed a petition with the Division of Tax Appeals. The petition is dated as signed on September 26, 2016. The envelope in which the petition was mailed to the Division of Tax Appeals bears a United State Postal Service (USPS) postage stamp dated October 24, 2016, and the petition and envelope are date stamped as received by the Division of Tax Appeals on November 1, 2016.

2. Letters attached to the petition, and addressed to the Clerk of the Supreme Court, Suffolk County, New York, indicate that petitioner's challenge concerns a levy on a bank account apparently made in connection with a certain indictment against petitioner. The letters reference a forfeiture order and seizure, and a restitution amount, but provide no further information concerning the underlying indictment or subsequent resolution (conviction) thereon, or identifying the levying party or the recipient of any funds seized, including specifically the Division of Taxation.

3. By a letter dated November 3, 2016, the Division of Tax Appeals acknowledged receipt of the petition, but advised petitioner that the petition could not be further processed because several required items of information had not been provided. Specifically, the petition form did not identify: the tax law article, years or periods at issue, or the notice or assessment number involved, or the amount of tax determined or contested.¹ In addition, the petition did not include a copy of any statutory document (e.g., notice, assessment, denial) giving rise to the right to a hearing before the Division of Tax Appeals. The November 3, 2016 letter included

¹ Notwithstanding the noted missing information, this matter has been captioned as pertaining to the years 2012 through 2015, apparently based upon petitioner's very brief and generic recitation of her personal tax filings for such years, as set forth at Item "6" of the petition form.

information (Division of Taxation telephone numbers, employee names and addresses) for petitioner to contact in order to obtain any relevant statutory document carrying with it the right to a hearing as sought by petitioner. Petitioner was afforded a period of 30 days within which to furnish the noted statutory document.

4. Petitioner did not respond to the foregoing letter, or provide any of the information specified therein as missing. In turn, on February 3, 2017, Daniel J. Ranalli, then-Supervising Administrative Law Judge of the Division of Tax Appeals, responded to the petition by issuing to petitioner a notice of intent to dismiss petition (Notice of Intent). The Notice of Intent provides, in relevant part, as follows:

“Pursuant to § 3000.3(d)(1) of the Rules of Practice and Procedure of the Tax Appeals Tribunal, where the petition is not in the form required by this section, the supervising administrative law judge shall promptly return it to the petitioner together with a statement indicating the requirements with which the petition does not comply, and extend to the petitioner an additional thirty (30) days within which to file a corrected petition with the supervising administrative law judge.

In conformity with § 3000.3(b)(8) of the Rules of Practice and Procedure of the Tax Appeals Tribunal, and in order to establish timeliness, the petition shall contain a copy of the conciliation order or statutory notice being protested. Petitioner did not include the required notice of deficiency, and therefore the petition does not appear to have been timely filed.”

Under the Notice of Intent, petitioner was afforded a period of thirty days within which to file a corrected petition so as to provide the requisite statutory document being protested, and the parties were afforded the same period of time within which to provide written comments on the proposed dismissal of the petition.

5. In response to the Notice of Intent, the Division of Taxation submitted a letter, dated February 24, 2017, listing the items and information missing from the petition, noting that the

petition was therefore not in proper form, and stating its agreement with the proposed dismissal of the petition.

6. Petitioner did not respond to the Notice of Intent.

CONCLUSIONS OF LAW

A. This matter proceeds by way of a notice of intent to dismiss petition, under 20 NYCRR 3000.9(a)(4), upon the basis that the petition did not include a copy of any statutory document giving rise to the right to a hearing, as required under 20 NYCRR 3000.3(b)(8), such that the timeliness of the petition can not be determined, therefore leaving the petition subject to dismissal as untimely. In *Matter of Victory Bagel Time, Inc.* (Tax Appeals Tribunal, September 13, 2012), the Tribunal held that the standard to employ for reviewing a notice of intent to dismiss petition is the same as that used for reviewing a motion for summary determination, and this matter shall proceed under that standard.

B. A motion for summary determination may be granted:

“if, upon all the papers and proof submitted, the administrative law judge finds that it has been established sufficiently that no material and triable issue of fact is presented and that the administrative law judge can, therefore, as a matter of law, issue a determination in favor of any party” (20 NYCRR 3000.9[b][1]).

C. In this case, the petition lacked a significant number of required items of information, per 20 NYCRR 3000.3(b), and was thus clearly not in proper form. As required under 20 NYCRR 3000.3(d)(1), petitioner was advised of the specific deficiencies in the petition, by letter dated November 3, 2016. Petitioner did not respond to this letter. In turn, the Notice of Intent was issued to petitioner under 20 NYCRR 3000.9(a)(4). Again, petitioner did not respond.

D. The petition in this case lacks sufficient information from which it can be concluded that the same was timely filed, or indeed even that the subject matter of the petition falls within

the jurisdiction of the Division of Tax Appeals. Specifically, the petition did not include any statutory document carrying with it the right to a hearing before the Division of Tax Appeals, as required under 20 NYCRR 3000.3(b)(8), from which the timeliness of the petition or the propriety of jurisdiction within this forum could be determined. The petition as filed was therefore not in proper form, it remains so notwithstanding the opportunities afforded petitioner for correction, and thus is clearly subject to dismissal.

In fact, there is nothing in the petition, or in the letters attached thereto, to even indicate that the bank account levy (forfeiture order and seizure) referred to therein was accomplished by, or for the benefit of, the Division of Taxation, or had any relationship whatsoever to any tax matter. Without more, it cannot be concluded that the petition was timely filed, or even if so, concerned any matter over which this forum has jurisdiction. 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; see *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]). Accordingly, the petition is properly dismissed pursuant to 20 NYCRR 3000.3(b), (d)(2) and 20 NYCRR 3000.9(a)(4)(i), (ii).

E. The petition of Ingrid Gordon-Patterson is hereby dismissed.

DATED: Albany, New York
June 1, 2017

/s/ Dennis M. Galliher
ADMINISTRATIVE LAW JUDGE