

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition :  
of :  
**JODI ANN CAPOBIANCO** : DETERMINATION  
 : DTA NO. 828534  
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 for :  
the Year 2016. :

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Petitioner, Jodi Ann Capobianco, 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 year 2016.

On July 6, 2018, the Division of Tax Appeals issued to petitioner a notice of intent to dismiss petition pursuant to 20 NYCRR 3000.9 (a) (4), on the ground that the Division of Tax Appeals lacks jurisdiction over this matter. The Division of Taxation, by Amanda Hiller, Esq. (Mary Hurteau, Esq., of counsel), submitted a letter and documentation in support of the dismissal. Petitioners, appearing pro se, did not submit a response by August 6, 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. The Division of Taxation (Division) issued a notice and demand for payment of tax due (notice and demand) bearing assessment ID L-046733393 to petitioner, Jodi Ann

Capobianco on June 21, 2017. The notice states that it was issued because petitioner did not pay the full amount due on her filed 2016 New York State personal income tax return.

2. A warrant (warrant ID E-020175561-W010-5) was docketed in the Suffolk County Clerk's Office against petitioner with respect to assessment ID L-046733393 on November 8, 2017.

3. Petitioner filed a petition that was received by the Division of Tax Appeals on December 7, 2017. The envelope containing the petition bears a United States Postal Service postmark dated December 12, 2017.

4. The petition challenges warrant ID E-020175561-W010-5. Petitioner asserts that she did not receive any statutory documents, such as a notice of deficiency, notice of determination, license or registration denial, or refund denial notice. She requests that the warrant be vacated, and the County Clerk remove it from her record.

5. No other notice was identified by or attached to the 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.* at 332). 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 § 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 or 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 executive 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]).

C. 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.”

D. Warrant ID: E-020175561-W010-5 was docketed in the Suffolk County Clerk's Office on November 8, 2017 against petitioner with respect to assessment L-046733393. This warrant was issued because petitioner failed to pay the amount of tax due for the tax period ending December 31, 2016, 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.

E. 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  
November 01, 2018

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