

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
MICHAEL A. SENNOTT	:	DETERMINATION
for Redetermination of a Deficiency or for Refund of	:	DTA NO. 850587
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 2015.	:	

Petitioner, Michael A. Sennott, 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 2015.

On May 15, 2025, the Division of Taxation, by its representative, Amanda Hiller, Esq. (Albert Gawer, Esq., of counsel), brought a motion seeking dismissal of the petition or, in the alternative, summary determination in its favor 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 by Clapsaddle & Company Certified Public Accountant (Richard A. Clapsaddle, CPA), filed a response to the motion by June 16, 2025, which date commenced the 90-day period for the issuance of this determination.

Based upon the motion papers and all pleadings and documents submitted in connection with this matter, Osborne K. Jack, Administrative Law Judge, renders the following determination.

ISSUE

Whether the Division of Tax Appeals has jurisdiction to address the notice of additional tax due issued to petitioner for the year 2015.

FINDINGS OF FACT

1. On October 11, 2016, petitioner, Michael A. Sennott, filed form IT-201, New York State resident income tax return, for the year 2015 (the original return) reporting federal adjusted gross income of \$551,459.00.

2. On May 9, 2017, petitioner filed form IT-201-X, New York State amended resident income tax return, for the year 2015 (the first amended return) reporting federal adjusted gross income of \$357,162.00.

3. Thereafter, in 2018, the Division of Taxation (Division) received an account transcript from the Internal Revenue Service (IRS) reporting that petitioner's federal adjusted gross income for the year 2015 was \$591,006.00. The first amended return did not report the information provided in the account transcript.

4. On June 21, 2019, based on the account transcript from the IRS, the Division sent petitioner a notice of additional tax due, notice number L-050122754 (notice), assessing additional tax of \$29,653.00, plus interest, for the year 2015. The notice advised petitioner that the "deficiency is based on [his] failure to report Federal audit changes to New York State." The notice further advised petitioner that the Division received information from the IRS showing that the IRS adjusted his 2015 federal income tax return. The notice explained that petitioner was required to report any changes to his federal income tax return to New York State within 90 days of the final IRS determination. The notice indicated that the IRS notified petitioner of the changes to his return on October 23, 2017, and advised petitioner that "[w]hen a taxpayer does

not report federal changes, there is no time limit when New York State may send a bill for additional tax.”

5. On February 7, 2020, petitioner filed form IT-201-X, New York State amended resident income tax return, for the year 2015 (the second amended return) reporting federal adjusted gross income of \$424,754.00. In light of the changes made by the IRS to petitioner’s federal adjusted gross income, the Division did not accept the second amended return.

6. On March 22, 2023, petitioner filed a request for conciliation conference with the Division’s Bureau of Conciliation and Mediation Services (BCMS).

7. On April 7, 2023, BCMS issued a conciliation order dismissing request to petitioner stating as follows:

“The Bureau of Conciliation and Mediation Services does not have jurisdiction over this matter. The notice(s) at issue, by law, shall not be construed as a notice which gives a person rights to a hearing. If the notice is full paid and a timely refund filed, denial of such refund may afford rights.

Therefore, the Bureau of Conciliation and Mediation Services is precluded from making a determination on the merits of this case.

The request filed for a Conciliation Conference is dismissed.”

8. In response to the motion, petitioner states that “[t]his entire matter stems from the Internal Revenue Service’s administrative failure to timely process an acknowledged claim for refund.”

CONCLUSIONS OF LAW

A. Tax Law § 659 provides that where a taxpayer’s federal taxable income is changed or corrected by the IRS, the taxpayer must report such change or correction to the Division within 90 days after the final determination of such change or correction and either concede the accuracy of the federal change or state the taxpayer’s basis for asserting that the change or

correction is erroneous. If the federal change or correction is not reported within the 90-day period, the Division is authorized by Tax Law § 681 (e) (1) to issue a notice of additional tax due. The Division received information from the IRS regarding federal audit changes to petitioner's taxable income for the year 2015. Petitioner did not report the federal audit changes to the Division as required by Tax Law § 659 and, therefore, the Division issued a notice of additional tax due to petitioner.

B. 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, 333 [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]).

A proceeding in the Division of Tax Appeals is commenced by filing 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]).

The notice of additional tax due in this matter is based on petitioner’s failure to report federal audit changes to New York State for the year in question. Tax Law § 173-a (2) specifically precludes petitioner from obtaining a hearing with respect to the subject notice of additional tax due (*see Matter of Nevins*, Tax Appeals Tribunal, June 7, 2018). Therefore, the Division of Tax Appeals is without jurisdiction to address the underlying merits of the notice.

C. The Division of Taxation's motion to dismiss is granted and the petition of Michael A. Sennott is dismissed.

DATED: Albany, New York
September 11, 2025

/s/ Osborne K. Jack
ADMINISTRATIVE LAW JUDGE