

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
GELI M. HERNANDEZ	:	DETERMINATION
for Redetermination of a Deficiency or for Refunds of	:	DTA NO. 830879
New York State and New York City Personal Income	:	
Taxes under Article 22 of the Tax Law and the	:	
Administrative Code of the City of New York for the	:	
Years 2018, 2019 and 2020.	:	

Petitioner, Geli M. Hernandez, filed a petition for redetermination of a deficiency or for refunds of New York State and New York City personal income taxes under article 22 of the Tax Law and the Administrative Code of the City of New York for the years 2018, 2019 and 2020.

The Division of Taxation, by its representative, Amanda Hiller, Esq. (Amanda K. Alteri), brought a motion on December 15, 2023, seeking an order dismissing the petition, or in the alternative, summary determination in the above-referenced matter pursuant to sections 3000.5 and 3000.9 (a) and (b) of the Rules of Practice and Procedure of the Tax Appeals Tribunal.

Petitioner, appearing pro se, did not file a response by January 16, 2024, which date commenced the 90-day period for issuance of this determination. Based upon the motion papers and all pleadings and documents submitted in connection with this matter, Jennifer L. Baldwin, Administrative Law Judge, renders the following determination.

ISSUE

Whether the Division of Tax Appeals has jurisdiction to address the merits of the petition filed in this matter.

FINDINGS OF FACT

1. On March 1, 2022, petitioner, Geli M. Hernandez, filed a petition with the Division of Tax Appeals listing tax years 2018, 2019 and 2020 in the caption. Petitioner attached a notice of disallowance for case identification number X-189596470, dated October 8, 2021, to the petition in which the Division of Taxation (Division) informed petitioner that her refund claim for tax year 2019 in the amount of \$1,564.00 was disallowed. Petitioner also attached a letter for case identification number X-189590165, dated May 19, 2021, in which the Division requested more information about petitioner's income tax return for tax year 2018. Petitioner did not attach a notice or letter regarding tax year 2020.

2. On the same day, March 1, 2022, petitioner filed a request for a conciliation conference with the Division's Bureau of Conciliation and Mediation Services (BCMS). The request lists tax years 2018, 2019 and 2020 and includes the same May 19, 2021, letter for tax year 2018 that is attached to the petition.

3. On October 11, 2022, the Division of Tax Appeals notified petitioner of her concurrent matters in the Division of Tax Appeals and BCMS and provided to petitioner a withdrawal of petition for matter currently pending in the Bureau of Conciliation and Mediation Services, form TA-135. Petitioner did not respond or return the form.

4. On November 28, 2022, the Division also notified petitioner of her simultaneous filing of a petition with the Division of Tax Appeals and a request for conciliation conference with BCMS and provided to petitioner the same withdrawal form as noted above. Petitioner did not respond or return the form.

5. A conciliation conference was held on December 29, 2022, and, on January 3, 2023, the conciliation conferee issued a letter to petitioner stating that the refund denial would be sustained and enclosed two copies of a consent, form CMS-8.1. The letter states as follows:

“After considering the evidence submitted, I must sustain the Refund Denial issued by the Department of Taxation and Finance.

Enclosed are two copies of a Consent form reflecting this proposal. If you agree, please sign and return one copy within 15 days in the return envelope provided.

If you do not return the signed Consent forms within 15 days, we will issue a Conciliation Order as required by the Tax Law. The Conciliation Order may not reflect the proposal offered on the enclosed Consent.”

6. On January 15, 2023, petitioner signed the BCMS consent form, CMS No. 000337606. The consent form lists tax years 2018, 2019 and 2020 and the following refund claims:

Refund Claim No.	Amount of Claim	Date of Notice
X-189590165	\$1,441.00	March 9, 2022
X-189596470	\$1,564.00	October 9, 2021
X-189606390	\$1,563.00	September 27, 2021

The consent form also provides as follows:

“The final disposition of the claim for credit or refund at issue, as described above, is acceptable to me as follows:

Your claim for a credit or refund is denied in full.

By signing this consent:

· I agree to waive any right to a hearing in the Division of Tax Appeals concerning the above notices.”

7. BCMS did not issue a conciliation order to petitioner.

8. On May 3, 2023, the Division notified petitioner that due to her signing the BCMS consent form, she should withdraw her petition to end the litigation in the Division of Tax

Appeals and provided her a withdrawal of petition and discontinuance of proceeding, form TA-110. Petitioner did not respond or return the form.

9. Petitioner did not file a response to the Division's motion.

CONCLUSIONS OF LAW

A. As noted, the Division brings a motion to dismiss the petition under section 3000.9 (a) of the Tax Appeals Tribunal's Rules of Practice and Procedure (Rules) or, in the alternative, a motion for summary determination under section 3000.9 (b). Where, as here, petitioner simultaneously files a petition with the Division of Tax Appeals and a request for conciliation conference with BCMS and, after a conciliation conference, signs a BCMS consent waiving her rights to a hearing, the Division of Tax Appeals is without jurisdiction to consider the merits of her petition.

B. As an alternative to proceeding directly to a formal hearing in the Division of Tax Appeals, a taxpayer may request a conciliation conference with BCMS (*see* Tax Law § 170 [3-a] [b]). BCMS is responsible for providing a conference "at the option of any taxpayer" who has received a statutory notice if the time to petition for a hearing has not elapsed (*see* Tax Law § 170 [3-a] [a]). A conciliation conference provides the parties with an informal opportunity to resolve disagreements and can narrow the scope of or eliminate the need for a hearing in the Division of Tax Appeals (*see* 20 NYCRR 4000.5 [c] [1] [i]). Once a conciliation order is issued, such order will be binding on the Division and the taxpayer unless the taxpayer petitions for a hearing within 90 days after the conciliation order is issued (*see* Tax Law § 170 [3-a] [e]). The filing of a request for conference tolls the state of limitations for filing a petition (*see* Tax Law § 170 [3-a] [b]).

C. In this case, petitioner filed a request for a conciliation conference and a petition concurrently. After the conference, and in lieu of BCMS issuing a conciliation order, petitioner signed a consent agreeing to the Division's denial in full of her refund claims for tax years 2018, 2019 and 2020. By its terms, petitioner agreed to waive her rights to a hearing in the Division of Tax Appeals.

D. Tax Law § 2006 (4) sets forth the functions, powers and duties of the Tax Appeals Tribunal including, in relevant part, as follows:

“To provide a hearing as a matter of right, to any petitioner upon such petitioner's request, pursuant to such rules, regulations, forms and instructions as the tribunal may prescribe, *unless a right to such a hearing is specifically provided for, modified or denied by another provision of this chapter*” (emphasis added).

E. Tax Law § 170 (3-a) (c) provides the following with respect to the powers and authority vested in the conciliation conferee:

“A conciliation conferee, all of whom, unless otherwise provided by law, shall be in the classified civil service, shall conduct the conciliation conference in an informal manner and shall hear or receive testimony and evidence deemed necessary or desirable for a just and equitable result. The commissioner of taxation and finance shall have the power to delegate authority to a conferee to waive or modify penalty, interest and additions to tax to the same extent as such commissioner is permitted under this chapter.”

The regulations promulgated thereunder specifically address the situation where, after the conferee has reviewed all the evidence, a proposed settlement is made and forwarded to the party requesting the conference for his approval or disapproval and provides, in part, as follows:

“(i) After reviewing the testimony, evidence and comments, the conciliation conferee will serve on the requestor a proposed resolution in the form of a consent. In developing this proposed resolution, the conciliation conferee may contact either party to clarify any issues or facts in dispute.

(ii) Where the proposal is acceptable to the requestor, the requestor shall have 15 days to execute the consent and agree to waive any right to petition for hearing in the Division of Tax Appeals concerning the statutory notice” (20 NYCRR 4000.5 [c] [3]).

As set forth in the facts, the consent form included language consistent with the regulation that called for petitioner to waive any rights that she may have to a hearing in the Division of Tax Appeals “concerning the above notices.” In this case, the statutory notices are notices of disallowance, dated March 9, 2022, October 9, 2021, and September 27, 2021.

By signing the consent, petitioner voluntarily discontinued proceedings before BCMS prior to the issuance of an order and, by the consent’s own terms, waived any rights to a hearing before the Division of Tax Appeals concerning all aspects of the notices of disallowance, dated March 9, 2022, October 9, 2021, and September 27, 2021, and agreed to the denial of petitioner’s refund claims for tax years 2018, 2019 and 2020 in full (*see Matter of Patel*, Tax Appeals Tribunal, October 17, 2013; *Matter of BAP Appliance Corp.*, Tax Appeals Tribunal, May 28, 1992).

F. By requesting a conciliation conference, petitioner exercised her option of having her refund claims for tax years 2018, 2019 and 2020 first addressed during the conciliation conference thereby making her petition with the Division of Tax Appeals premature (*see* Tax Law § 170 [3-a]). After her BCMS conference, petitioner signed a consent in which she agreed to waive her right to a hearing before the Division of Tax Appeals with respect to any of her refund claims for tax years 2018, 2019 and 2020. In either case, the Division of Tax Appeals is without jurisdiction to consider the merits of the petition.

G. The Division of Taxation’s motion to dismiss is granted and the petition of Geli M. Hernandez is dismissed.

DATED: Albany, New York
April 11, 2024

/s/ Jennifer L. Baldwin
ADMINISTRATIVE LAW JUDGE