

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
ANTONIO BRUNO : DETERMINATION
Under Article 40 of the Tax Law. : DTA NO. 828726

Petitioner, Antonio Bruno, filed a petition for a writ of error coram nobis pertaining to a criminal proceeding decided by the Appellate Division, Second Department dated May 2, 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), on the ground that the Division of Tax Appeals lacks jurisdiction over this matter. The Division of Taxation, by Amanda Hiller, Esq. (Christopher O'Brien., 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, Antonio Bruno, filed a petition that was received by the Division of Tax Appeals on May 21, 2018. The envelope containing the petition bears the United States Postal Service postmark dated May 17, 2018.

2. The petition included: (1) a copy of a decision and order of the Appellate Division, Second Department in the matter of People v. Bruno dated May 2, 2018; (2) a notice of motion

for writ of error coram nobis by petitioner; (3) an affidavit in support of motion for a writ of error coram nobis by petitioner; (4) notice of motion to proceed as a poor person by petition; (5) affidavit in support of motion to proceed as poor person by petitioner; (6) a memorandum of law for writ of error coram nobis for defendant-appellant by petitioner; (7) an affirmation in opposition to motion for writ of error coram nobis by the Kings County District Attorney's office; and (8) a memorandum of law by the Kings County District Attorney's office.

3. The petition challenges the writ of error coram nobis decision by the Appellate Division, Second Department, dated May 2, 2018.

4. No other notice was identified by or attached to the petition.

5. On July 6, 2018, the Division of Tax Appeals issued to petitioner a notice of intent to dismiss petition. The noticed stated, in sum, that as the petition had been filed in protest of a writ of error coram nobis decision pertaining to a criminal proceeding, 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 July 17, 2018 supporting dismissal.

7. 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. Tax Law § 2000 provides that:

“This article is enacted to establish an independent division of tax appeals within the department of taxation and finance which shall be responsible for providing the public with a just system of resolving controversies with such department of taxation and finance and to ensure that the elements of due process are present with regard to such resolution of controversies. . . The administrative hearing process is the process commenced by the filing of a petition protesting a notice issued by the commissioner of taxation and finance of a determination of tax due, a tax deficiency, a denial of a refund or credit application, a cancellation, revocation or suspension of a license, permit or registration, a denial of an application for a license, permit or registration or any other notice which gives a person the right to a hearing under this chapter.”

C. The Division of Tax Appeals does not have jurisdiction over criminal proceedings such as the one petitioned here. As a result, dismissal is warranted.

D. 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