

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
VALERIE JENKINS	:	DECISION
for Redetermination of a Deficiency or for Refund	:	DTA NO. 824708
of New York State Personal Income Tax under		
Article 22 of the Tax Law for the Year 2010.	:	

Petitioner, Valerie Jenkins, filed an exception to the determination of the Administrative Law Judge issued on August 16, 2012. Petitioner appeared *pro se*. The Division of Taxation appeared by Amanda Hiller, Esq. (Michele Milavec, Esq., of counsel).

On September 14, 2012, the Tax Appeals Tribunal issued a Notice of Intent to Dismiss Exception on the grounds that it lacked jurisdiction over the matter. The parties were given until October 19, 2012 to respond. Petitioner filed a letter in response. The Division of Taxation filed a letter brief in response.

On its own motion, after reviewing the determination, the exception, and the responses to the Notice of Intent to Dismiss Exception, the Tax Appeals Tribunal renders the following decision.

ISSUE

Whether the Tax Appeals Tribunal has jurisdiction to consider this matter.

FINDINGS OF FACT

We find the following facts.

Petitioner filed an exception to the determination of the Administrative Law Judge, which

was received by the Office of the Secretary to the Tribunal on September 6, 2012. This exception seeks an award in the amount of \$32,480.00, which appears unrelated to the denial of the claimed real property tax credit, the item which was originally petitioned. Upon review of the determination, we note that the petition was dismissed because the Division of Taxation (Division) reconsidered its denial of petitioner's real property tax credit (the matter at issue), and granted the relief sought by petitioner (i.e., a refund of \$57.00).

Accordingly, on September 14, 2012, the Tax Appeals Tribunal (Tribunal) issued a Notice of Intent to Dismiss Exception on the grounds that it lacked jurisdiction to consider the exception. The parties were given until October 19, 2012 to respond. Petitioner filed a letter response, postmarked October 13, 2012, which stated various motions. The Division also filed a response, agreeing with the position that the Tribunal lacks jurisdiction because there is no longer a justiciable issue in this matter.¹

OPINION

Tax Law § 2006 provides that the Tribunal shall have certain functions, powers and duties. Tax Law § 2006 (4) provides, in pertinent 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, or denied by another provision of this chapter.”

Tax Law § 2008 (1), in turn, provides that:

“All proceedings in the division of tax appeals shall be commenced by the filing of a petition with the division of tax appeals protesting any written notice of the division of taxation which has advised the petitioner of a tax deficiency, a notice

¹ Petitioner also filed a submission that was postmarked January 30, 2013. This submission was not considered because it was filed beyond the time frame to file a response (i.e., October 19, 2012).

of determination of tax due, *a denial of a refund or credit application . . .*, of any other notice which gives a person the right to a hearing in the division of tax appeals under this chapter or other law" (emphasis added).

The Tax Appeals Tribunal 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]). 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).

In this matter, the Division of Tax Appeals and the Tribunal have jurisdiction to consider only the refund denial of the real property tax credit. Subsequent to the filing of the petition, the Division reconsidered the denial and granted the refund of \$57.00. Accordingly, the Division of Tax Appeals and the Tribunal no longer possess jurisdiction over the matter because the basis of the petition (the Division's refund denial), was granted (Tax Law § 2008 [1]; 20 NYCRR 3000.9 [a] [1] [ii]). In considering the remaining issues raised by petitioner, neither the Division of Tax Appeals nor the Tribunal may address these issues because they are beyond this agency's jurisdiction (*id.*). Petitioner's response fails to persuade us that this agency does, in fact, have jurisdiction over this matter. As such, we conclude that dismissal is appropriate.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

On the Tax Appeals Tribunal's own motion, the exception of Valerie Jenkins is dismissed with prejudice as of this date.

DATED: Albany, New York
April 4, 2013

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

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