

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
HUGO PACORI	:	ORDER
		DTA NO. 821943
for Redetermination of a Deficiency or for Refund of	:	
New York State and New York City Personal Income	:	
Taxes under Article 22 of the Tax Law and the	:	
Administrative Code of the City of New York for the	:	
Year 2004.	:	

Petitioner, Hugo Pacori, filed a petition for redetermination of a deficiency or for refund of New York State and New York City personal income taxes under Article 22 of the Tax Law and the Administrative Code of the City of New York for the year 2004.

On December 13, 2007, the Division of Tax Appeals issued to petitioner a Notice of Intent to Dismiss Petition pursuant to 20 NYCRR 3000.9(a)(4). On December 19, 2007, the Division of Taxation by Daniel Smirlock, Esq. (John E. Matthews, Esq., of counsel) submitted a letter agreeing with the proposed dismissal. On January 14, 2008, petitioner, appearing pro se, submitted a letter and documents in opposition to dismissal. Pursuant to 20 NYCRR 3000.5(d) and 3000.9(a)(4), the 90-day period for issuance of this order commenced on January 14, 2007. After due consideration of the documents and arguments submitted by the parties, Brian L. Friedman, Administrative Law Judge, renders the following order.

ISSUE

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

FINDINGS OF FACT

1. On October 29, 2007, the Division of Tax Appeals received a petition from Hugo Pacori (petitioner) which appears to challenge a Notice of Deficiency (L-027643510-1) asserting New York State personal income tax in the amount of \$1,792.00, plus penalty and interest, and New York City personal income tax in the amount of \$1,127.00, plus penalty and interest, for a total amount due of \$3,693.81 for the year 2004. The petition did not include a copy of the Notice of Deficiency but, instead, had attached to it a Response to Taxpayer Inquiry.

2. On October 31, 2007, the Petition Intake, Review and Exception Unit of the Division of Tax Appeals sent a letter to petitioner advising him that the petition was not complete in that it did not include a copy of the statutory notice in this matter. Petitioner was advised that if he did not have the relevant statutory notice, he could pay the tax, penalty and interest due and then file a timely claim for refund. Enclosed with the letter was a form IT-113-X, Claim for Credit or Refund of Personal Income Tax, for petitioner's use. No other documentation was received from petitioner.

3. On December 13, 2007, a Notice of Intent to Dismiss Petition was sent to petitioner giving him an additional 30 days to respond with the necessary statutory notice.

4. On January 14, 2008, petitioner submitted a letter and various documents in response to the Notice of Intent to Dismiss Petition. These documents included another copy of the Response to Taxpayer Inquiry, dated October 16, 2007, and a list setting forth various business expenses which petitioner was claiming as Schedule C expenses on his 2004 income tax return. Petitioner did not submit a copy of the Notice of Deficiency in this matter.

CONCLUSIONS OF LAW

A. With regard to personal income tax, the Tax Law provides 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]).

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 the Tax Appeals Tribunal for the Division of Tax Appeals require a legible copy of the statutory notice being protested to be attached to a petition for purposes of determining whether the petition is timely filed (20 NYCRR 3000.3[b][8]).

C. In the instant matter, the Notice of Deficiency was not attached to the petition.

Petitioner was notified that the petition was defective in that it did not include a copy of the statutory notice as required by section 3000.3(b)(8) of the Tax Appeals Tribunal's regulations, and he was given 30 additional days to provide it. However, petitioner failed to provide the requested and required copy of the statutory notice, i.e., the Notice of Deficiency, which would enable the Division of Tax Appeals to determine the timeliness of the petition. Accordingly, the Division of Tax Appeals lacks jurisdiction to hear and determine this matter.

D. The petition of Hugo Pacori is hereby dismissed with prejudice.

DATED:Troy, New York
April 3, 2008

/s/ Brian L. Friedman
ADMINISTRATIVE LAW JUDGE