

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
CARMEN AQUINO : DETERMINATION
 : DTA NO. 828674
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 and :
New York City Administrative Code for the :
Years 2009 and 2010. :

Petitioner, Carmen Aquino, filed a petition for the 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 and New York City Administrative Code for the years 2009 and 2010.

On August 10, 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. (Colleen McMahon, Esq. of counsel), submitted a letter and documentation in support of the dismissal. Petitioners, appearing pro se, did not submit a response by September 10, 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, Carmen Aquino, filed a petition that was received by the Division of Tax Appeals on April 23, 2018. The envelope containing the petition bears a United States Postal Service postmark dated April 21, 2018.

2. Petitioner filed additional documentation (including page one of the petition) that was received by the Division of Tax Appeals on April 30, 2018. The envelope containing the additional documentation bears a United States Postal Service postmark dated April 28, 2018.

3. The petition included a copy of two notice and demands for payment of tax due (notice and demands) bearing assessment numbers L-036762455 and L-037160785, issued to petitioner on October 25, 2011 and January 11, 2012, respectively. The petition also included a DTF 982.2 form pertaining to income execution ID number E-032980795, which was entered in Bronx County on December 20, 2016, and appears to have been issued to petitioner on November 8, 2017.

4. The petition challenges the notice and demands and income execution ID number E-032980795.

5. On August 10, 2018, the Division of Tax Appeals issued to petitioner a notice of intent to dismiss petition. The notice of intent stated, in sum, that as the petition had been filed in protest of two notice and demands and an income execution form, it appeared that the Division of Tax Appeals was without jurisdiction to consider the merits of the petition.

6. In response to the notice of intent to dismiss petition, the Division of Taxation's representative submitted a letter on September 6, 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] (copies of which are 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."

7. Petitioner has not submitted a response to the notice of intent to dismiss 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 demands protested by petitioner here do 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 demands 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 29, 2018

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