

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
LINNEA R. EDORSSON : DETERMINATION
for Redetermination of a Deficiency or for : DTA NO. 831210
Refund of New York State Personal Income Tax :
under Article 22 of the Tax Law for the Year 2014. :
:

Petitioner, Linnea R. Edorsson, 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 2014.

On July 31, 2024, the Division of Tax Appeals issued a notice of intent to dismiss petition to petitioner pursuant to 20 NYCRR 3000.9 (a) (4). The Division of Taxation, appearing by Amanda Hiller, Esq. (Michele W. Milavec, Esq., of counsel), submitted a letter in support of the dismissal. Petitioner, appearing pro se, did not submit a response by August 30, 2024, which date began 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, Linnea R. Edorsson, filed a petition with the Division of Tax Appeals on January 12, 2023. Included with the petition was a copy of a correspondence acknowledgment notice, dated September 26, 2022, issued to petitioner from the Division of Taxation (Division).

2. No statutory notice or conciliation order was attached to the petition.
3. On April 3, 2023, the Division of Tax Appeals made a written request to petitioner for a copy of the statutory notice being protested.
4. Petitioner did not provide any statutory notice.
5. On July 31, 2024, the Division of Tax Appeals issued to petitioner a notice of intent to dismiss petition. The notice of intent to dismiss petition stated that the Division of Tax Appeals lacked jurisdiction to review the merits of the petition because it was not in proper form.
6. On August 13, 2024, in response to the notice of intent to dismiss petition, the Division submitted a letter that stated:

“[t]he Division is in receipt of the Notice of Intent to Dismiss Petition in the above referenced matter. 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 being protested. As such, the Division is in agreement with the proposed dismissal of the petition filed in this matter.”

7. 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 Matter of New York State Dept. of Taxation & Fin. v Tax Appeals Trib.*, 151 Misc 2d 326 [Sup Ct, Albany County 1991]). 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]).

All proceedings in the Division of Tax Appeals “shall be commenced by the filing of 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 credit application . . . or any other notice which gives a person the right to a hearing” (Tax Law § 2008 [1]).

B. 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.” In this case, no statutory notice was attached.

C. On April 3, 2023, the Division of Tax Appeals made a written request to petitioner for a copy of a statutory notice. Petitioner failed to provide any statutory notice. Where 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] [2]). A notice of intent was issued on July 31, 2024. Petitioner failed to respond to the notice of intent.

D. As petitioner failed to attach a notice contemplated by 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]; *see also Matter of Richardson*, Tax Appeals Tribunal, November 17, 2022).

E. Although petitioner attached a copy of a correspondence acknowledgement notice to the petition, this notice is insufficient to confer jurisdiction upon the Division of Tax Appeals to consider the merits of the petition (*see Matter of Etienne*, Tax Appeals Tribunal, July 7, 2022).

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
November 27, 2024

/s/ Donna M. Gardiner
ADMINISTRATIVE LAW JUDGE