

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
AUDIE DE LA CRUZ : DETERMINATION
for Redetermination of a Deficiency or for Refund of New : DTA NO. 830831
York State Personal Income Tax under Article 22 of the :
Tax Law for the Year 2019 :

Petitioner, Audie De la Cruz, 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 year 2019.

On September 15, 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 Division of Taxation, by Amanda Hiller, Esq. (Stefan Armstrong, Esq., of counsel), submitted a letter in support of the dismissal. Petitioner, appearing pro se, did not submit a response by October 17, 2022, 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 to consider the subject matter of the petition.

FINDINGS OF FACT

1. Petitioner, Audie De la Cruz, filed a petition that was received by the Division of Tax Appeals on January 20, 2022. The envelope containing the petition bears a United States Postal Service postmark indicating the petition was mailed on January 18, 2022.

2. The petition included the following: (i) a copy of a notice of additional tax due bearing assessment number L-054728342, issued by the Division of Taxation (Division) on November 22, 2021 and; (ii) a copy of a notice and demand for payment due bearing assessment number L-054728342, issued by the Division on January 3, 2022.

3. The petition solely challenges the notice of additional tax due and notice and demand.

4. On September 15, 2022, the Division of Tax Appeals issued to petitioner a notice of intent to dismiss petition. The notice stated, in sum, that as the petition had been filed in protest of a notice of additional tax due and notice and demand, it appeared that the Division of Tax Appeals was without jurisdiction to consider the merits of the petition.

5. In response to the notice of intent to dismiss petition, the Division's representative submitted a letter dated September 23, 2022, stating:

“[t]he Division is in receipt of the Notice of Intent to Dismiss the petition in the above referenced matter. Notices of Additional Tax Due issued on or after December 1, 2004 do not provide for a right to a hearing. Therefore, the Division is in agreement with the proposed dismissal of the Notice of Additional Tax Due (L-054728342).

6. The petitioner did not submit a response to the notice of intent to dismiss the 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.*). Accordingly, absent legislative action, this forum cannot extend its authority to disputes that have not been specifically delegated to it (*see Matter of Hooper*, Tax Appeals Tribunal, July 1, 2010).

B. A proceeding in the Division of Tax Appeals is commenced by filing a petition “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 any other notice which gives a person the right to a hearing” (Tax Law § 2008 [1]) unless such right is specifically modified or denied by another provision of this chapter (*see* Tax Law § 2006 [4]; 20 NYCRR 3000.9 [a]).

C. The notice of additional tax due and notice and demand protested by the petitioner here do not give rise to hearing rights (*see* Tax Law § 173-a [2]).

D. As the notices mentioned above are insufficient to confer jurisdiction upon the Division of Tax Appeals to consider the merits of the petition filed, dismissal is warranted.

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

DATED: Albany, New York
January 12, 2023

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