

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition :  
of :  
**ALEXEI MOSTOVOI** : DETERMINATION  
DTA NO. 828628  
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 2011. :

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Petitioner, Alexei Mostovoi, 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 2011.

On April 30, 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 the petition. On May 9, 2018, the Division of Taxation, by Amanda Hiller, Esq. (Michele W. Milavec, Esq., of counsel), submitted a letter in support of dismissal. Petitioner, appearing pro se, did not respond. Pursuant to 20 NYCRR 3000.5 (d) and 3000.9 (a) (4), the 90-day period for issuance of this determination commenced on May 30, 2018. After due consideration of the arguments submitted, Donna M. Gardiner, Administrative Law Judge, renders the following determination.

***ISSUE***

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

***FINDINGS OF FACT***

1. Petitioner, Alexei Mostovoi, filed a petition with the Division of Tax Appeals on March 15, 2017. The petition protests a consolidated statement of tax liabilities, notice of collection

case ID: E-042384146-CL04-6, dated February 27, 2018. The subject of the collection case is assessment number L-042384146 for personal income tax due for the tax year 2011.

2. On April 30, 2018, Supervising Administrative Law Judge Herbert M. Friedman, Jr., of the Division of Tax Appeals issued a notice of intent to dismiss petition (notice of intent) to petitioner on the basis that the Division of Tax Appeals appears to lack jurisdiction over the petition. The notice of intent explained that the petition filed with respect to the consolidated statement of tax liabilities appears to be insufficient to confer jurisdiction upon the Division of Tax Appeals to address the merits of the petition.

3. In response to the issuance of the notice of intent, the Division noted that assessment number L-042384146, the assessment number listed on the consolidated statement of tax liabilities, was previously protested by the filing of a petition. The Division noted that the petition was dismissed by the Division of Tax Appeals and, after an exception was filed, such dismissal was upheld by the Tax Appeals Tribunal. The Division emphasizes that, as this notice was previously adjudicated and sustained, petitioner is barred from relitigating the validity of the notice.

4. Petitioner failed to respond to the notice of intent.

### ***CONCLUSIONS OF LAW***

A. Pursuant to Tax Law §§ 681 (b) and 689 (b), the protest of a statutory notice that has been issued to a taxpayer under article 22 of the Tax Law is commenced by the filing of a petition with the Division of Tax Appeals (*see* 20 NYCRR 3000.3 [c]). Such petition must include a copy of the statutory notice under protest; either a copy of a notice of deficiency or a

copy of the refund denial letter (*see* Tax Law § 681; 20 NYCRR 3000.1 [k]; 20 NYCRR 3000.3 [b] [8]).

B. In this matter, petitioner attached a copy of a consolidated statement of tax liabilities which is not a statutory notice. Moreover, petitioner previously filed a petition to protest the notice of deficiency, assessment number L-042384146, which is the assessment listed in the consolidated statement of tax liabilities attached to his petition. The previous petition was dismissed as untimely filed (*Matter of Mostovoi*, Division of Tax Appeals, November 17, 2016). Thereafter, petitioner filed an exception to the determination of the administrative law judge and the Tax Appeals Tribunal sustained the determination and dismissed the petition (*Matter of Mostovoi*, Tax Appeals Tribunal, August 10, 2017). As this assessment has been previously adjudicated, petitioner cannot relitigate the validity of the notice (*see Matter of Kyte*, Tax Appeals Tribunal, October 9, 2014).<sup>1</sup>

C. The petition of Alexei Mostovoi is dismissed.

DATED: Albany, New York  
August 23, 2018

/s/ Donna M. Gardiner  
ADMINISTRATIVE LAW JUDGE

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<sup>1</sup>Petitioner may pay the disputed tax and, within two years of payment, file a claim for refund (Tax Law § 687 [a]). If the claim for refund is disallowed, petitioner may then request a conciliation conference or file a petition with the Division of Tax Appeals in order to contest such disallowance (Tax Law §§ 689 [c]; 170 [3-a] [a]).