

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition :  
of :  
**DSA P&C SOLUTIONS, INC.** : DETERMINATION  
for Redetermination of a Deficiency or for Refund of New : DTA NO. 829860  
York State Personal Income Tax under Article 22 of the :  
Tax Law for the Year 2019. :

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Petitioner, DSA P&C Solutions, Inc., filed a petition for the redetermination of a deficiency or for refund of New York State personal income tax under article 22 of the Tax Law for the year 2019. 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 parties were given 30 days to respond to the proposed dismissal. The parties were subsequently granted an extension, until March 9, 2021 to respond to said notice. The Division of Taxation, by Amanda Hiller, Esq. (James Passineau, Esq., of counsel), submitted a letter and documentation in support of the dismissal. Petitioner, appearing by Alight Solutions, LLC (Robert Ellington, CPA), did not submit a response by March 9, 2021, which date triggered the 90-day deadline for issuance of this determination. That deadline was extended 30 days for good cause consistent with Tax Law 2010 (3). After due consideration of the documents submitted, Herbert M. Friedman, Jr., Supervising Administrative Law Judge renders the following determination.

***ISSUE***

Whether the petition should be dismissed based on lack of subject matter jurisdiction.

***FINDINGS OF FACT***

1. Petitioner, DSA P&C Solutions, Inc., filed a petition that was received by the Division of Tax Appeals on February 18, 2020. The envelope containing the petition bears a United States Postal Service postmark indicating the petition was mailed on February 7, 2020.

2. The petition included a copy of: (i) a notice and demand for payment of tax due (notice and demand) bearing assessment number L-050509179, issued by the Division of Taxation on September 13, 2019; and (ii) a consolidated statement of tax liabilities, bearing assessment numbers L-050170102 and L-050509179 issued by the Division of Taxation on September 13, 2019.

3. The petition solely challenges the documents referenced in finding of fact 2.

4. On December 14, 2020 the Division of Tax Appeals issued to petitioner a notice of intent to dismiss petition. The notice stated, in sum, that as the petition had been filed in protest of a notice and demand, it appeared that the Division of Tax Appeals was without jurisdiction to consider the merits of the petition.

5. In response to the notice of intent to dismiss petition, the Division of Taxation's representative submitted a letter on January 25, 2021 stating:

“[t]he Division is in receipt of the Notice of Intent to Dismiss the petition in the above referenced matter. Notices and Demand issued on or after December 1, 2004, do not provide for a right to a hearing prior to payment of the assessment. Please find copies of the Notice and Demand enclosed. Therefore, the Division is in agreement with the proposed dismissal.”

6. On February 9, 2021, the notice of intent to dismiss the petition was mailed to petitioner's representative, Alight Solutions, LLC., once it was determined that its representative was granted special permission to appear before the Division of Tax Appeals. Additionally, the

due date to respond to the notice of intent to dismiss the petition was then extended 30 days until March 9, 2021.

7. Neither petitioner nor its representative 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. 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 demand protested by petitioner here does not give rise to hearing rights (*see* Tax Law § 173-a [2]).

D. Additionally, the above-referenced consolidated statement of tax liabilities is not a statutory notice that offer rights to a hearing in the Division of Tax Appeals (*see* Tax Law §§

173-a [2]; 2008 and 20 NYCRR 3000.1 [k].

E. The petition of DSA P&C Solutions, Inc., is dismissed.

DATED: Albany, New York  
July 01, 2021

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