

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
LISSETTE LOPEZ : DETERMINATION
for Redetermination of a Deficiency or for Refund of New : DTA NO. 829452
York State Personal Income Tax under Article 22 of Tax :
Law for Year 2016. :

Petitioner, Lissette Lopez, 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 2016.

On December 20, 2019, 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, appearing by Amanda Hiller, Esq. (Christopher O'Brien, Esq., of counsel), submitted a letter in support of the dismissal. Petitioner, appearing pro se, did not submit a response by January 20, 2020. The period for issuing this determination was extended by three months for good cause pursuant to Tax Law § 2010 (3). After due consideration of the documents submitted, Herbert M. Friedman, Jr., Supervising Administrative Law Judge, renders the following determination.

FINDINGS OF FACT

1. Petitioner, Lissette Lopez, filed a petition that was received by the Division of Tax Appeals on June 18, 2019. The envelope containing the petition does not bear a USPS shipping label indicating the date the petition was mailed.

2. The petition stated that it challenges article 22 personal income tax for the year 2016 but did not reference a notice or assessment identification number.

3. The petition did not include a notice from the New York State Department of Taxation and Finance notifying petitioner of formal protest rights, specifically a notice of deficiency or refund denial notice.

4. The petitioner did not attach a copy of a conciliation order.

5. On November 12, 2019, the Division of Tax Appeals sent a letter to petitioner identifying the items missing from the petition and that failure to correct it within 30 days may result in a dismissal. Additional requests for a copy of the notice at issue were made by the Division of Tax Appeals to petitioner, to no avail.

6. Petitioner did not cure the deficiencies in the petition.

7. December 20, 2019, the Division of Tax Appeals issued to petitioner a notice of intent to dismiss petition. The notice stated, in sum, that the petition is in improper form and the division lacks jurisdiction.

8. In response to the notice of intent to dismiss petition, the Division of Taxation's (Division's) representative submitted a letter on January 8, 2020 stating:

“[t]he Division is in receipt of the Notice of Intent to Dismiss the petition in the above referenced matter. As the petition submitted was not in proper form, as required by 20 NYCRR 3000.3 and Tax Law § 2008, the petitioner neglected to include a copy of the statutory notice or conciliation order issued to petitioner, the Division is in agreement with the proposed dismissal.”

9. 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.*). The Division of Tax Appeals is authorized “[t]o provide a hearing as a matter of right, to any petitioner upon such petitioner’s request . . . unless a right to such hearing is specifically provided for, modified or denied by another provision of this chapter” (Tax Law § 2006 [4]).

Tax Law § 2008 limits the jurisdiction of the Division of Tax Appeals to matters

“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 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 in the division of tax appeals under this chapter or other law.”

B. Pursuant to 20 NYCRR 3003.3 (b) (8), a petition shall contain, “for the sole purpose of establishing the timeliness of the petition, a legible copy of the order of the conciliation conferee if issued; if no such order was previously issued, a legible copy of any other statutory notice being protested.”

C. Pursuant to 20 NYCRR 3000.3 (b) (3), a petition shall contain “the date of the notice, the tax article involved, and the nature of the tax.”

D. Where the petitioner fails to correct the petition within the time prescribed, the Supervising Administrative Law Judge will issue a determination dismissing the petition (20 NYCRR 3000.3 [d]).

E. The petition in this case did not include or identify a required statutory notice or conciliation order and, therefore, fails to present a notice for which the Division of Tax Appeals has jurisdiction (*see* Tax Law § 2008). Additionally, petitioner failed to correct the petition within the time period allowed (*see* 20 NYCRR 3000.3 [d]). Thus, as petitioner failed to attach or identify a notice contemplated by Tax Law § 2008, the Division of Tax Appeals lacks jurisdiction of the subject matter of the petition and dismissal is warranted (*see* 20 NYCRR

3000.3 [d]; 3000.9 [a] [4] [i]).

F. 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
July 16, 2020

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