

STATE OF NEW YORK

DIVISION OF TAX APPEALS

---

In the Matter of the Petition	:	
of	:	
<b>NIKYRA SMITH</b>	:	<b>DETERMINATION</b>
		<b>DTA NO. 851428</b>
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 2022.	:	

---

Petitioner, Nikyra Smith, 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 2022.<sup>1</sup>

On July 11, 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. (Amy Seidenstock, Esq., of counsel), submitted a letter in support of the dismissal. Petitioner, appearing pro se, did not submit a response by August 11, 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.

---

<sup>1</sup> The petitioner appears to protest two notices of deficiency, bearing assessment numbers L-054857999 and L-058070135, issued to petitioner. As a statutory notice was provided for assessment number L-054857999, the petition was severed and DTA number 831322 was assigned to the protest of that notice of deficiency.

### ***FINDINGS OF FACT***

1. Petitioner, Nikyra Smith, filed a petition with the Division of Tax Appeals on May 26, 2023.
2. The petition appears to protest a notice of deficiency, bearing assessment number L-058070135, issued to petitioner by the Division of Taxation (Division).
3. The petition did not include a statutory notice.
4. On August 3, 2023, the Division of Tax Appeals made a written request to petitioner for a copy of the statutory notice.
5. No statutory notice was provided.
6. On July 11, 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 it appeared the Division of Tax Appeals lacked jurisdiction to review the merits of the petition because it was not in proper form.
7. On July 22, 2025, 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 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.”
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 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 . . . 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 statutory notice was attached.

C. On August 3, 2023, the Division of Tax Appeals made a written request for petitioner to provide the statutory notice. Petitioner 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, 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).

D. Although petitioner provided 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  
November 6, 2025

/s/ Donna M. Gardiner  
SUPERVISING ADMINISTRATIVE LAW JUDGE