

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
ARMONDO D. PONS : DETERMINATION
for Redetermination of Deficiency or for : DTA NO. 827988
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 2008. :

Petitioner, Armondo D. Pons, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law and the New York City Administrative Code for the year 2008.

On April 28, 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 parties had until May 28, 2017 to submit a response. The Division of Taxation, by Amanda Hiller, Esq. (Linda Jordan, Esq., of counsel), submitted documents in support of dismissal. Petitioners, 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, Armondo D. Pons, filed a petition that was received by the Division of Tax Appeals on December 20, 2016. The envelope containing the petition was postmarked December 14, 2016.

2. The petition challenged Notice and Demand for Payment of Tax Due number

L-032225730, dated June 22, 2009, and issued to petitioner for personal income tax under Article 22 of the Tax Law and the New York City Administrative Code for the year 2008.

3. On April 28, 2017, the Division of Tax Appeals issued to petitioner a notice of intent to dismiss petition (Notice of Intent) pursuant to 20 NYCRR 3000.9(a)(4). The Notice of Intent 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.

As filed, the petition to the Notice and Demand, in accordance with Tax Law § 173-a(2), as set forth above, 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 a notice and demand for payment of additional tax due. Tax Law § 173-a(2) denies petitioner a right to a hearing with respect to the subject notice. The petition did not challenge any other notice. 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
July 6, 2017

/s/ Herbert M. Friedman
SUPERVISING ADMINISTRATIVE LAW JUDGE