

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition :  
of :  
**PETER JOHNSON** : DETERMINATION  
DTA NO. 831103  
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 2021. :

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Petitioner, Peter Johnson, 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 2021.

On June 30, 2023, 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. (Stefan Armstrong, Esq., of counsel), submitted a letter in support of the dismissal. Petitioner did not submit a response by July 31, 2023, which date commenced the 90-day period for the issuance of this determination. After due consideration of the documents submitted, Donna M. Gardiner, Supervising Administrative Law Judge, renders the following determination.

***ISSUE***

Whether the Division of Tax Appeals has jurisdiction over the petition.

***FINDINGS OF FACT***

1. Petitioner, Peter Johnson, filed a petition with the Division of Tax Appeals on September 7, 2022. The petition challenges a notice and demand, assessment number L-056671227.

2. A statutory notice or conciliation order was not attached to the petition.
3. The petition bears the signature of Jonathan Willard, who is identified as a certified public accountant licensed to practice in New York State, yet a power of attorney form was not attached to the petition.
4. On November 14, 2022, the Division of Tax Appeals made a written request for petitioner to provide a copy of the notice at issue and for a copy of a fully executed power of attorney form.
5. Petitioner did not provide either a statutory notice or a power of attorney form authorizing Mr. Willard to represent him.
6. On June 30, 2023, the Division of Tax Appeals issued to petitioner a notice of intent to dismiss petition. The notice stated, in sum, that the Division of Tax Appeals lacked jurisdiction to review the merits of the petition because it was not in proper form.
7. On July 18, 2023, the Division of Taxation (Division) submitted its response to the notice of intent to dismiss petition that stated:

“[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 power of attorney [form] was not submitted pursuant to 20 NYCRR 3000.2 [sic] the Division is in agreement with the proposed dismissal.”

8. Petitioner did not respond 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 a 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 NCCR 3000.3 (b) (7), a petition must be signed by either petitioner or petitioner’s representative. In this case, the petition was signed by Jonathan Willard, but there was no power of attorney form filed authorizing him to represent petitioner in this matter.

C. Pursuant to 20 NYCRR 3000.3 (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.”

D. On November 14, 2022, the Division of Tax Appeals made a written request for petitioner to supply a statutory notice and to provide a fully executed power of attorney form. Petitioner failed to do so. Where petitioner fails to correct the petition within the time prescribed, the supervising administrative law judge will issue a notice of intent to dismiss petition (*see* 20 NYCRR 3000.3 [d] [2]). Such notice of intent to dismiss petition was issued on June 30, 2023. Petitioner failed to respond.

As petitioner failed to provide both the completed power of attorney form and a statutory

notice, pursuant to Tax Law § 2008 (1), the Division of Tax Appeals lacks jurisdiction over the subject matter of the petition and, thus, dismissal is warranted (*see* 20 NYCRR 3000.3 [d] [2]; 3000.9 [a] [4] [i]; *Matter of Richardson*, Tax Appeals Tribunal, November 17, 2022).

E. While the petition included a copy of a notice and demand, such notice is insufficient to confer jurisdiction upon the Division of Tax Appeals to consider the merits of the petition (*see* Tax Law § 173-a [2]; *Matter of Alesi*, Tax Appeals Tribunal, June 9, 2022; *Matter of Mostovoi*, Tax Appeals Tribunal, May 23, 2019).

F. It is ORDERED, on the motion of the supervising administrative law judge, that the petition is dismissed with prejudice as of this date.

DATED: Albany, New York  
October 26, 2023

/s/ Donna M. Gardiner  
SUPERVISING ADMINISTRATIVE LAW JUDGE