

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition :  
of :  
**KATHERINE E. MCINTYRE** : DETERMINATION  
for Revision of a Determination or for Refund : DTA NO. 828560  
of New York State Personal Income Tax under :  
Article 22 of the Tax Law for the Year 2014. :

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Petitioner, Katherine E. McIntyre, filed a petition for the revision of a determination or for refund of New York State personal income tax under article 22 of the Tax Law for the year 2014.

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). The Division of Taxation, by Amanda Hiller, Esq. (Christopher O'Brien, 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. Petitioner, Katherine E. McIntyre, filed a petition that was received by the Division of Tax Appeals on January 16, 2018. The envelope containing the petition bears a United States Postal Service postmark dated January 8, 2018.

2. The petition included a copy of a notice and demand for payment of tax due (notice

and demand) bearing assessment number L-046097229, issued to petitioner on March 1, 2017 and, a DTF 982.11 form pertaining to income execution ID number E-046097229, issued to petitioner on December 22, 2017.

3. The petition challenges the notice and demand and income execution ID number E-046097229.

4. On July 6, 2018, the Division of Tax Appeals issued to petitioner a notice of intent to dismiss petition. The notice stated, in sum, that as the petition had been filed in protest of a notice and demand and income execution form, it appeared that the Division of Tax Appeals was without jurisdiction to consider the merits of the petition.

5. In response to the notice of intent to dismiss petition, the Division of Taxation's representative submitted a letter on July 24, 2018 stating: "[t]he Division is in receipt of the Notice of Intent to Dismiss the petition in the above referenced matter. Under Tax Law §173-a, Notices and Demand [sic] (a copy of which is enclosed) issued on or after December 1, 2004, do not provide for a right to a hearing prior to payment of the assessment. Therefore, the Division of Tax Appeals lacks jurisdiction over the merits and the Division is in agreement with the proposed dismissal."

6. The petitioner has not submitted a response to the notice of intent to dismiss 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.*). Accordingly, absent legislative action, this forum cannot extend its authority to disputes that have not been specifically delegated to it (*see Matter of Hooper*, Tax Appeals Tribunal, July 1, 2010).

B. A proceeding in the Division of Tax Appeals is commenced by filing a petition “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 any other notice which gives a person the right to a hearing” (Tax Law § 2008 [1]) unless such right is specifically modified or denied by another provision of this chapter (*see* Tax Law § 2006 [4]; 20 NYCRR 3000.9 [a]).

C. The notice and demand protested by petitioner here does not give rise to hearing rights (*see* Tax Law § 173-a [2]). The Tax Law also does not provide hearing rights to an income execution form.

D. As the notice and demand and income execution form are insufficient to confer jurisdiction upon the Division of Tax Appeals to consider the merits of the petition filed, dismissal is warranted.

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