

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
BARBARA J. SATTELBERG : DETERMINATION
for Redetermination of a Deficiency or for Refund of New : DTA NO. 829705
York State Personal Income Tax under Article 22 of Tax :
Law for Year 2018. :

Petitioner, Barbara J. Sattelberg, 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 2018.

On October 1, 2020, 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. (Ellen Krejci, Esq., of counsel), submitted a letter in support of the dismissal. Petitioner, appearing pro se, did not submit a response by November 2, 2020. After due consideration of the documents submitted, Herbert M. Friedman, Jr., Supervising Administrative Law Judge, renders the following determination.

FINDINGS OF FACT

1. Petitioner, Barbara J. Sattelberg, filed a petition that was received by the Division of Tax Appeals on November 12, 2019. The envelope containing the petition bears a US postage label indicating the petition was mailed on November 8, 2019.

2. The petition stated that it challenges article 22 personal income tax for the year 2018 and lists ID number E-049724521-CL01-9.

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 January 13, 2020, 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.

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

7. October 1, 2020, 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 of Taxation (Division) lacks jurisdiction.

8. In response to the notice of intent to dismiss petition, the Division's representative submitted a letter on October 23, 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.

The notice number referenced in the petition is E-049724521-CL01-9, which is the collection case ID associated with petitioner's Installment Payment Agreement (IPA). The petition states that the petitioner is seeking to continue her IPA and avoid having her driver's license suspended. It appears the petition was in response to a Notice of Proposed Driver's License Suspension the Division issued on September 5, 2019 when petitioner was past due on her IPA. However, once petitioner made the overdue payments, her IPA was reinstated, and her DMV license suspension was put on hold as of September 16, 2019. Therefore, there does not appear to be any current controversy.”

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
January 28, 2021

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