

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
	:	
of	:	
	:	
RAYMOND AND HORTENSE MARAGH	:	ORDER
	:	DTA NO. 830290
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 2007, 2008, 2009, 2011,	:	
2013 and 2014.	:	

Petitioners, Raymond and Hortense Maragh, 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 2007, 2008, 2009, 2011, 2013 and 2014.

The Division of Taxation, by its representative, Amanda Hiller, Esq. (Peter Ostwald, Esq., of counsel), filed a motion on November 3, 2022, for dismissal of the petition pursuant to sections 3000.5 and 3000.9 (a) (1) (ii) of the Tax Appeals Tribunal’s Rules of Practice and Procedure. Petitioners, appearing pro se, filed their reply to the motion by December 1, 2022, which date commenced the 90-day period for issuance of this order.

Based upon the Division of Taxation’s motion to dismiss and its motion papers and documents submitted, petitioners’ response and all pleadings and documents submitted in connection with this matter, Donna M. Gardiner, Administrative Law Judge, renders the following order.

ISSUE

Whether the petition should be dismissed for lack of subject matter jurisdiction.

FINDINGS OF FACT

1. Petitioners, Raymond and Hortense Maragh, late filed their 2007 and 2008 New York State resident income tax returns, forms IT-201, on October 1, 2012.

2. On October 18, 2012, the Division of Taxation (Division) issued to petitioners an account adjustment notice that denied petitioners' claimed refund on their 2007 income tax return.

3. Subsequently, on March 13, 2013, the Division issued a notice and demand to petitioners, bearing assessment number L-039130214, asserting tax due in the amount of \$87,319.90, plus interest for the tax year 2007.

4. On October 10, 2012, the Division issued to petitioners an account adjustment notice that denied petitioners' claimed refund on their 2008 income tax return.

5. After a subsequent audit of petitioners' 2008 income tax return, the Division issued a notice and demand, bearing assessment number L-039126605, dated March 13, 2013, asserting tax due in the amount of \$93,097.40, plus penalty and interest for the tax year 2008.

6. For the tax year 2009, petitioners late filed their form IT-201 twice. The first return was filed on December 4, 2012 and the second return was filed on September 13, 2015.

7. The Division issued a notice and demand, dated January 15, 2016, bearing assessment number L-044254196, asserting tax due in the amount of \$9,089.77, plus penalty and interest for the tax year 2009.

8. On May 1, 2017, petitioners late filed their form IT-201 for the year 2011.

9. On August 23, 2017, after a review of the 2011 return, the Division issued to petitioners a notice and demand, bearing assessment number L-046966108, asserting tax due in the amount of \$95,909.75, plus penalty and interest.

10. On October 19, 2017, petitioners late filed their form IT-201 for the year 2013.

11. On December 13, 2017, after a review of the 2013 return, the Division issued to petitioners a notice and demand, bearing assessment number L-047513040, asserting tax due in the amount of \$3,330.00, plus penalty and interest..

12. On October 19, 2017, petitioners late filed their form IT-201 for the year 2014.

13. On November 30, 2017, after a review of the 2014 return, the Division issued to petitioners a notice and demand, bearing assessment number L-047493106, asserting tax due in the amount of \$2,823.00, plus penalty and interest.

14. All of the notices and demand described in findings of fact 3, 5, 7, 9, 11 and 13 were paid in full by petitioners on July 10, 2018.

15. On September 22, 2019, petitioners filed a request for conciliation conference (request) with the Bureau of Conciliation and Mediation Services (BCMS) in protest of the six notices and demand issued to them for the tax years 2007, 2008, 2009, 2011, 2013 and 2014. Since the six notices and demand had been paid in full, BCMS treated the request as a claim for refund.

16. The conciliation conference was held on September 1, 2020.

17. On October 27, 2020, BCMS issued two separate consent forms. CMS No. 000316138 was for the tax years 2007, 2008 and 2009. Set forth in the consent were modified liabilities for the tax years 2007 through 2009. CMS No. 000316163 was for the tax years 2011, 2013, and 2014. Similar to the other consent, this form set forth modified liabilities for the years 2011, 2013, and 2014.

18. The consents were accompanied by a cover letter with instructions. The instructions were as follows:

“After considering the evidence submitted, I propose modifying the Notice[s] and Demand issued by the Department of Taxation and Finance.

For an agreement to be completed the Consents for both cases, CMS No(s). 000316138 and 000316163, are to be signed, dated and returned. The total combined overpayment for these two (2) conciliation conference matters is \$22,526.45.

Enclosed are two copies of a Consent form reflecting this proposal. If you agree, please sign and return one copy within 15 days in the return envelope provided.

If you do not return the signed Consent forms within 15 days, we will issue a Conciliation Order as required by the Tax Law. The Conciliation Order will not reflect the proposal offered on the enclosed Consent[s].”

Petitioners failed to return the consents within 15 days.

19. On December 11, 2020, BCMS issued two conciliation orders. CMS. No. 000316138 referenced the tax years 2007 through 2009 and CMS No. 000316163 referenced the tax years 2011, 2013, and 2014. Both conciliation orders noted that all six notices and demand had been paid in full.

20. After the conciliation orders were issued, petitioners returned the signed consents.

21. In direct contradiction to the instructions set forth in the cover letter to the consents, and after issuing conciliation orders, the Division accepted the late-filed consents and issued refund checks to petitioners.

22. These refund checks were returned as undelivered to the Division.

23. On January 26, 2021, petitioners timely filed a petition with the Division of Tax Appeals in protest of the two conciliation orders issued to them on December 11, 2020.

24. The affirmation of Peter Ostwald, Esq., states that petitioners knowingly and affirmatively waived their rights to a hearing by executing and filing the consent forms. The Division argues that the signed consent forms, dated December 14, 2020, settled the matter and constituted a final disposition of all the notices and demand in controversy. Therefore, the

Division states that the proceeding should be dismissed for lack of jurisdiction of the subject matter of the petition pursuant to 20 NYCRR 3000.9 (a) (1) (ii).

CONCLUSIONS OF LAW

A. The Division has moved for dismissal of the petition pursuant to Tax Law § 2006 (5) and 20 NYCRR 3000.9 (a) (1) (ii). The Rules of Practice and Procedure of the Tax Appeals Tribunal (Rules) provide for any party to move to dismiss a petition on the grounds that the Division of Tax Appeals lacks jurisdiction of the subject matter (20 NYCRR 3000.9 [a] [1] [ii]).

B. In this case, the Division argues that petitioners executed consents at BCMS that finally disposed of the six notices and demand issued to petitioners. This argument is without merit.

As set forth in the findings of fact, the Division issued two separate consents to petitioners dated October 27, 2020. The consents expressly stated that the offer to modify the liabilities would expire within 15 days and, if signed consents were not received by then, conciliation orders would be issued.

It is undisputed that petitioners did not file signed consents within 15 days. Additionally, in accordance with its own language, BCMS issued conciliation orders dated December 11, 2020. However, petitioners signed the consents well after the time frame to do so and after the issuance of the conciliation orders. The Division is now trying to force a settlement, claiming that petitioners intended to settle the matter despite not adhering to the settlement offer language and after the subsequent issuance of the conciliation orders. There is simply no authority that allows the Division to ignore its own consent form language and to ignore the existence of issued conciliation orders.

C. Under article 22 of the Tax Law, there is a strict 90-day statutory time limit for filing a petition for a hearing with the Division of Tax Appeals (*see* Tax Law §§ 689 (b); 170 [3-a] [e]). The conciliation orders were issued on December 11, 2020 and petitioners timely filed a petition with the Division of Tax Appeals in protest of the conciliation orders on January 26, 2021. Therefore, the Division has jurisdiction to entertain the merits of the petition.

D. Accordingly, the Division of Taxation's motion to dismiss the petition is denied and this matter will be scheduled for hearing in due course.

DATED: Albany, New York
February 23, 2023

/s/ Donna M. Gardiner
ADMINISTRATIVE LAW JUDGE