

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition	:	
of	:	
<b>BRIAN AND TAMARA NETKIN</b>	:	<b>DETERMINATION</b>
	:	<b>DTA NO. 828526</b>
for Redetermination of a Deficiency or for Refund	:	
of New York State Personal Income Tax under	:	
Article 22 of the Tax Law for the Years 2014 and	:	
2015.	:	

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Petitioners, Brian and Tamara Netkin, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under article 22 of the Tax Law for the years 2014 and 2015.

On July 6, 2018, the Division of Tax Appeals issued to petitioners a notice of intent to dismiss petition pursuant to 20 NYCRR 3000.9 (a) (4). The Division of Taxation, appearing by Amanda Hiller, Esq. (Mary Hurteau, Esq., of counsel), submitted a letter in support of the dismissal. Petitioners, appearing pro se, did not submit a response by November 1, 2018, which date triggered the 90-day deadline for issuance of this determination. After due consideration of the documents submitted, Herbert M. Friedman, Jr., Supervising Administrative Law Judge, renders the following determination.

***FINDINGS OF FACT***

1. Petitioners, Brian and Tamara Netkin, filed a petition that was received by the Division of Tax Appeals on December 22, 2017. The envelope containing the petition bears a United States Postal Service (USPS) postmark dated December 20, 2017.

2. The petition included a copy of IRS Form 4089-B, a Notice of Deficiency-Waiver indicating a deficiency of federal income tax and penalties.

3. The petition did not have a required New York State or City statutory document attached, specifically a notice of deficiency, notice of determination, license or registration denial, or refund denial notice.

4. The petition stated that it was challenging article 22 personal income tax for the years 2014 and 2015, but did not reference any New York State or City notice or assessment identification number.

5. The petitioners did not attach a copy of a conciliation order.

6. On January 4, 2018, the Division of Tax Appeals sent a letter to petitioners informing them of the items missing from the petition and that failure to correct it within 30 days may result in a dismissal. Additional requests for a copy of a New York State or City notice at issue or its number were made by the Division of Tax Appeals to petitioners, to no avail.

7. Petitioners did not cure the deficiencies in the petition.

8. On July 6, 2018, the Division of Tax Appeals issued to petitioners a notice of intent to dismiss petition to their last known address. The notice stated, in sum, that as the petition appeared to protest a federal document and did not identify a New York State or City statutory notice, the Division of Tax Appeals was without jurisdiction to consider the merits of the petition.

9. In response to the notice of intent to dismiss petition, the Division of Taxation's (Division's) representative submitted a letter on July 23, 2018 stating:

“[t]he Division is in receipt of the Notice of Intent to Dismiss the petition in the

above referenced matter. The petition challenges IRS Form 4089-B regarding federal income tax and penalties and does not attach a New York State or City statutory notice. Pursuant to Tax Law § 2008, the Division of Tax Appeals does not have jurisdiction over this matter. Therefore, the Division is in agreement with the proposed dismissal.”

10. The notice of intent to dismiss petition was returned to the Division of Tax Appeals from USPS as “unclaimed” on September 28, 2018, and USPS provided a new forwarding address for petitioners. On October 2, 2018, the Division of Tax Appeals reissued the notice of intent to dismiss petition to petitioners at the new address and granted an additional 30 days to petitioners to submit a response to the notice of intent to dismiss petition.

11. Petitioners have not submitted a response to the notice of intent to dismiss petition.

### ***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 [Sup Ct, Albany County 1991, Keniry, J.]). Its power to adjudicate disputes is exclusively statutory (*id.*). 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]). Tax Law § 2008 limits the jurisdiction of the Division of Tax Appeals to matters

“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, a cancellation, revocation or suspension of a license, permit or registration, a denial of an application for a license, permit or registration 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.”

B. Pursuant to 20 NYCRR 3003.3 (b) (8), a petition shall contain, “for the sole purpose of establishing the timeliness of the petition, a legible copy of the order of the conciliation conferee if issued; if no such order was previously issued, a legible copy of any other statutory notice being protected.”

C. Pursuant to 20 NYCRR 3000.3 (b) (3), a petition shall contain “the date of the notice, the tax article involved, and the nature of the tax.”

D. Where the petitioner fails to correct the petition within the time prescribed, the Supervising Administrative Law Judge will issue a determination dismissing the petition (20 NYCRR 3000.3 [d]).

E. The petition in this case did not include a required New York State or City statutory notice or conciliation order and, therefore, fails to present a notice for which the Division of Tax Appeals has jurisdiction (*see* Tax Law § 2008). The Division of Tax Appeals does not have jurisdiction over the federal notice attached. Additionally, petitioners failed to correct the petition within the time period allowed (*see* 20 NYCRR 3000.3 [d]). Thus, as petitioners failed to attach or identify a notice contemplated by Tax Law § 2008, the Division of Tax Appeals lacks jurisdiction of the subject matter of the petition and dismissal is warranted (*see* 20 NYCRR 3000.3 [d]; 3000.9 [a] [4] [i]).

F. 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  
January 24, 2019

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