

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
JAMES CALOCERINOS : DETERMINATION
for Redetermination of the Denial of a STAR Credit. : DTA NO. 829985

Petitioner, James Calocerinos, filed a petition for redetermination of the denial of a STAR credit. On July 23, 2021, 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, of counsel), submitted a letter in support of the dismissal. Petitioner did not submit a response by August 23, 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 Calocerinos, filed a petition that was received by the Division of Tax Appeals on June 24, 2020. The priority mail envelope containing the petition, bears a United States Postal Service (USPS) postmark indicating the petition was mailed on June 19, 2020.

2. The petition was challenging real property taxes issued by the City of Syracuse and, in particular, the denial of a STAR credit.

3. The petition did not include a notice from the Division of Taxation (Division) allowing formal protest rights under article 40 of the Tax Law.

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

5. On August 18, 2020, a written request was made to petitioner by the Division of Tax Appeals to provide a copy of the notice at issue.

6. Additional attempts were made by the Division of Tax Appeals to petitioner by phone and email to provide the notice being protested. Petitioner did not provide the notice.

7. On July 23, 2021, 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.

8. In response to the notice of intent to dismiss petition, the Division's representative submitted a letter dated August 11, 2021 stating:

“[t]he Division of Taxation is in receipt of the Notice of Intent to Dismiss the petition in the above referenced matter. A copy of the statutory notice or conciliation order issued to petitioner was not included with the petition pursuant to Tax Law § 2008. However, our records indicate that on May 8, 2020, the Division issued Form RP-5310-DELC, DLN #STEX1130178398725, to Mr. Calocerinos, denying his STAR credit due to delinquent property taxes, based on inaccurate information the Division received from the City of Syracuse. Mr. Calocerinos' property taxes were not in fact delinquent; the Division subsequently issued his 2020 STAR credit on July 16, 2020 and his 2021 STAR credit on July 16, 2020. Therefore, there is no matter currently in controversy, and the Division is in agreement with the proposed dismissal.”

9. Petitioner 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. 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 Calocerinos is dismissed.

DATED: Albany, New York
November 18, 2021

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