

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition :  
of :  
**TONI RANIERI** : ORDER  
DTA NO. 828672  
for Redetermination of a Deficiency or for Refund of New :  
York State Personal Income Tax Under Article 22 of the :  
Tax Law for the Years 2000 through 2003. :

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Petitioner, Toni Ranieri, 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 years 2000 through 2003.

On April 30, 2018, the Division of Tax Appeals issued to petitioner a notice of intent to dismiss petition pursuant to 20 NYCRR 3000.9 (a) (4) on the ground that the Division of Tax Appeals lacked jurisdiction to hear the merits of the petition. On May 22, 2018, the Division of Taxation, by Amanda Hiller, Esq. (Christopher O'Brien, Esq., of counsel), submitted a letter and documents in support of dismissal. On May 29, 2018, petitioner submitted a letter and documents in opposition to dismissal. Pursuant to 20 NYCRR 3000.5 (d) and 3000.9 (a) (4), the 90-day period for issuance of this order commenced on May 30, 2018. After due consideration of the arguments submitted, Donna M. Gardiner, Administrative Law Judge, renders the following order.

***ISSUE***

Whether the Division of Tax Appeals has subject matter jurisdiction over the petition filed in this matter.

***FINDINGS OF FACT***

1. Petitioner, Toni Ranieri, filed a petition with the Division of Tax Appeals on December 14, 2017, protesting assessment numbers L-029569320, L-029569321, L-029569322 and L-029569323. Attached to the petition is an undated consolidated statement of tax liabilities that sets forth ten assessment numbers.

2. On April 30, 2018, Supervising Administrative Law Judge Herbert M. Friedman, Jr., of the Division of Tax Appeals issued a notice of intent to dismiss petition (notice of intent) to petitioner on the basis that it appeared that the Division of Tax Appeals lacked jurisdiction. Specifically, the notice of intent indicated that the consolidated statement of tax liabilities was not a statutory notice that provided a right to a hearing.

3. In response to the issuance of the notice of intent, the Division of Taxation (Division) addressed eight of the assessment numbers that were listed on the consolidated statement of tax liabilities.

With respect to the four assessment numbers set forth in finding of fact 1, the Division states that on August 14, 2017, petitioner filed New York State resident income tax returns, forms IT-201, for the tax years 2000 through 2003. As a result of these filings, the assessment numbers listed above were canceled, leaving a zero balance. The Division submitted an updated consolidated statement of tax liabilities, dated May 10, 2018, which reflects the assessment numbers L-029569320, L-029569321, L-029569322 and L-029569323, for tax years 2000 through 2003, respectively, have a balance of \$0.00.

4. On August 25, 2017, the Division issued four notice and demands for the tax years 2000 through 2003. These assessment numbers are: L-046972326 for the tax year 2000, L-

046972327 for the tax year 2001, L-046972328 for the tax year 2002 and L-046972329 for the tax year 2003. The Division states that these four notices were issued to petitioner for her late-filed, non-remit returns for the years 2000 through 2003. Therefore, the Division notes that pursuant to Tax Law § 173-a, a notice and demand issued on or after December 1, 2004 does not provide for a right to a hearing prior to payment of the underlying assessment.

5. Petitioner responded to the notice of intent with a letter stating that she was assured by the Division that the assessments against her would be canceled after she filed her forms IT-201 for the years 2000 through 2003. Petitioner argues that it was her understanding that the penalties and assessments would be waived based upon undue hardship.

6. With respect to the notice and demand for the tax year 2000, L-046972326, it reflects tax due in the amount of \$643.00, interest in the amount of \$1,458.59 and penalty in the amount of \$305.20, for a balance due of \$2,406.79. In reviewing the updated consolidated statement of tax liabilities, this assessment number is not included with the other notice and demands as assessments subject to collection action. In fact, assessment number L-046972326 is listed under the section entitled "THE FOLLOWING LIABILITIES HAVE BEEN DETERMINED TO BE DUE. Although not yet subject to collection action [sic] they should be paid promptly in order to avoid the accrual of additional penalty and/or interest charges." The updated consolidated statement of tax liabilities for the notice and demand issued for the year 2000 reflects a payment made by petitioner in the amount of \$2,023.44, with a balance due of \$0.00.

#### ***CONCLUSIONS OF LAW***

A. The Division of Tax Appeals is an adjudicatory body of limited jurisdiction whose powers are confined to those expressly conferred in its authorizing statute (*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 [1991]). Therefore, in the absence of legislative action, this forum cannot extend its authority to disputes that have not been specifically delegated to it (*Matter of Hooper*, Tax Appeals Tribunal, July 1, 2010).

B. As there is an agreement that the assessment numbers L-029569320, L-029569321, L-029569322 and L-029569323, for tax years 2000 through 2003, respectively, have a balance of \$0.00, these notices have been canceled and are no longer at issue.

C. With respect to the notice and demands issued on August 25, 2017, assessment numbers L-046972327 for the tax year 2001, L-046972328 for the tax year 2002 and L-046972329 for the tax year 2003, this proceeding must be dismissed with respect to these notice and demands because the Division of Tax Appeals lacks jurisdiction to review the documents. The Tax Appeals Tribunal is authorized to “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]). In this instance, the right to a hearing is specifically denied. Tax Law § 173-a (2) provides that a notice and demand “shall not be construed as a notice which gives a person the right to a hearing.” Accordingly, the Division of Tax Appeals is without authority to proceed with respect to these three notice and demands for the tax years 2001 through 2003 (*see Matter of Chait*, Tax Appeals Tribunal, April 22, 2010).

D. With respect to assessment number L-046972326, it appears that this is no longer a notice and demand. It is listed as a notice that is not yet subject to collection on the updated consolidated statement of tax liabilities. Moreover, the balance is now \$0.00 and it appears that a payment has been made. The record herein does not provide enough information regarding

assessment number L-046972326 to dismiss the petition with respect to such assessment.

Therefore, the Division of Tax Appeals shall retain jurisdiction over this notice.

E. The petition of Toni Ranieri is dismissed to the extent indicated in conclusions of law B and C, the notice of intent to dismiss is rescinded to the extent indicated in conclusion of law D, and the Division of Taxation shall have 75 days from the date of this order to file its answer in this matter.

DATED: Albany, New York  
August 23, 2018

/s/ Donna M. Gardiner  
ADMINISTRATIVE LAW JUDGE