

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
SAMAN B. CHUBINEH, M.D. : DETERMINATION
for Redetermination of a Deficiency or for Refund of New : DTA NO. 830314
York State Personal Income Tax under Article :
22 of the Tax Law for the Year 2018. :

Petitioner, Saman B. Chubineh, M.D., filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under article 22 of the Tax Law for the year 2018. 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 Division of Taxation, appearing by Amanda Hiller, Esq. (Michelle Helm, Esq., of counsel), submitted a letter in support of the dismissal. Petitioner, appearing pro se, 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 Division of Tax Appeals has jurisdiction over the petition in this matter.

FINDINGS OF FACT

1. Petitioner, Saman B. Chubineh, M.D., filed a petition that was received by the Division of Tax Appeals on February 26, 2021. The priority mail envelope containing the petition, bears a United States Postal Service postmark indicating the petition was mailed on

February 21, 2021.

2. The petition challenges a response to taxpayer inquiry bearing number L-052360523 issued by the Department of Taxation and Finance on February 16, 2021. This document does not constitute as a statutory notice under Tax Law § 2008.

3. The petition did not include a notice from the New York State Department of Taxation and Finance conferring formal protest rights.

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

5. On April 9, 2021, the Division of Tax Appeals sent a letter to petitioner identifying the items missing from the petition and that failure to correct it within 30 days may result in a dismissal. The letter to petitioner indicated the following:

- i. The petition does not include the notice being challenged from the Department of Taxation and Finance that offers formal protest rights.
- ii. The petition did not include a fully executed power of attorney for the requested representative, Frank T. Minisci.

6. Petitioner did not cure the deficiencies in the petition.

7. On October 8, 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 without a statutory notice and the Division of Tax Appeals lacks jurisdiction.

8. In response to the notice of intent to dismiss petition, Michelle M. Helm, Esq., the Division of Taxation's (Division'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. As the petition submitted was not in proper form, as required by 20 NYCRR 3000.3 and Tax Law § 2008 because the petitioner neglected to include a copy of the statutory notice or conciliation order issued to petitioner, and the petition did not include a fully executed power of attorney for

the requested representative, Frank T. Minisci, 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. The petition in this case did not include a required statutory notice or conciliation

order and, therefore, fails to present a notice for which the Division of Tax Appeals has jurisdiction (*see* Tax Law § 2008). Additionally, petitioner failed to correct the petition within the time period allowed (*see* 20 NYCRR 3000.3 [d]). Thus, as petitioner failed to attach or identify a notice required 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. While the petition included a copy of a response to taxpayer inquiry, that document is insufficient to confer jurisdiction upon the Division of Tax Appeals to consider the merits of the petition.

F. The petition of Saman B. Chubineh, M.D., is dismissed.

DATED: Albany, New York
February 3, 2022

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