

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
HESHAM ALY : DETERMINATION
for Redetermination of a Deficiency or for Refund of New : DTA NO. 830088
York State Personal Income Tax under Article 22 of the :
Tax Law the Year 2014. :

Petitioner, Hesham Aly, 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 2014. On June 7, 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 parties were given 30 days to respond to the proposed dismissal. The Division of Taxation, by Amanda Hiller, Esq. (Colleen McMahon, Esq., of counsel), submitted a letter and documentation in support of the dismissal. Petitioner, appearing pro se, did not submit a response by July 7, 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 petition should be dismissed based on lack of subject matter jurisdiction.

FINDINGS OF FACT

1. Petitioner, Hesham Aly, filed a petition that was received by the Division of Tax Appeals on October 5, 2020. The envelope containing the petition bears a United States Postal

Service postmark indicating the petition was mailed on September 26, 2020.

2. The petition included a copy of a notice and demand for payment of tax due (notice and demand) bearing assessment number L-051990774 for the tax year 2019, issued by the Division of Taxation on September 9, 2020.

3. The petition lists tax year 2014, but petitioner failed to identify or include a statutory notice or conciliation order pertaining to that year. Further, petitioner's personal income tax return for 2014 was the subject of a previous determination by the Division of Tax Appeals in the *Matter of Aly*, Division of Tax Appeals, March 8, 2018 (DTA# 828298).

4. On June 7, 2021, 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. On July 22, 2021, the Division of Tax Appeals received from the U.S. Postal Service petitioner's copy of the notice of intent to dismiss as "return to sender, unclaimed, unable to forward." The notice of intent to dismiss was then remailed the same day to petitioner by regular mail. That copy was not returned.

6. In response to the notice of intent to dismiss petition, the Division of Taxation's representative submitted a letter on June 22, 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. Notice and Demand L-051990774 was for tax year 2019. Section I of the petition lists the tax year 2014. On March 8, 2018, the Division of Tax Appeals issued a Determination, DTA No. 828298, sustaining Assessment No. L045412814 (Conciliation Order dated June 2, 2017; CMS No. 275280) for the tax year 2014. Attached are copies of the Determination and Conciliation Order. Therefore, the Division is in agreement with the proposed dismissal."

7. Petitioner did not respond 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, pursuant to section 2010.4 of the Tax Law, the determination in *Matter of Aly* finally decided the matter in controversy unless a party to the hearing, either the petitioner or the Division of Taxation, takes exception by requesting review by the Tax Appeals Tribunal. An exception was not taken in that matter. Thus, the determination became fixed and final by operation of the law and the Tax Appeals Tribunal lacks jurisdiction of the subject matter of this petition.

E. The petition of Hesham Aly is dismissed.

DATED: Albany, New York
September 30, 2021

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