

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
TASHIMA THOMAS : ORDER
 : DTA NO. 830934
for Redetermination of a Deficiency or for Refund of :
New York State and City Personal Income Tax :
under Article 22 of the Tax Law and the Administrative :
Code of the City of New York for the Year 2020. :
:

Petitioner, Tashima Thomas, filed a petition for a redetermination of deficiency or for refund of New York State and City personal income tax under article 22 of the Tax Law and the Administrative Code of the City of New York for the year 2020.

The Division of Taxation, by its representative, Amanda Hiller, Esq. (Colleen McMahon, Esq., of counsel), brought a motion, dated August 8, 2023, seeking dismissal of the above-referenced matter pursuant to section 3000.9 (a) of the Rules of Practice and Procedure of the Tax Appeals Tribunal. Petitioner, appearing pro se, did not submit a response by September 7, 2023, which date commenced the 90-day period for the issuance of this order. After due consideration of the documents submitted, Nicholas A. Behuniak, Administrative Law Judge, renders the following order.

ISSUE

Whether the Division of Taxation's motion to dismiss should be granted.

FINDINGS OF FACT

1. Petitioner, Tashima Thomas, filed a petition on April 1, 2022, with the Division of Tax Appeals.

2. The petition challenges a notice of deficiency bearing assessment ID number L-055122992 and dated March 1, 2022, issued by the Division of Taxation (Division) to the petitioner for the year 2020 (notice). The petition indicates, in an attachment, that the reason for the dispute is:

“This letter serves as the formal notice of my intent to file a lawsuit against N.Y[sic] State Dept [o]f Taxation Finance [sic] in court within 30 days, due to violations under (FDCPA 15 U.S.C. 1692 et.seq [sic]), & (FDCPA 15 U.S.C [sic] et.seq [sic]). NY [sic] State Dept. [o]f Taxation & Finance has continued to enforce a contract of debt in a false name in *which I have none with your agency*, this [matter] has been resolved already, and keep [sic] re-appearing year after year for approximately 11 years now. *NY [sic] State Dept. [o]f Taxation & Finance has continued to state I owe a particular amount of debt, reporting the fraudulent amount* to public records and all 3 credit bureaus. N.Y. State Dept [o]f Taxation & Finance contacted me via, mail [sic] with treats [sic] with a warrant with no signature for a frivolous amount of debt in a false name, not identifying with the name said as a [sic] above in this letter. N.Y State Dept of Taxation & Finance coherently [sic] inserted damages [sic] my credit report without proof of contract or validation. To settle this [matter] in private contact within [sic] 30 days by via [sic] telephone (xxx)-xxx-xxxx¹ and/or mail at the name and address located above with a certified check/ money [sic] order for \$5,000.00 dollars for each year claimed, or simply proceed with anyone [sic] of my previous letters mailed at your office certified mail notary presentment [sic], stating remedies for settling injury” (emphasis added).

3. In support of its motion, the Division by affirmation of Colleen McMahon, Esq., dated August 8, 2023, submitted the following with its motion papers: (i) an affidavit, dated August 8, 2023, of Linda Cichy, a Tax Technician III in the Audit Division, Personal Income Tax Unit of the Division; (ii) a copy of petitioner’s New York State resident income tax return (form IT-201) for 2020; (iii) a copy of a statement of proposed audit change, dated January 13,

¹The phone number has been redacted.

2022 for assessment ID L-055122992, issued by the Division to petitioner; (iv) two copies of the notice; (v) a copy of the petition; and (vi) a copy of the answer, dated October 26, 2022, the Division filed in this matter.

4. In its motion papers, the Division argues that the petition refers to “‘a contract of debt in a false name’ that the [p]etitioner holds has been at issue for 11 years.” In addition, in its motion, the Division points out that petitioner “asks the Division to make a payment of \$5000 [sic] to ‘settle this matter in private.’” Accordingly, the Division asserts that petitioner has failed to state a cause of action because she fails to contest the notice or argue that the computation of the tax assessed was incorrect.

CONCLUSIONS OF LAW

A. The Division brought a motion to dismiss pursuant to 20 NYCRR 3000.9 (a) (1) (vi). The standard for review on a motion to dismiss is the same as that for summary determination (*see Matter of Nwankpa*, Tax Appeals Tribunal, October 27, 2016). Such a motion “shall be granted if, upon all the papers and proof submitted, the administrative law judge finds that it has been established sufficiently that no material and triable issues of fact is presented” (20 NYCRR 3000.9 [b] [1]). Motions to dismiss and motions for summary determination are subject to the same provisions as motions to dismiss and motions for summary judgment brought under CPLR 3211 and 3212, respectively (20 NYCRR 3000.9 [c]).

Proceedings in the Division of Tax Appeals are commenced by the filing of a petition protesting any written notice of the Division that has advised the petitioner of a tax deficiency, a determination of tax due or a denial of a refund or credit application (Tax Law § 2008 [1]). A taxpayer may protest a notice of deficiency by filing a petition for a hearing with the Division of

Tax Appeals within 90 days from date of mailing of such notice (*see* Tax Law §§ 681 [b]; 689 [b]).

In the case at hand, petitioner filed the petition within 90 days of the notice, therefore, the petition was timely filed.

B. The Division of Tax Appeals is a forum of limited jurisdiction (Tax Law § 2008). The Division seeks a dismissal of the petition alleging that petitioner has failed to state a cause of action because it failed to contest the notice or argue that the computation of the tax assessed was incorrect. In its motion, the Division quotes only a very limited number of assertions made in the petition. However, the challenges articulated in the petition must be examined individually, in addition to examining such in their entirety.

In *Matter of Med. Capital Corp.* (Tax Appeals Tribunal, July 25, 2013), the Tax Appeals Tribunal held that in reviewing motions to dismiss, pleadings are “to be afforded a liberal construction” (*Matter of Med. Capital Corp.*, quoting *High Tides, LLC v DeMichele*, 88 AD3d 954, 956 [2d Dept 2011] citing CPLR 3026, *EBCI, Inc. v Goldman, Sachs & Co.*, 5 NY3d 11, 19 [2005], and *Leon v Martinez*, 84 NY2d 83, 87-88 [1994]) and the Division of Tax Appeals must accord petitioners “‘the benefit of every possible favorable inference,’ accept the facts alleged in the complaint as true, and ‘determine only whether the facts as alleged fit within any cognizable legal theory’” (*Matter of Med. Capital Corp.*, quoting *High Tides, LLC*, citing *Leon v Martinez*, 84 NY2d at 87-88).

In the case at hand, the arguments advanced in the petition include the assertion that petitioner does not have a debt with the Division (*see* finding of fact 2). Accordingly, petitioner has sufficiently challenged the notice and argues that she does not owe the debt assessed therein.

C. The Division of Taxation's motion to dismiss is hereby denied, and this matter will be scheduled for a hearing in due course.

DATED: Albany, New York
November 30, 2023

Nicholas A. Behuniak
ADMINISTRATIVE LAW JUDGE