

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
HERBERT BENDER ESTATE : DETERMINATION
for Redetermination of a Deficiency or for Refund : DTA NO. 828644
of Estate Tax under Article 26 of the Tax Law :
for the Year 2018. :

Petitioner, Martin Bender, as Administrator of the Estate of Herbert Bender, filed a petition for the redetermination of a deficiency or for refund of estate tax under article 26 of the Tax Law for the year 2018.

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. (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. Petitioner, Martin Bender, as Administrator of the Estate of Herbert Bender, filed a petition that was received by the Division of Tax Appeals on March 28, 2018. The envelope containing the petition bears a United States Postal Service postmark dated March 24, 2018.
2. The petition included a copy of an estate tax notice and demand for payment of tax

due (notice and demand) bearing assessment number L-047774650, issued to petitioner pursuant to article 26 of the Tax Law on February 26, 2018.

3. The petition challenges the notice and demand.

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 an estate tax notice and demand, 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 23, 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. Surrogate’s Court Procedure Act (SCP) § 201 confers upon the surrogate’s court:

“full and complete general [subject matter] jurisdiction in law and in equity to administer justice in all matters relating to the affairs of decedents . . . to try and determine all questions, legal or equitable, arising between any or all of the parties to any action or proceeding. . . as to any and all matters necessary to be determined in order to make a full, equitable and complete disposition of the matter . . . (SCP § 201 [3]).

D. Tax Law § 998 provides taxpayers with both the right and the means to protest a notice of deficiency or a notice of disallowance of a claim for refund issued by the Division with respect to estate taxes. The surrogate’s court is granted exclusive jurisdiction over proceedings under this section. As a result the Division of Tax Appeals is without jurisdiction to hear 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

