

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
GALINA KOMISSARCHUK	:	DETERMINATION
		DTA NO. 831338
for Redetermination of a Deficiency or for Refund 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 Year 2019.	:	

Petitioner, Galina Komissarchuk, filed a petition for redetermination of a deficiency or for refund 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 year 2019.¹

On June 13, 2025, 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. (Amy Seidenstock, Esq., of counsel), submitted a letter in support of the dismissal. Petitioner, appearing by Michael Petrushansky, CPA, did not submit a response by July 14, 2025, 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.

¹ The petition protested tax years 2018 and 2019. The petition was severed and assigned separate DTA numbers. DTA number 831338 addresses the tax year 2019 only.

FINDINGS OF FACT

1. Petitioner, Galina Komissarchuk, filed a petition with the Division of Tax Appeals on June 5, 2023. Included with the petition was a copy of a statement of proposed audit change issued to her, dated January 11, 2023.
2. No statutory notice or conciliation order was attached to the petition.
3. On August 10, 2023, the Division of Tax Appeals made a written request to petitioner for a copy of the statutory notice being protested or for a copy of a conciliation order.
4. Petitioner did not provide any statutory notice.
5. On June 13, 2025, 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 June 27, 2025, in response to the notice of intent to dismiss petition, the Division of Taxation (Division) submitted a letter 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[,] the Division is in agreement with the proposed dismissal.”
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 (*Matter of New York State Dept. of Taxation & Fin. v Tax Appeals Trib.*, 151 Misc 2d at 332). 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 expressly 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 conciliation order or statutory notice was attached.

C. On August 10, 2023, the Division of Tax Appeals made a written request asking petitioner to supply a statutory notice. She failed to do so. 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]).

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).

D. While the petition included a statement of proposed audit change, such document does not give rise to hearing rights at the Division of Tax Appeals (*see Matter of Etienne*, Tax Appeals Tribunal, July 7, 2022).

E. 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
September 18, 2025

/s/ Donna M. Gardiner
SUPERVISING ADMINISTRATIVE LAW JUDGE