

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition	:	
of	:	
<b>165 JAMAICA REALTY, LLC</b>	:	<b>DETERMINATION</b>
for Redetermination of a Deficiency or for Refund of	:	DTA NO. 828530
New York State Personal Income Tax Under Article	:	
22 of the Tax Law for the Years 2008, 2010 and 2011.	:	

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Petitioner, 165 Jamaica Realty, LLC, 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 2008, 2010 and 2011.

The Division of Taxation, by its representative, Amanda Hiller, Esq. (Charles Fishbaum, Esq., of counsel), brought a motion dated April 16, 2018, seeking an order dismissing the petition, or in the alternative, summary determination in the above-referenced matter pursuant to sections 3000.5, 3000.9 (a), and 3000.9 (b) of the Rules of Practice and Procedure of the Tax Appeals Tribunal. Petitioner, appearing by Isaac Sternheim, CPA, did not respond to the Division of Taxation's motion. Based upon the motion papers, the affidavits and documents submitted therewith, and all pleadings and documents submitted in connection with this matter, 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. The subject of the motion of the Division of Taxation (Division) is the petitioner's right to protest three notice and demands for payment of tax due (notices) issued against petitioner, 165 Jamaica Realty, LLC, as follows:

<b>Tax Period</b>	<b>Issue Date</b>	<b>Assessment ID Number</b>	<b>Amount</b>
2008	November 28, 2014	L-042235912	\$2,500 penalty + interest
2010	October 16, 2013	L-040222622	\$2,500 penalty + interest
2011	September 25, 2013	L-040132867	\$2,500 penalty + interest

The Division imposed the foregoing penalties against petitioner for failing to timely file, or for failing to show all required information on, the New York State Partnership Returns filed by petitioner for the above listed tax periods.

2. Petitioner filed a request for conciliation conference with the Division's Bureau of Conciliation and Mediation Services (BCMS) in protest of the notices on November 22, 2017.

3. On December 15, 2017, BCMS issued a conciliation order dismissing request (conciliation order) to petitioner. The conciliation order determined that petitioner's protest of the notices was untimely and stated, in part:

“The Tax Law requires that a request be filed within 90 days from the date of the statutory notice. Since the notice(s) was issued on September 25, 2013; October 16, 2013 and November 24, 2014, but the request was not mailed until November 22, 2017, or in excess of 90 days, the request is late filed.”

4. Petitioner filed a petition with the Division of Tax Appeals in protest of the conciliation order on December 19, 2017.

5. In support of its motion, the Division submitted: (i) an affidavit, dated April 16, 2016, of Charles Fishbaum, Esq.; (ii) a copy of the petition and its attachments; (iii) a copy of the

Division's answer to the petition; (iv) copies of the three notices at issue; (v) a copy of petitioner's request for conciliation conference; and (vi) a copy of the conciliation order dismissing request.

### ***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. 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.”

D. 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). Notwithstanding that a timely petition was filed, it remains that the Division of Tax Appeals is without jurisdiction to hear and determine the substantive issues in this matter.

E. The Division's motion for an order dismissing the petition is granted, and the petition of 165 Jamaica Realty, LLC is hereby dismissed.

DATED: Albany, New York  
August 9, 2018

/s/ Dennis M. Galliher  
ADMINISTRATIVE LAW JUDGE