

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
JAMES JAY SALTER TRUST : DETERMINATION
for Redetermination of a Deficiency or for Refund of New : DTA NO. 829829
York State Personal Income Tax under Article 22 of the :
Tax Law for Year 2016. :

Petitioner, James Jay Salter Trust, 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 14, 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. (James Passineau, of counsel), submitted a letter in support of the dismissal. Petitioner, appearing through its representative, Cadesky US Tax Ltd. (Dean Smith, CPA), did not submit a response by January 20, 2021, 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.

ISSUE

Whether the Division of Tax Appeals has subject matter jurisdiction over the petition.

FINDINGS OF FACT

1. Petitioner, James Jay Salter Trust, filed a petition that was received by the Division of

Tax Appeals on January 9, 2020. The priority mail envelope containing the petition, bears a United States Postal Service (USPS) postmark indicating the petition was mailed on January 6, 2020.

2. The petition challenges three responses to taxpayer inquiry that appear to have been issued by the Department of Taxation and Finance on October 23, 2018, May 23, 2019, and August 16, 2019. These documents do not constitute as statutory notices under Tax Law § 2008.

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

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

5. On January 29, 2020, February 12, 2020 and March 13, 2020, communication was made over the phone with petitioner's representative, Dean Smith, CPA, advising that a statutory document is needed that offers formal protest rights.

6. On March 13, 2020, a written request was made to petitioner's representative by the Division of Tax Appeals to provide a copy of the notices at issue. The representative failed to provide the notices.

7. On June 4, 2020, due to the COVID health emergency, another written request was made by the Division of Tax Appeals to provide a copy of the notice at issue. The representative failed to provide the notice.

8. On July 2, 2020, the representative contacted the Division of Tax Appeals and was again informed of the need to provide a statutory notice. To date, no statutory notice has been received.

9. On December 20, 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 Tax Appeals lacks jurisdiction.

10. In response to the notice of intent to dismiss petition, the Division of Taxation's (Division's) representative submitted a letter on January 8, 2021 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.”

11. Petitioner's representative did not submit 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. 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]).

D. The petition in this case did not include 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). The Division of Tax Appeals does not have jurisdiction over the attached responses to taxpayer inquiry. Additionally, despite several requests, petitioner failed to correct the petition within the time period allowed (*see* 20 NYCRR 3000.3 [d]). Thus, as petitioner failed to attach a notice identified 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]).

E. The petition of James Jay Salter Trust is dismissed.

DATED: Albany, New York
April 8, 2021

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