

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
KELLI A. HUNTER PETRUZILLO : DETERMINATION
for Redetermination of a Deficiency or for Refund of : DTA NO. 830604
New York State and New York City Personal Income :
Taxes and Yonkers Income Tax Surcharge under :
Articles 22 and 30A of the Tax Law and the New York :
City Administrative Code for the Years 2016 and 2017. :

Petitioner, Kelli A. Hunter Petruzillo, filed a petition for redetermination of a deficiency or for refund of New York State and New York City personal income taxes and Yonkers income tax surcharge under articles 22 and 30A of the Tax Law and the New York City administrative code for the years 2016 and 2017. On August 26, 2022, 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, appearing by Amanda Hiller, Esq. (Jennifer L. Hink-Brennan Esq., of counsel), submitted a letter in support of the dismissal. Petitioner, appearing pro se, did not submit a response by September 26, 2022, which date triggered the 90-day deadline for issuance of this determination.¹ 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.

¹ The petition lists Charles D. Gomez, CPA, as petitioner's representative but a power of attorney was not attached to the petition.

FINDINGS OF FACT

1. Petitioner, Kelli A. Hunter Petruzillo, filed a petition that was received by the Division of Tax Appeals on August 23, 2021. The envelope containing the petition bears a USPS postal mark indicating the petition was mailed on August 19, 2021.

2. The petition does not include or identify a statutory notice or conciliation order issued to petitioner.

3. The petition lists Charles D. Gomez as petitioner's representative. Mr. Gomez is identified as a certified public accountant duly qualified to practice in New York State.

4. Mr. Gomez signed the petition on behalf of petitioner. An executed power of attorney form did not accompany the petition.

5. On July 30, 2021, the Division of Tax Appeals sent a letter to petitioner with a copy to Charles D. Gomez, CPA, identifying the deficiencies in the petition and stating that failure to correct within 30 days may result in a dismissal. The letter to petitioner indicated the following:

- i. The petition does not include a statutory notice.
- ii. A power of attorney form was not attached to the petition.

6. Petitioner did not provide the statutory notice or a power of attorney.

7. On August 26, 2022, 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 and the Division of Tax Appeals lacks jurisdiction.

8. In response to the notice of intent to dismiss petition, the Division of Taxation's (Division's) representative submitted a letter on February 8, 2022 stating:

“[t]he Division is in receipt of the Notice of Intent to Dismiss the petition in the above referenced matter. First, Petitioner neglected to include a copy of the statutory notice or conciliation order issued to petitioner, as required by Tax Law § 2008 and 20 NYCRR § 3000.3. Second, Petitioner failed to submit a fully

executed power of attorney as the petition is signed by a CPA on Petitioner's behalf, as required by 20 NYCRR § 3000.2. As the petition submitted was not in proper form for several reasons, 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. 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. 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]).

E. The petition in this case did not 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). Thus, as petitioner failed to attach or properly identify a notice contemplated 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]).

F. Furthermore, an individual will not be recognized as the representative of a taxpayer until a power of attorney in proper form is filed with the Division of Tax Appeals (*see* 20 NYCRR 3000.2 [c]). In this case, the petition was signed by Charles D. Gomez, CPA, and a power of attorney was not attached to the petition, rendering the petition in improper form.

G. IT IS ORDERED, on the supervising administrative law judge's own motion, that the petition be, and it is hereby, dismissed as of this date.

DATED: Albany, New York
December 22, 2022

/s/ Herbert M. Friedman
SUPERVISING ADMINISTRATIVE LAW JUDGE