

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition	:	
of	:	
<b>JACOB AND CAROL FELDHEIM</b>	:	DETERMINATION
	:	DTA NO. 831454
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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Petitioners, Jacob and Carol Feldheim, 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 13, 2025, 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. (Lydia Filewych, Esq., of counsel), submitted a letter in support of the dismissal. Petitioners submitted a response by July 14, 2025, 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. Petitioners, Jacob and Carol Feldheim, filed a petition with the Division of Tax Appeals on November 13, 2023.
2. A statutory notice or conciliation order was not attached to the petition.

3. On August 28, 2024, the Division of Tax Appeals made a written request to petitioners for a copy of the statutory notice.

4. Petitioners did not provide any statutory notice.

5. On June 13, 2025, the Division of Tax Appeals issued to petitioners 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 20, 2025, in opposition to the notice of intent to dismiss petition, petitioners argued that they are not required to provide a statutory notice with their petition. They claimed that “NYS did not dispute timeliness of petition. Rather ‘a statutory notice was not included in petition.’” Petitioners stated that Tax Law § 2008 (1) does not require that a statutory notice be included with the petition.

7. On July 3, 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. 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.”

### ***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]).

Petitioners’ argument that the statute does not require that they include a statutory notice with their petition is without merit. 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]). In this case, no statutory notice was attached.

B. On August 28, 2024, the Division of Tax Appeals made a written request for petitioners to supply a statutory notice. Petitioners failed to do so. Where petitioners fail 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 petitioners failed to attach a notice contemplated by Tax Law § 2008, the Division of Tax Appeals lacks jurisdiction over the subject matter of the petition and, therefore, 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).

C. Although petitioners provided a notice of adjusted assessment, this notice does not provide hearing rights at the Division of Tax Appeals. A notice of adjusted assessment is issued after a notice of deficiency has been issued and a subsequent modification has been made. In this case, the notice of deficiency is the statutory notice that provides hearing rights at the Division of Tax Appeals (*see* Tax Law § 2008 [1]). However, the notice of deficiency was not provided.

Petitioners also provided a tax warrant and a response to taxpayer inquiry letter. These

documents also do not provide hearing rights at the Division of Tax Appeals as set forth in Tax Law § 2008 (1) (*see Matter of Pavlak*, Tax Appeals Tribunal, February 12, 1998 [wherein the Tax Appeals Tribunal held that the Division of Tax Appeals is without authority to review activities undertaken by the Division to collect outstanding assessments after they become fixed and final]; *Matter of PC Touch Servs.*, Tax Appeals Tribunal, August 23, 2012 [wherein the Tax Appeals Tribunal held that a response to taxpayer inquiry letter is not a statutory document and, thus, does not provide hearing rights]).

D. 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 9, 2025

/s/ Donna M. Gardiner  
Donna M. Gardiner  
Supervising Administrative Law Judge