

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
DARRYL E. MOYLER : DETERMINATION
for Redetermination of a Deficiency or for Refund of New : DTA NO. 830302
York State Personal Income Tax under Article 22 of the :
Tax Law for the Years 2014, 2016, and 2017. :

Petitioner, Darryl E. Moyler, 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 years 2014, 2016 and 2017. 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. (Michael Trajbar, Esq., of counsel), submitted a letter and documentation in support of the dismissal. Petitioner, appearing pro se, submitted a letter and documentation in opposition of the dismissal. Pursuant to 20 NYCRR 3000.5 (d) and 3000.9 (a) (4), the 90-day period for issuance of this order began on November 8, 2021. 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, Darryl E. Moyler, filed a petition that was received by the Division of

Tax Appeals on February 17, 2021. The envelope containing the petition does not bear a United States Postal Service postmark indicating when the petition was mailed.

2. The petition includes a copy of: (i) a notice of deficiency bearing assessment number L-046336741 issued by the Department of Taxation and Finance on June 19, 2017; (ii) a notice and demand for payment of tax due (notice and demand) bearing assessment number L-046485619, issued by the Department of Taxation and Finance on May 26, 2017; and (iii) a notice and demand for payment of tax due (notice and demand) bearing assessment number L-048439120 issued by the Department of Taxation and Finance on June 22, 2018.

3. The petition challenges the documents referenced in finding of fact 2.

4. Notices numbers L-046336741 and L-048439120 were dismissed by determination in the *Matter of Moyler*, Division of Tax Appeals, March 16, 2020 (DTA# 829185). These two notices became fixed and final as a timely exception to DTA# 829185 was not filed by petitioner.

5. On October 8, 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 numbers L-048439120 and L-046336741 appeared to be the subject of a previous matter before the Division of Tax Appeals, and notice and demand L-046485619 does not provide appeal rights.

6. In response to the notice of intent to dismiss petition, the Division of Taxation's representative submitted a letter on October 21, 2021 stating:

“[t]he Division is in receipt of the Notice of Intent to Dismiss the petition in the above referenced matter. On March 16, 2020, the Division of Tax Appeals issued a Determination, DTA No. 829185, sustaining Assessment Nos. L-046336741, L-046485619, and L-048439120. 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.”

7. The petitioner submitted a response to the notice of intent to dismiss the petition stating in sum that he would like the aforementioned assessments issued from the Department of Taxation and Finance to be reviewed for accuracy. He also submitted a Notice of Exception to Administrative Law Judge’s Determination for DTA# 829185 and the instant matter dated October 16, 2021 in an undated envelope that was received by the Division of Tax Appeals on October 22, 2021.¹ Finally, petitioner filed a draft Stipulation for Discontinuance of Proceeding and Referral of Proceeding to Bureau of Conciliation and Mediation Services on October 27, 2021. This form was not executed by a representative for the Division.

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-046336741 and L-048439120 were the subject of a previous matter before the Division of Tax Appeals and notice and demand L-046485619 does not offer appeal rights. 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]).

¹ The exceptions for DTA#s 829185 and 830302, and their respective timeliness, are currently under review by the Tax Appeals Tribunal.

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 determination issued on March 16, 2020 for DTA# 829185, sustained notice numbers L-046336741 and L-048439120 and a timely exception was not taken by petitioner. Subsequently, since the petition filed in the instant matter seeks to challenge the same notices as in DTA# 829185, 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).

E. Additionally, the notice and demand protested by petitioner here does not give rise to hearing rights (*see* Tax Law § 173-a [2]) and as the notice and demand is insufficient to confer jurisdiction upon the Division of Tax Appeals to consider the merits of the petition filed, dismissal is warranted.

F. Finally, the draft Stipulation for Discontinuance of Proceeding and Referral of Proceeding to Bureau of Conciliation and Mediation Services filed by petitioner in response to the notice of intent to dismiss is of no moment as it was not signed by both parties (*see* 20 NYCRR 3000.3 [e]).

G. The petition of Darryl E. Moyler is dismissed.

DATED: Albany, New York
February 3, 2022

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