

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
MEDICAL CAPITAL CORPORATION	:	DECISION DTA NO. 824837
for Redetermination of a Deficiency or for Refund of Corporation Franchise Tax under Article 9-A of the Tax Law for the Years 2004 through 2006.	:	

Petitioner, Medical Capital Corporation, filed an exception to the order of the Supervising Administrative Law Judge issued on August, 30 2012. Petitioner appeared by Howard Castner and Thomas Seaman. The Division of Taxation appeared by Amanda Hiller, Esq. (Clifford Peterson, Esq., of counsel).

Petitioner filed a letter brief in lieu of a formal brief in support of its exception. The Division of Taxation filed a letter brief in lieu of a formal brief in opposition. Petitioner did not file a reply brief. Oral argument was not requested.

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

ISSUE

Whether the petition in this matter should have been dismissed for failing to state a cause for relief.

FINDINGS OF FACT

We find the facts as determined by the Supervising Administrative Law Judge. These facts are set forth below.

Petitioner, Medical Capital Corporation, filed a timely petition with the Division of Tax Appeals on January 18, 2012 in protest of a Conciliation Order, CMS No. 235630, issued to petitioner on November 18, 2011.

The protested Conciliation Order recomputed a Notice of Deficiency, Assessment No. L-032522246, which resulted in a tax due in the amount of \$47,861.00, plus interest.

The instant petition, Form TA-10, states that the amount of tax determined is “\$47,861.00” and that the amount contested is “0.”

On the portion of the petition form designated for petitioner to assert facts and allege errors made by the Division of Taxation (Division) in connection with the protested notice, petitioner asserted, in pertinent part, the following:

We are requesting that the New York State Department of Taxation and Finance postpone the final determination on this matter.

By way of background, on August 17, 2009 . . . the United States District Court for the Central District of California appointed Thomas A. Seaman . . . as the permanent receiver for [petitioner and two other entities] and their subsidiaries and affiliates (the “Receivership Entities”), pursuant to a Preliminary Injunction and Order: (1) Freezing assets; (2) Appointing a permanent receiver; (3) Prohibiting the destruction of documents; (4) Granting expedited discovery; and (5) Requiring accountings.

Petitioner proceeded by describing the receiver’s activities since his appointment to included the conducting of an extensive forensic accounting. This accounting disclosed overstated income of the Receivership Entities totaling nearly \$10 billion, for which the receiver filed amended state and federal returns. Petitioner further explained that the amended federal returns requested a refund of approximately \$14 million based on the overstated income, which petitioner alleges “was part of the fraud perpetrated by the Receivership Entities” However, according to petitioner, “the IRS is still conducting an audit of the Receivership Entities. When

the audit is complete, it is possible that state returns will have to again be amended. We expect the IRS audit to conclude by the end of the first quarter of 2012.” Petitioner also noted that “[d]ue to the size of the refund in question, the findings of the IRS will need approval of [an unnamed] United States Senate subcommittee We expect the entire process to be completed by the third quarter of 2012.” Based on these assertions, petitioner requested that “any determination on this matter by the New York State Department of Taxation and Finance be postponed until we have a final determination issued by the IRS. At that time, it would be timely to make a final determination on the New York liability.”

The Division brought the a motion to dismiss the petition on June 11, 2012, pursuant to 20 NYCRR 3000.9, on grounds that the Division of Tax Appeals is without jurisdiction to consider the merits of the petition insofar as the petition fails to state a cause for relief and the Division of Tax Appeals does not have jurisdiction of the subject matter of the petition or over petitioner. The Division asserted, in part, that in light of petitioner’s indication on its petition that there is no amount in controversy, petitioner

fails to contest the reasonableness of the basis for the Conferee’s determination of its final tax liability of \$47,861.00 or argue that the computation of the \$47,861.00 was incorrect. Put differently, there is no controversy over Medical Capital Corporation’s final tax liability of \$47,861.00. Therefore, Medical Capital Corporation has failed to state a cause of action (affirmation of Clifford Peterson, Esq., ¶ 5 [internal citations omitted]).

The Division further averred that:

The possibility of a future dispute over a possible refund claim filed by Medical Capital Corporation to report changes to its New York taxable income that may result from its reporting amendments to its federal taxable income for the period at issue does not give the Division of Tax Appeals jurisdiction over such a dispute. [Tax Law § 2000]; 20 NYCRR § 3000.9(ii) [*sic*]. And, thus, the Division of Tax Appeals also lacks jurisdiction over Medical Capital Corporation. 20 NYCRR

§ 3000.9(vii) [*sic*] (*id.* at ¶ 9).

THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE

The Supervising Administrative Law Judge reviewed petitioner's filings and noted that petitioner failed to challenge any dollar amount reflected on the relevant Notice of Deficiency. In addition, the Supervising Administrative Law Judge found that petitioner did not articulate any specific claim that the relevant Notice of Deficiency was incorrect. The Supervising Administrative Law Judge explained that the Division of Tax Appeals is a "forum of limited jurisdiction" and based upon petitioner's assertions, the Division of Tax Appeals lacked jurisdiction over petitioner and the matter.

Accordingly, the Supervising Administrative Law Judge granted the Division's motion to dismiss the petition for failure to state a cause for relief.

ARGUMENTS ON EXCEPTION

On exception, petitioner asserts that it did identify a problem with the relevant Notice of Deficiency in its petition. Specifically, petitioner claims that it had previously clearly stated that its relevant New York State income is overstated.

In opposition, the Division argues that petitioner's arguments on exception are merely a repetition of the arguments made before the Supervising Administrative Law Judge and that the Supervising Administrative Law Judge's order should be upheld.

OPINION

We reverse the order of the Supervising Administrative Law Judge. As the Supervising Administrative Law Judge correctly recognized, a motion may be brought to dismiss a petition on grounds that, inter alia, the pleading fails to state a cause for relief or that the Division of Tax

Appeals lacks jurisdiction over either the subject matter of the petition or the taxpayer (*see* 20 NYCRR 3000.9 [a] [1] [ii], [vi], [vii]; *see also* Tax Law § 2006 [5]).

The Rules of Practice and Procedure of the Tax Appeals Tribunal require that petitions filed in the Division of Tax Appeals state:

“in clear and concise terms, each and every error which the petitioner alleges has been made by the division, bureau or unit (e.g., in issuing a notice of deficiency or in denying a refund application), together with a statement of the facts upon which the petitioner relies to establish each said error . . .” (20 NYCRR 3000.3 [b] [5]).

However, motions filed pursuant to 20 NYCRR 3000.9, unless otherwise in conflict with the Rules of Practice and Procedure of the Tax Appeals Tribunal, are “subject to the same provisions as motions filed pursuant to section 3211 of the CPLR . . .” (20 NYCRR 3000.9 [c]).

The Division bases its motion in this matter on the ground that the petition fails to state a cause for relief pursuant to 20 NYCRR 3000.9 (a) (1) (vi). This provision is comparable to CPLR 3211 [a] [7], which authorizes a party to move to dismiss a cause of action on the ground that “the pleading fails to state a cause of action”

In *High Tides, LLC v DeMichele*, the Appellate Division reiterated the standard for granting a motion to dismiss under CPLR 3211 (a) (7). In particular, the court noted that:

“the pleading is to be afforded a liberal construction (*see* CPLR 3026; *EBCI, Inc. v. Goldman, Sachs & Co.*, 5 NY3d 11, 19 [2005]; *Leon v. Martinez*, 84 NY2d 83, 87-88 [1994]), and the court must accord the plaintiff ‘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’ (*Leon v. Martinez*, 84 NY2d at 87-88). Such a motion should be granted only where, even viewing the allegations as true, the plaintiff still cannot establish a cause of action (*see Kuzmin v. Nevsky*, 74 AD3d 896, 898 [2010]; *Hartman v. Morganstern*, 28 AD3d 423, 424 [2006])” (*High Tides, LLC v DeMichele* (88 AD3d 954, 956-57 [2011])).

In this matter, we note that the arguments advanced in the petition are not entirely clear. The fact that petitioner failed to respond to the Division's motion to dismiss only exacerbated the problem. However, providing petitioner "the benefit of every possible favorable inference" (*id.*), we find it reasonable to infer from all of the assertions made in the petition, that petitioner has sufficiently challenged the subject Notice and believes it has overstated its New York State income. As a controversy exists between petitioner and the Division over the subject Notice, the Division of Tax Appeals has jurisdiction to resolve this matter. Therefore, the case is remanded to the Division of Tax Appeals for a hearing on the merits.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The order of the Supervising Administrative Law Judge is reversed; and
2. The case is remanded to the Division of Tax Appeals for further proceedings consistent with the decision herein.

DATED: Albany, New York
July 25, 2013

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

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

/s/ Roberta Moseley Nero
Roberta Moseley Nero
Commissioner