

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
ANTHONY J. FIGUEROA	:	DETERMINATION DTA NO. 829883
for Redetermination of a Deficiency or for Refund of New York State Personal Income Tax under Article 22 of the Tax Law for the Years 2016, 2017 and 2018.	:	

Petitioner, Anthony J. Figueroa, 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 years 2016, 2017 and 2018. 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) on the ground that the Division of Tax Appeals lacks jurisdiction over the petition. The parties were given 30 days to respond to the proposed dismissal. The parties were subsequently granted extensions until March 22, 2021 to respond to said notice. The Division of Taxation, appearing by Amanda Hiller, Esq. (Colleen McMahon, Esq., of counsel), submitted a letter dated January 8, 2021,¹ in support of dismissal. Petitioner did not submit a response by March 22, 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.

¹ The letter itself is erroneously dated January 8, 2020. However, the envelope is postmarked January 8, 2021.

FINDINGS OF FACT

1. Petitioner filed a petition that was received by the Division of Tax Appeals on March 2, 2020. The envelope containing the petition bears a United States Postal Service (USPS) postmark indicating the petition was mailed on February 27, 2020.
2. The petition included a consolidated statement of tax liabilities that was issued by the Department of Taxation and Finance on February 5, 2020, pertaining to assessment numbers L-049941119, L-049941118 and L-049811698.
3. The petition solely attached the consolidated statement of tax liabilities and did not reference any other notice or conciliation order.
4. On March 12, 2020, a written request was made to petitioner by the Division of Tax Appeals to provide the following: (i) a correct taxpayer ID; (ii) a copy of the correct notice at issue; and (iii) a correct power of attorney form. The written request indicated that although a consolidated statement of tax liabilities was attached to the petition, it is not a notice that is considered a statutory document that offers formal protest rights. Also, petitioner signed the petition but the E-ZRep form attached to the petition does not give power of attorney for representation in proceedings before the Tax Appeals Tribunal (Tribunal) and administrative law judges (*see* 20 NYCRR 3000.2).
5. Petitioner failed to provide the corrections.
6. On June 4, 2020 in response to the COVID public health emergency, another written request was made requesting a notice that offers formal protest rights, correct taxpayer ID, and an acceptable power of attorney form.
7. On September 28, 2020, the Division of Tax Appeals received a corrected

petition with the correct taxpayer ID and power of attorney form. The power of attorney indicated that the representative “James Pinto” is a tax preparer, which is not authorized to represent in proceedings before the Tribunal and administrative law judges (*see* 20 NYCRR 3000.2).

8. On December 14, 2020, Supervising Administrative Law Judge Herbert M. Friedman, Jr., of the Division of Tax Appeals issued a notice of intent to dismiss petition (notice of intent) to petitioner. The notice of intent stated, in sum, that the petition did not identify or include a statutory notice and the Division of Tax Appeals was without jurisdiction to consider the merits of the petition.

9. In response to the notice of intent, 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.”

10. Petitioner did not submit a response.

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 Trib.*, 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 3000.3 (b) (8), a petition shall contain, “for the sole purpose of establishing the timeliness of a 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. 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. As petitioner failed to identify or attach a notice, the Division of Tax Appeals lacks jurisdiction of the subject matter of the petition and the dismissal is warranted (*see* 20 NYCRR 3000.9 [a] [4] [i]).

D. While the petition included a copy of a consolidated statement of tax liabilities, that document is insufficient to confer jurisdiction upon the Division of Tax Appeals to consider the merits of the petition.

E. 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
June 17, 2021

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