

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

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In the Matter of the Petition :  
of :  
**RICHARD E. GREEN** : DECISION :  
 : DTA NO. 823472 :  
for Redetermination of a Deficiency or for :  
Refund of New York State and New York City :  
Personal Income Tax under Article 22 of the :  
Tax Law and the Administrative Code of the :  
City of New York for the Year 2006. :  
:

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Petitioner, Richard E. Green, filed an exception to the order of the Administrative Law Judge issued on June 9, 2010. Petitioner appeared *pro se*. The Division of Taxation appeared by Daniel Smirlock, Esq. (John E. Matthews, Esq., of counsel).

Neither party filed a brief. Petitioner's request for oral argument was denied.

After reviewing the entire record in this matter, the Tax Appeals Tribunal renders the following decision.

***ISSUE***

Whether the Division of Tax Appeals has subject matter jurisdiction to entertain the petition.

***FINDINGS OF FACT***

We find the following facts.

The petition in this matter appears to challenge a Notice of Deficiency (L029726025-5) asserting tax due for tax year 2006.

On February 9, 2010, a letter was sent by the Petition Intake Unit of the Division of Tax

Appeals to petitioner, advising him that the petition was not complete in that it did not include a copy of the Notice of Deficiency. In response, petitioner provided to the Division of Tax Appeals, a corrected page one of the petition.

On February, 18, 2010, a second letter was sent by the Petition Intake Unit of the Division of Tax Appeals to petitioner, advising him that the Notice of Deficiency was not attached to the petition. Petitioner was given an additional 30 days to respond. Petitioner did not respond. On April 28, 2010, a Notice of Intent to Dismiss Petition was sent to petitioner giving him an additional 30 days to respond with the necessary document. Petitioner did not respond.

On June 9, 2010, the Administrative Law Judge issued an Order Dismissing Petition for lack of jurisdiction. This exception followed.

### ***OPINION***

We affirm the order of the Administrative Law Judge.

The Tax Law provides with regard to personal income tax that:

After ninety days from the mailing of a notice of deficiency, such notice shall be an assessment of the amount of tax specified in such notice, together with the interest, additions to tax and penalties stated in such notice, except only for any such tax or other amounts as to which the taxpayer has within such ninety day period filed with the [Division of Tax Appeals] a petition under section six hundred eighty-nine (Tax Law § 681[b]).

In the alternative, a taxpayer may also, within the same 90 day period, file a request for a conciliation conference with the Bureau of Conciliation and Mediation Services (“BCMS”) (*see* Tax Law §§ 170[3-a], 2006[4]; 20 NYCRR 4000.3[c]). If a taxpayer first elects to file a request for a conciliation conference with BCMS, the conciliation order is binding upon the Department and the taxpayer unless a petition is filed with the Division of Tax Appeals within 90 days after the conciliation order is issued (*see* Tax Law § 170[3-a][e], 20 NYCRR 4000.3[c] and 4000.6[b]).

A proceeding in the Division of Tax Appeals is commenced by filing a petition

challenging a statutory notice pursuant to such rules and regulations as may be provided by the Tax Appeals Tribunal (Tax Law §§ 2000, 2006[4]; 20 NYCRR 3000.1[k]). The Rules of Practice and Procedure of the Tax Appeals Tribunal require that where a statutory notice has been issued, it must be attached to a petition for purposes of determining whether the petition is timely filed (*see* 20 NYCRR 3000.3[b][8]).

In this case, a Notice of Deficiency was not attached to the petition. Petitioner was notified that the petition was not in proper form, as it did not include a copy of the Notice of Deficiency as required by section 3000.3(b)(8) of the Tribunal's regulations. He was given two additional opportunities to provide it. Petitioner did not provide the requested document, which is necessary in order for the Division of Tax Appeals to determine the timeliness of the petition. Consequently, the Division of Tax Appeals is without jurisdiction to hear and determine this matter.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Richard E. Green is denied;
2. The order of the Administrative Law Judge is affirmed; and
3. The petition of Richard E. Green is dismissed with prejudice.

DATED: Troy, New York  
February 4, 2011

/s/ James H. Tully, Jr.  
James H. Tully, Jr.  
President

/s/ Carroll R. Jenkins  
Carroll R. Jenkins  
Commissioner

/s/ Charles H. Nesbitt  
Charles H. Nesbitt  
Commissioner