

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
SHAIFAH SALAHUDDIN : DETERMINATION
for Redetermination of a Deficiency or for Refund of : DTA NO. 828241
New York State and New York City Personal Income :
Tax under Article 22 of the Tax Law and the :
Administrative Code of the City of New York for the :
Year 2014. :

Petitioner, Shaifah Salahuddin, 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 Administrative Code of the City of New York for the year 2014.

Pursuant to 20 NYCRR 3000.9 (a) (4), the Division of Tax Appeals issued a notice of intent to dismiss petition, dated October 27, 2017, on the ground that the Division of Tax Appeals lacks jurisdiction over this matter. In response to several requests for additional time, the parties were granted until April 12, 2018 to respond to the proposed dismissal. On November 16, 2017, the Division of Taxation, by its representative, Amanda Hiller, Esq. (Charles Fishbaum, Esq., of counsel), submitted a letter and documents in support of dismissal. On April 13, 2018, petitioner, appearing pro se, filed a response in opposition to dismissal, dated April 12, 2018.¹ Pursuant to 20 NYCRR 3000.5 (d) and 3000.9 (a) (4), the 90-day period for issuance of this determination commenced on April 13, 2018. After due consideration of the documents and

¹ Pursuant to his authority in 20 NYCRR 3000.23 (b), Supervising Administrative Law Judge Herbert M. Friedman, Jr., found good cause existed to extend the April 12, 2018 deadline until April 13, 2018 and accept petitioner's written argument.

arguments submitted, Winifred M. Maloney, Administrative Law Judge, renders the following determination.

ISSUE

Whether the Division of Tax Appeals has subject matter jurisdiction to entertain the petition.

FINDINGS OF FACT

1. The Division of Taxation (Division) issued to petitioner, Saifah Salahuddin, a notice and demand for payment of tax due dated August 21, 2015 (Assessment ID L-043545038), in the amount of \$807.00, plus interest and penalty, for a balance due of \$993.93. The notice stated that it was issued because petitioner late filed her personal income tax return, form IT-201, for the year 2014 on July 17, 2015, and did not pay the full amount she owed. The computation section of the notice stated that penalties were imposed for late filing of the return and late payment of the tax shown on the return, and interest was imposed for underpayment.

2. On March 16, 2017, a warrant (Warrant ID: E-043545038-W002-3) was docketed in the Kings County Clerk's Office against petitioner with respect to assessment ID L-043545038. This warrant shows New York State and New York City personal income tax due in the amount of \$489.00 for the period ending December 31, 2014, plus penalty of \$225.25 and interest of \$130.85, for an assessment total of \$845.10.

3. On June 28, 2017, petitioner filed a petition with the Division of Tax Appeals. It was received on June 29, 2017. The petition challenges notice and demand number L-043545038, and warrant ID: E-043545038-W002-3. In the petition, petitioner asserted that her income appeared larger in 2014 than what she actually earned because the New York City Department of Education reported pension loans from previous years against her in one lump sum in 2014. She

further asserted that her income is limited due to work related injuries and illness, along with job budget cuts, and, as a result, her financial status is below “NYS /Kings County/US thresholds for affordable/allowable living expenses/standards for housing, utilities, food, etc.” She requests revocation of the warrant and cancellation of the assessment.

4. On October 27, 2017, the Division of Tax Appeals issued to petitioner a notice of intent to dismiss petition (Notice of Intent) pursuant 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 the issuance of 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 No. L-043545038, issued on August 21, 2015, and a Warrant. This notice is insufficient to confer jurisdiction upon the Division of Tax Appeals to consider the merits of the petition.”

SUMMARY OF THE PARTIES' POSITIONS

5. In her letter in opposition to the Notice of Intent, petitioner claims that she has not “received a copy of the original tax assessment by mail or fax as agreed upon via telephone.” She maintains that an enclosed installment payment agreement (IPA) is the closest document she has to the initial assessment. Petitioner contends that she is an indigent, disabled, pro se litigant who is opposing the warrant and the collection action. Petitioner contends that the existing plan of collection under the IPA is an undue hardship because she is “under the Federal living standard guidelines” and “the lien/warrant/collection threshold of approximately \$300 weekly.” She requests reasonable accommodations, counsel and leniency.

6. The Division submitted a letter stating that it is in agreement with the proposed dismissal because there is no jurisdiction to review the notice and demand.

CONCLUSIONS OF LAW

A. The Division of Tax Appeals is an adjudicatory body of limited jurisdiction whose powers are confined to those expressly conferred in its authorizing statute (*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]). Therefore, 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).

B. 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]).

C. Section 682 (a) of the Tax Law provides, in pertinent part, that:

“[t]he amount of tax which a return shows to be due, or the amount of tax which a return would have shown to be due but for a mathematical or clerical error, shall be deemed to be assessed on the date of filing of the return”

Tax Law § 692 (b), in turn, provides for the issuance of a notice and demand for tax:

“The tax commission shall as soon as practicable give notice to each person liable for any amount of tax, addition to tax, penalty or interest, which has been assessed but remains unpaid, stating the amount and demanding payment thereof. Such notice shall be left at the dwelling or usual place of business of such person or shall be sent by mail to such person’s last known address. Except where the tax commission determines that collection would be jeopardized by delay, if any tax is assessed prior to the last date (including any date fixed by extension) prescribed for payment of such tax, payment of such tax shall not be demanded until after such date.”

D. With respect to the issuance of a warrant after notice and demand, Tax Law § 692 (c) provides, in relevant part, as follows:

“If any person liable under this article for the payment of any tax, addition to tax, penalty or interest neglects or refuses to pay the same within twenty-one calendar days after notice and demand thereof is given to such person under subsection (b)

of this section (ten business days if the amount for which such notice and demand is made equals or exceeds one hundred thousand dollars), the commissioner may within six years after the date of such assessment issue a warrant under the commissioner's official seal directed to the sheriff of any county of the state, or to any officer or employee of the department, commanding him to levy upon and sell such person's real and personal property for the payment of the amount assessed, with the cost of executing the warrant and to return such warrant to the commissioner and pay to him or her the money collected by virtue thereof within sixty days after receipt of the warrant. . . ."

Tax Law § 692 (d) provides that:

"Copy of warrant to be filed and lien to be created. —Any sheriff or officer or employee who receives a warrant under subsection (c) shall within five days thereafter, file a copy with the clerk of the appropriate county. The clerk shall thereupon enter in the judgment docket, in the column for judgment debtors, the name of the taxpayer mentioned in the warrant, and in the appropriate columns the tax or other amounts for which the warrant is issued and the date when such copy is filed; and such amount shall thereupon be a lien upon the title to and interest in real, personal and other property of the taxpayer. Such lien shall not apply to personal property unless such warrant is filed in the department of state."

Once a warrant is filed with the county clerk, "the tax commission shall, in the right of the people of the state of New York, be deemed to have obtained judgment against the taxpayer for the tax or other amounts" (Tax Law § 692 [e]).

E. In this case, the petition challenges notice and demand L-043545038, dated August 21, 2015, and warrant E-043545038-W002-3, docketed March 16, 2017. Upon review, it is concluded that regardless of which document is being challenged, this matter must be dismissed because the Division of Tax Appeals lacks jurisdiction to review either document.

F. With regard to the notice and demand, Tax Law § 173-a (2) provides, that:

"Corporate and personal income taxes. With respect to any tax which incorporates or otherwise utilizes the procedures set forth in part VI of article twenty-two or article twenty-seven of this chapter, provisions of law which authorize the issuance of a notice and demand for an amount without the issuance of a notice of deficiency for such amount, including any interest, additions to tax or penalties related thereto, in cases of mathematical or clerical errors or failure to pay tax shown on a return, or authorize the issuance of a notice of additional tax

due, including any interest, additions to tax or penalties related thereto, shall be construed as specifically denying and modifying the right to a hearing with respect to any such notice and demand or notice of additional tax due for purposes of subdivision four of section two thousand six of this chapter. Any such notice and demand or notice of additional tax due shall not be construed as a notice which gives a person the right to a hearing under article forty of this chapter.”

As set forth above, the right to a hearing based upon a notice and demand is specifically denied by Tax Law § 173-a (2) (*see Matter of Chait*, Tax Appeals Tribunal, April 22, 2010; *see also Matter of PC Touch Services Inc.*, Tax Appeals Tribunal, August 23, 2012).

G. With respect to the warrant, Tax Law § 2008 (1) provides:

“All proceedings in the division of tax appeals shall be commenced by the filing of a petition with the division of tax appeals 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 credit application . . . or any other notice which gives a person the right to a hearing in the division of tax appeals under this chapter or other law.”

H. Warrant ID: E-043545038-W002-3 was docketed in the Kings County Clerk’s Office against petitioner with respect to assessment L-043545038, the subject notice and demand. This warrant was issued because petitioner failed to pay the amount of tax due for the tax period ending December 31, 2014, plus the penalty and the interest, assessed by the notice and demand (*see* Tax Law § 692 [c]). Once the warrant was docketed, it became a lien and judgment for the unpaid tax, penalties and interest (*see* Tax Law § 692 [d] and [e]). It is not a document giving petitioner a right to a hearing in this forum. As a result, the Division of Tax Appeals is without jurisdiction to hear and determine this matter.

I. The petition of Shaifah Salahuddin is hereby dismissed.

DATED: Albany, New York
July 5, 2018

/s/ Winifred M. Maloney
ADMINISTRATIVE LAW JUDGE

