STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition of **RAYMOND A. DOMINGUEZ MACHATO** 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 2024.	: : : : : :	DETERMINATION DTA NO. 852001

Petitioner, Raymond A. Dominguez Machato, 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 2024.

The Division of Taxation, by its representative, Amanda Hiller, Esq. (Kobena Eyiah, Esq., of counsel), brought a motion on March 17, 2026, seeking an order dismissing the petition in the above-referenced matter pursuant to sections 3000.5 and 3000.9 (a) (1) (ii) of the Rules of Practice and Procedure of the Tax Appeals Tribunal. Petitioner, appearing by Reliable Accounting Services (Boris Nikhman, Esq., of counsel), did not file a response by April 16, 2026, 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 merits of the petition filed in this matter.

FINDINGS OF FACT

1. On July 15, 2025, petitioner, Raymond A. Dominguez Machato, filed a petition with the Division of Tax Appeals listing tax year 2024 in the caption. Petitioner did not attach a notice of disallowance to the petition but listed case identification number X-192173580 in section V of the petition.

2. On July 28, 2025, the Division of Tax Appeals notified petitioner in writing that it could not process the petition until petitioner provided a copy of the statutory notice being protested.

3. On August 4, 2025, petitioner provided a copy of a notice of disallowance for case identification number X-192173580, dated July 1, 2025, wherein the Division of Taxation (Division) disallowed petitioner's refund claim of $4,115.00 for tax year 2024.

4. On August 6, 2025, the Division of Tax Appeals was notified by the Division that, on July 14, 2025, petitioner had filed a request for conciliation conference (request) with the Bureau of Conciliation and Mediation Services (BCMS) regarding the notice of disallowance, case identification number X-192173580.

5. On August 8, 2025, the Division of Tax Appeals notified petitioner of his concurrent matters in the Division of Tax Appeals and BCMS, provided petitioner with form TA-135, withdrawal of petition for matter currently pending in the Bureau of Conciliation and Mediation Services and instructed petitioner to withdraw his request at BCMS if he wished to proceed with his petition at the Division of Tax Appeals. Petitioner did not respond or return the form.

6. On March 17, 2026, the Division filed a motion for dismissal stating that the petition filed with the Division of Tax Appeals is premature and should be dismissed. In support of its motion, the Division attached, among other items, a copy of petitioner's request, a letter dated February 9, 2026, indicating that a BCMS conference had been scheduled for March 18, 2026, and a copy of the petition filed in this matter.

7. Petitioner did not file a response to the Division's motion.

CONCLUSIONS OF LAW

A. As noted, the Division brings a motion to dismiss the petition under section 3000.9 (a) of the Rules of Practice and Procedure of the Tax Appeals Tribunal (Rules). Where, as here, petitioner simultaneously files a petition with the Division of Tax Appeals and a request with BCMS, the Division of Tax Appeals is without jurisdiction to consider the merits of the petition.

B. As an alternative to proceeding directly to a formal hearing in the Division of Tax Appeals, a taxpayer may request a conciliation conference with BCMS (***see*** Tax Law § 170 [3-a] [b]). BCMS is responsible for providing a conference "at the option of any taxpayer" who has received a statutory notice if the time to petition for a hearing has not elapsed (Tax Law § 170 [3-a] [a]). A conciliation conference provides the parties with an informal opportunity to resolve disagreements and can narrow the scope of or eliminate the need for a hearing in the Division of Tax Appeals (20 NYCRR 4000.5 [c] [1] [i]). Once a conciliation order is issued, such order will be binding on the Division and the taxpayer unless the taxpayer petitions for a hearing within 90 days after the conciliation order is issued (***see*** Tax Law § 170 [3-a] [e]).

C. Tax Law § 2006 (4) sets forth the functions, powers and duties of the Tax Appeals Tribunal including, in relevant part, as follows:

> "To provide a hearing as a matter of right, to any petitioner upon such petitioner's request, pursuant to such rules, regulations, forms and instructions as the tribunal

> may prescribe, *unless a right to such a hearing is specifically provided for, modified or denied by another provision of this chapter*" (emphasis added).

D. Tax Law § 170 (3-a) (c) provides the following with respect to the powers and authority vested in the conciliation conferee:

> "A conciliation conferee, all of whom, unless otherwise provided by law, shall be in the classified civil service, shall conduct the conciliation conference in an informal manner and shall hear or receive testimony and evidence deemed necessary or desirable for a just and equitable result. The commissioner of taxation and finance shall have the power to delegate authority to a conferee to waive or modify penalty, interest and additions to tax to the same extent as such commissioner is permitted under this chapter."

In this case, petitioner filed a request and a petition concurrently. The Tax Appeals Tribunal (Tribunal) previously addressed this exact situation and stated that "[t]o maintain an orderly and efficient system of review, an order must be rendered before a petition may be filed" (***Matter of Sawlani***, Tax Appeals Tribunal, September 14, 1995). In ***Sawlani***, the Tribunal noted that maintaining concurrent matters before the Division of Tax Appeals and BCMS could raise questions regarding the finality of Tribunal decisions. The Tribunal concluded that "[i]n order to avoid such uncertainty, petitions filed prematurely must be rejected as untimely" (***id.***). By requesting a conciliation conference, petitioner exercised his option of having his refund claim for tax year 2024 first addressed during the conciliation conference thereby making his petition with the Division of Tax Appeals premature (***see id.***). Accordingly, the Division of Tax Appeals is without jurisdiction to consider the merits of the petition.

E. The Division of Taxation's motion to dismiss is granted and the petition of Raymond A. Dominguez Machato is dismissed.

DATED: Albany, New York
July 9, 2026

/s/ Osborne K. Jack
ADMINISTRATIVE LAW JUDGE