

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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. 830114
York State Personal Income Tax under Article 22 of the :
Tax Law for the Year 2019. :

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 October 8, 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. (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 November 8, 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, DSA P&C Solutions, Inc., filed a petition that was received by the Division of Tax Appeals on October 13, 2020. The envelope containing the petition bears a

United States Postal Service postmark indicating the petition was mailed on October 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. Notices number L-050509179 and L-050170102 were the subject of a determination dismissing the petition by the Division of Tax Appeals in the *Matter of DSA P&C Solutions, Inc.*, (DTA#829860, Division of Tax Appeals, July 1, 2021).

5. Petitioner did not file an exception with regards to the determination in DTA# 829860.

6. On October 8, 2021, the Division of Tax Appeals issued to petitioner a notice of intent to dismiss petition in the instant matter. The notice stated, in sum, that as the petition had been filed in protest of a notice that had been the subject of a final determination, it appeared that the Division of Tax Appeals was without jurisdiction to consider the merits of the petition. The parties were given 30 days to respond to the notice of intent to dismiss.

7. In response to the notice of intent to dismiss petition, the Division of Taxation's representative submitted a letter on October 26, 2021 stating:

“[t]he Division is in receipt of the Notice of Intent to Dismiss the petition in the above referenced matter. On July 1, 2021, the Division of Tax Appeals issued a Determination, DTA No. 829860, sustaining Assessment Numbers L-050170102 and L-050509179. Attached is a copy of the Determination. Therefore, the Division of Tax Appeals lacks jurisdiction over the merits and the Division is in agreement with the proposed dismissal.”

8. Neither petitioner nor its representative submitted a response to the notice of intent to dismiss the petition.

CONCLUSIONS OF LAW

A. This matter proceeds on a notice of intent to dismiss petition under 20 NYCRR 3000.9 (a) (4), upon the basis that assessment numbers L-050170102 and L-050509179 were the subject of a previous determination by the Division of Tax Appeals. In ***Matter of Victory Bagel Time, Inc.***, (Tax Appeals Tribunal, September 13, 2012), the Tax Appeals Tribunal held that the standard to employ for reviewing a notice of intent to dismiss petition is the same as that used for reviewing a motion for summary determination.

B. A motion for summary determination shall be granted: “if, upon all papers and proof submitted, the administrative law judge finds that it has been established sufficiently that no material and triable issue of fact is presented and that the administrative law judge can, therefore, as a matter of law, issue a determination in favor of any party” (20 NYCRR 3000.9 [b] [1]).

C. Pursuant to Tax Law § 2010 (4), a determination issued by an administrative law judge shall finally decide matters in controversy before the Division of Tax Appeals unless one of the parties takes exception by timely requesting review of the matter before the Tax Appeals Tribunal (***see also*** Tax Law § 2016).

D. In this case, the July 1, 2021 determination sustained notice numbers L-050170102 and L-050509179 and petitioner did not file an exception.

E. Accordingly, since the petition filed on October 7, 2020 seeks to challenge the same notices as in DTA# 829860, which are now fixed and final by operation of law, the Division of Tax Appeals lacks jurisdiction of the subject matter and the petition must be dismissed (***see Matter of Yim***, Tax Appeals Tribunal, October 7, 2021).

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

DATED: Albany, New York
February 3, 2022

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