

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition :  
of :  
**NENA ADVISORS, LLC** : DETERMINATION  
for Redetermination of a Deficiency or for Refund of : DTA NO. 827949  
Personal Income Tax under Article 22 of the Tax Law for :  
the Years 2013, 2014 and 2015. :

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Petitioner, Nena Advisors, LLC, 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 2013, 2014, and 2015.

On March 10, 2017, the Division of Tax Appeals issued to petitioner a notice of intent to dismiss petition pursuant to 20 NYCRR 3000.9(a)(4). The Division of Taxation, by Amanda Hiller, Esq. (Christopher O'Brien, Esq., of counsel), submitted documents in support of dismissal. Petitioner, appearing pro se, did not submit a response. After due consideration of the documents submitted, Herbert M. Friedman, Jr., Supervising Administrative Law Judge, renders the following determination.

***FINDINGS OF FACT***

1. Petitioner, Nena Advisors, LLC, filed a petition that was received by the Division of Tax Appeals on November 21, 2016. The envelope containing the petition was postmarked November 16, 2016.

2. The petition challenged Notice and Demand for Payment of Tax Due numbers Nos. L-045036190-5, L-045059833-3, and L-045212363-7, issued on June 15, 2016, June 16, 2016, and

July 11, 2016, respectively, and issued to “Nena Advisors, LLC” for personal income taxes due for the years 2013, 2014, and 2015.

3. On March 10, 2017, the Division of Tax Appeals issued to petitioner a Notice of Intent to Dismiss Petition pursuant to 20 NYCRR 3000.9(a)(4). The subject notice stated, in pertinent part:

“ . . . 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 and Demand for Payment of Tax Due, Assessment Nos. L-045036190-5, L-045059833-3, and L-045212363-7, issued on June 15, 2016, June 16, 2016, and July 11, 2016, respectively. This notice is insufficient to confer jurisdiction upon the Division of Tax Appeals to consider the merits of the petition.”

#### ***CONCLUSIONS OF LAW***

A. The Division of Tax Appeals is authorized “[t]o provide a hearing as a matter of right, to any petitioner upon such petitioner’s request . . . unless a right to such hearing is specifically provided for, modified or denied by another provision of this chapter” (Tax Law § 2006[4]).

B. Tax Law § 173-a(2) provides that the Division of Tax Appeals lacks jurisdiction to consider the merits of a petition that is filed in protest of a notice and demand for payment of tax due.

C. In this case, petitioner filed a petition challenging three notices and demands for payment of additional tax due. Tax Law § 173-a(2) denies petitioner a right to a hearing with respect to the subject notices. Consequently, the Division of Tax Appeals is without jurisdiction to hear and determine this matter (*see Matter of Rodriguez*, Tax Appeals Tribunal, March 20, 2017).

D. IT IS ORDERED, on the supervising administrative law judge's own motion, that the petition be, and it is hereby, dismissed with prejudice as of this date.

DATED: Albany, New York  
May 11, 2017

/s/ Herbert M. Friedman, Jr.  
SUPERVISING ADMINISTRATIVE LAW JUDGE