

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition :

of :

**ISMAIL KHAIRY** :

DETERMINATION  
DTA NO. 830190

for Redetermination of a Deficiency or for Refund of New York State Personal Income Tax under Article 22 of Tax Law and for the New York City Administrative Code for Year 2014. :

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Petitioner, Ismail Khairy, filed a petition for redetermination of a deficiency or for Refund of New York State personal income tax under article 22 of Tax Law and for the New York City administrative code for the year 2014.

Pursuant to 20 NYCRR 3000.9 (a) (4), the Division of Tax Appeals issued a notice of intent to dismiss petition, dated March 15, 2021, on the grounds that the Division of Tax Appeals lacks jurisdiction of the subject matter of the petition as the claim appeared to have been previously decided. The parties were given 30 days to respond to the proposed dismissal. On April 10, 2021, petitioner, appearing pro se, submitted a letter in opposition to dismissal. The Division of Taxation, appearing by Amanda Hiller, Esq. (Linda Farrington, Esq., of counsel) submitted a letter dated March 31, 2021, and supporting documents in support of dismissal. Pursuant to 20 NYCRR 3000.5 (d) and 3000.9 (a) (4), the 90-day period for issuance of this determination began on April 14, 2021. 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 jurisdiction over the subject matter of the petition.

## *FINDINGS OF FACT*

1. Petitioner filed a petition that was received by the Division of Tax Appeals on October 28, 2020. The envelope in which the petition was mailed bears a USPS postal mark indicating the petition was mailed on October 26, 2020.
2. The petition challenged notice number L-043849961. Attached to the petition was a copy of a consolidated statement of tax liabilities that was issued by the Department of Taxation and Finance on January 17, 2020, bearing assessment numbers L-047661221 (not listed in the petition itself) and L-043849961. The petition did not contain any other notice.
3. On March 15, 2021, 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, on the basis that assessment number L-043849961 appeared to be the subject of a previous matter before the Division of Tax Appeals, DTA number 827718. That matter was resolved by a stipulation for discontinuance signed by the parties and dated January 28, 2018 and February 6, 2018. An order of discontinuance finalizing the stipulation was issued by the Division of Tax Appeals February 27, 2018.
4. In response to the notice of intent to dismiss petition, the Division of Taxation's representative submitted a letter on March 31, 2021 stating:

“[t]he Division is in receipt of the Notice of Intent to Dismiss the petition in the above referenced matter. On February 27, 2018, the Division of Tax Appeals issued an Order of Discontinuance, DTA No. 827718, recomputing Assessment No. L043849961 and refund claim. Attached is a copy of the

Stipulation for Discontinuance. Therefore, the Division of Tax Appeals lacks jurisdiction over the merits and the Division is in agreement with the proposed dismissal.”

5. In its response to the notice of intent to dismiss petition, petitioner submitted a letter dated April 10, 2021, claiming, in pertinent part, that he continues to receive bills from the Department of Taxation and Finance for assessment number L-043849961, despite the fact that the tax matter has already been resolved. He does not allege any fraud, malfeasance or misrepresentation.

### ***CONCLUSIONS OF LAW***

A. Tax Law § 171(18) provides that the Commissioner of Taxation and Finance shall:

“Have authority to enter into a written agreement with any person, relating to the liability of such person (or of the person for whom he acts) in respect of any tax or fee imposed by the tax law or by a law enacted pursuant to the authority of the tax law or article two-E of the general city law, which agreement shall be final and conclusive, and except upon a showing of fraud, malfeasance, or misrepresentation of a material fact: (a) the case shall not be reopened as to the matters agreed upon or the agreement modified, by any officer, employee, or agent of the state . . . .”

B. Pursuant to Tax Law § 171(18), the Division was authorized to enter into a written agreement with petitioner concerning assessment number L-043849961. By signing the stipulation for discontinuance, petitioner agreed that the filing of the stipulation with the Division of Tax Appeals would be deemed a motion for an order discontinuing the matter in accordance with its terms and that the issuance of the order shall finally decide the matter pending before the Division of Tax Appeals. That order was issued by the Division of Tax Appeals on February 27, 2018.

C. Since the petition filed on October 26, 2020 challenges the same statutory notice as in DTA number 827718, and petitioner has failed to claim fraud, malfeasance or

misrepresentation, the Tax Appeals Tribunal lacks jurisdiction of the subject matter of the petition based on the provisions of Tax Law § 171(18) and the principle of res judicata (*see also Matter of Brahms*, Tax Appeals Tribunal, July 3, 1997, *confirmed* 256 AD2d 822 [1998]).

D. Finally, the above-referenced consolidated statement of tax liabilities is not a statutory notice and does not offer rights to a hearing in the Division of Tax Appeals (*see* Tax Law § 2008 and 20 NYCRR 3000.1 [k]).

E. The petition of Ismail Khairy is dismissed.

DATED: Albany, New York  
July 08, 2021

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