

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
CHARLES L. KYTE	:	DETERMINATION
	:	DTA NO. 824871
for Redetermination of Deficiencies 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	:	
Years 2004, 2006 and 2010.	:	

Petitioner, Charles L. Kyte, filed a petition for redetermination of deficiencies 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 years 2004, 2006 and 2010.

The Division of Taxation, by its representative, Mark F. Volk, Esq. (Michele W. Milavec, Esq., of counsel), brought a motion on May 22, 2012, seeking summary determination in the above-referenced matter pursuant to section 2006(5)(ii) of the Tax Law and sections 3000.9(a)(1) and (b)(1) of the Rules of Practice and Procedure of the Tax Appeals Tribunal. Petitioner, appearing pro se, did not file a response to the motion. Accordingly, the 90-day period for the issuance of this determination began on June 21, 2012. After due consideration of the motion papers and pleadings filed in this matter, Daniel J. Ranalli, Supervising Administrative Law Judge, issues the following determination.

ISSUE

Whether the Division of Tax Appeals has jurisdiction over the petition filed in this matter.

FINDINGS OF FACT

1. Petitioner, Charles L. Kyte, filed a petition with the Division of Tax Appeals on November 28, 2011.
2. On the petition form (Form TA-10), in the space provided for listing the “Notice/assessment number” under protest, petitioner indicated that he was protesting three notices of deficiency, Assessment Nos. L-033233109, L-029090305 and L-028891241,¹ with respect to the years 2004, 2006 and 2010.²
3. In addition to a document outlining the basis of his protest, petitioner attached four documents to the instant petition: (1) a copy of an undated Payment Document (Form DTF-968.8) in connection with Assessment No. L-033233109 on which petitioner listed the amount enclosed to be “\$130.00”; (2) a copy of certain pages of an Account Adjustment Notice - Personal Income Tax, dated March 18, 2011, issued to petitioner by the Division of Taxation (Division) indicating that the refund petitioner requested on his tax return for the year 2010 was being “applied toward another New York State tax liability”; (3) a copy of an undated Payment Document (Form DTF-968.6) in connection with Warrant ID No. E-033233109-W001-1 on which petitioner listed the amount enclosed to be “\$130.00”; and (4) a copy of a Notice of Additional Tax Due, dated January 25, 2010 (Assessment No. L-033233109) with respect to the year 2006.

¹ Petitioner did not provide a copy of Assessment No. L-028891241. In its motion, the Division of Taxation asserts that assessment is a Notice and Demand for Payment of Tax Due dated July 12, 2007 that was “cancelled by the Audit Division on or about October 31, 2007” (Division’s Affirmation in Support of Motion ¶ 5).

² Assessment No. L-033233109 is a Notice of Additional Tax Due for the year 2006. Assessment No. L-029090305 is a Notice of Deficiency for the year 2004. Assessment No. L-028891241 is a Notice and Demand for Payment of Tax Due for an unspecified year.

4. Two of the assessments (Assessment Nos. L-029090305 and L-033233109) at issue in this matter were the subject of two previous protests by petitioner. The outcomes of those protests were as follows:

The Division of Tax Appeals issued a Determination, DTA No. 822518, sustaining Assessment No. L-029090305 with respect to the year 2004 (*see Matter of Kyte*, Division of Tax Appeals, May 13, 2010). Petitioner took exception to this Determination and the Tax Appeals Tribunal issued a Decision affirming the Determination and sustaining Assessment No. L-029090305 (*see Matter of Kyte*, Tax Appeals Tribunal, February 4, 2011).

The Division of Tax Appeals issued an Order, DTA No. 823713, sustaining Assessment No. L-033233109 with respect to the year 2006 (*see Matter of Kyte*, Division of Tax Appeals, October 28, 2010). Petitioner took exception to this Order and the Tax Appeals Tribunal issued a Decision affirming the Order and sustaining Assessment No. L-033233109 (*see Matter of Kyte*, Tax Appeals Tribunal, June 9, 2011).

CONCLUSIONS OF LAW

A. The Division of Tax Appeals is an adjudicatory body of limited jurisdiction; its powers are limited to those conferred by its authorizing statute (*see 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 Tribunal*, 151 Misc 2d 326 [1991]; *see also Matter of Hogan*, Tax Appeals Tribunal, November 25, 2009). Accordingly, absent legislative action, this forum cannot extend its authority to disputes that have not been specifically delegated to it (*see Matter of Hooper*, Tax Appeals Tribunal, July 1, 2010).

B. Pursuant to Tax Law § 2008(1), proceedings before the Division of Tax Appeals must be commenced by the filing a petition in protest of “any written notice of the division of taxation

which has advised the petitioner of a tax deficiency, a determination of tax due, a denial of a refund . . . or any other notice which gives a person the right to a hearing . . . ” unless such right is specifically modified or denied by another provision of this chapter (Tax Law § 2006[4]).

Among other requirements, petitions filed with the Division of Tax Appeals must include a copy of the statutory notice being protested (20 NYCRR 3000.3[b][8]).

C. A notice and demand for payment of tax due issued with respect to personal income tax “shall not be construed as a notice which gives a person the right to hearing . . . ” (Tax Law § 173-a[2]).

D. Determinations issued by administrative law judges of the Division of Tax Appeals “shall finally decide the matters in controversy unless any party to the hearing takes exception by timely requesting a review” by the Tax Appeals Tribunal (Tax Law § 2010[4]). Decisions of the Tax Appeals Tribunal “shall finally and irrevocably decide all issues which were raised” before the Division of Tax Appeals unless the petitioner “timely petitions for judicial review in the manner provided by article seventy-eight of the civil practice law and rules . . . ” (Tax Law § 2016).

E. The Division of Tax Appeals is without jurisdiction to consider the merits of the petition filed in this matter as the three assessments under protest are insufficient to provide for petitioner’s right to a hearing. Specifically, pursuant to Tax Law § 2016, the Tax Appeals Tribunal has already issued decisions “finally and irrevocably” sustaining Assessment Nos. L-033233109 and L-029090305.³ Therefore, the Division of Tax Appeals is without jurisdiction to consider the merits of the petition with respect to these two assessments.

³ See Finding of Fact 4.

In addition, petitioner failed to provide a copy of Assessment No. L-028891241 when the instant petition was filed (*see* Tax Law § 2008[1]; § 2006[4]; 20 NYCRR 3000.3[b][8]).

Nonetheless, in its Motion for Summary Determination, the Division asserts that this Assessment, a Notice and Demand for Payment of Tax Due, was “cancelled by the Audit Division on or about October 31, 2007.” However, even assuming, *arguendo*, that petitioner had provided a copy of the protested Notice and Demand for Payment of Tax Due, this too would be insufficient to confer jurisdiction upon the Division of Tax Appeals to consider the merits of the petition in this matter (*see* Tax Law 173-a[2]).

F. The Division of Taxation’s motion for summary determination is granted and the petition of Charles L. Kyte is dismissed.

DATED: Albany, New York
July 12, 2012

/s/ Daniel J. Ranalli
SUPERVISING ADMINISTRATIVE LAW JUDGE