

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
DEAN R. CLOUDEN AND	:	DETERMINATION
SHERWIN GRIFFITH-CLOUDEN	:	DTA NO. 830317
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 2019.	:	

Petitioners, Dean R. Clouden and Sherwin Griffith-Clouden, 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 2019. On October 8, 2021, the Division of Tax Appeals issued to petitioners a notice of intent to dismiss petition pursuant to 20 NYCRR 3000.9 (a) (4). The Division of Taxation, appearing by Amanda Hiller, Esq. (Jennifer L. Hink-Brennan, Esq., of counsel), submitted a letter in support of the dismissal. Petitioners, 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 lacks jurisdiction over the petition.

FINDINGS OF FACT

1. Petitioners, Dean R. Clouden and Sherwin Griffith-Clouden, filed a petition that was received by the Division of Tax Appeals on March 8, 2021. The envelope containing the petition bears a USPS shipping label indicating the petition was mailed on February 25, 2021.

2. The petition does not identify or include a statutory notice.
3. On April 9, 2021, the Division of Tax Appeals sent a letter to petitioners identifying the items missing from the petition and that failure to correct it within 30 days may result in a dismissal. The letter to petitioners 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 does not include the full taxpayers' IDs (social security numbers).
 - iii. The petition does not include the assessment number.
 - iv. The petition is not signed.
4. Petitioners did not cure the deficiencies in the petition.
5. On October 8, 2021, the Division of Tax Appeals issued to petitioners a notice of intent to dismiss petition. The notice stated, in sum, that the petition is in improper form and the Division of Tax Appeals lacks jurisdiction.
6. In response to the notice of intent to dismiss petition, the Division of Taxation's (Division'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. Petitioners failed to submit the petition in a proper form as required by 20 NYCRR 3000.3 and Tax Law § 2008. Petitioners neglected to include a copy of the statutory notice or conciliation order issued to Petitioners, the full taxpayers' IDs (social security numbers), the assessment number and their signatures. The Division is in agreement with the proposed dismissal.”
7. Petitioners have not submitted 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. Pursuant to 20 NYCRR 3000.3 (b) (3), a petition shall contain “the date of the notice, the tax article involved, and the nature of the tax.”

D. Pursuant to 20 NYCRR 3000.3 (b) (7), a petition shall contain “the signature of the petitioner or the petitioner’s representative.”

E. Where the petitioner fails to correct the petition within the time prescribed, the Supervising Administrative Law Judge will issue a determination dismissing the petition (*see* 20 NYCRR 3000.3 [d]).

F. The petition filed in this matter was not filed in accordance with Tax Law § 2008 and 20 NYCRR 3000.3. Specifically, petitioners neglected to include or identify 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, petitioners failed to correct the petition within the time period allowed (*see* 20 NYCRR 3000.3 [d]). Thus, as petitioners failed to attach or properly identify a notice contemplated by Tax Law § 2008, or correct the other concerns identified, 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]).

G. The petition of Dean R. Clouden and Sherwin Griffith-Clouden is dismissed.

DATED: Albany, New York
February 3, 2022

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