

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
NOAH A. WALTERS III	:	ORDER
	:	DTA NO. 825171
for Redetermination of a Deficiency or for Refund of	:	
New York State Personal Income Tax under Article 22 of	:	
the Tax Law for the Year 2008.	:	

Petitioner, Noah A. Walters III, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under Article 22 for the year 2008.

On August 23, 2012, the Division of Tax Appeals issued petitioner a Notice of Intent to Dismiss Petition pursuant to 20 NYCRR 3000.9(a)(4). The Division of Taxation, by its representative, Mark F. Volk, Esq. (John E. Matthews, Esq., of counsel), submitted a letter on August 28, 2012 in support of the proposed dismissal. Petitioner, appearing pro se, submitted documents on September 4, 2012 and September 16, 2012, respectively, in opposition to the proposed dismissal. Accordingly, the 90-day period for the issuance of this determination began on September 16, 2012. After due consideration of all papers and pleadings filed in this matter, Daniel J. Ranalli, Supervising Administrative Law Judge, issues the following order.

ISSUE

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

FINDINGS OF FACT

1. On August 3, 2012, petitioner, Noah A. Walters III, filed a petition with the Division of Tax Appeals.

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 Assessment No. L-037103852-3.

3. Petitioner included four documents with the Form TA-10 filed in this matter: (1) a Response to Taxpayer Inquiry concerning Assessment No. L-037103852-3, issued to petitioner on June 18, 2012; (2) a Notice and Demand for Payment of Tax Due concerning Assessment No. L-037103852-3, issued to petitioner on December 30, 2011; (3) a letter from petitioner addressed to “NYS Assessment Receivables” dated January 7, 2012; and (4) a copy of a letter from the Bureau of Conciliation and Mediation Services (BCMS) of the Division of Taxation (Division), dated July 6, 2012, addressed to petitioner.

The Notice and Demand for Payment of Tax Due assessed tax of \$68.00, plus interest.

The computation section explained the assessment, in part, as follows:

Based on our review, an error was made in computing the correct exemption amount on your 2008 New York State return.

New York State only allows exemptions for dependents. The personal exemption for you is no longer allowed.

Your tax is recomputed to reflect the correct number of exemptions allowed for New York Tax purposes.

The BCMS letter to petitioner referenced CMS No. 253247 and Assessment No. L-037103852 and stated, in pertinent part, as follows:

The Bureau of Conciliation and Mediation Services has received your request for conciliation conference (or protest) regarding the above matter.

The Tax Law provides that a conciliation conference may be requested when the Department issues a notice which gives rise to formal protest rights. In most cases, it is the issuance of a Notice of Deficiency or Notice of Determination, or the denial of a refund which may be protested. In this case, the Notice and Demand which you received is not such a notice and your request cannot be accepted.

4. On August 23, 2012, the Petition Intake Unit of the Division of Tax Appeals issued to petitioner a Notice of Intent to Dismiss Petition. The notice stated, in sum, that because the petition had been filed in protest of a Notice and Demand for Payment of Tax Due and a Response to Taxpayer Inquiry, it appeared that the Division of Tax Appeals was without jurisdiction to consider the merits of the petition.

5. In response to the Notice of Intent to Dismiss Petition, the Division's representative submitted a letter on August 28, 2012 stating: "[t]he Division is in receipt of the Notice of Intent to Dismiss the petition in the above referenced matter. As the petition protests a Notice and Demand that has no hearing rights, the Division is in agreement with the proposed dismissal."

6. On September 4, 2012, petitioner submitted a letter in opposition to the proposed dismissal. Petitioner set forth the basis for his opposition as follows:

I am requesting that my appeal not be denied.

I am pursuing this matter because I believe the origins of the NYS Taxation and Finance claim to be retaliatory in nature.

In addition, I was denied due process and the time to reply to the NYS Department of Taxation and Finance tax claim.

Please see attached.

I will follow up in the next couple of days with a detailed explanation and timelines to substantiate the above.

Petitioner attached to his letter in opposition copies of the following items of correspondence:

(1) a letter by petitioner, dated September 3, 2012, addressed to the Office of the Attorney

General; (2) a letter by petitioner, dated August 4, 2012, addressed to the Division's Records Access Office, requesting that the Division "provide the 2008 1040 Tax Return Information that was sent from the IRS" to the Division; (3) a letter by petitioner, dated August 24, 2012, addressed to the Division's Records Access Office, with the heading "Freedom of Information Law Request" that states "I received my 1040A printout but I did not receive from you the date and time that it was received from the IRS"; and (4) a letter to petitioner from the an employee of the Division's Records Access Office, dated August 29, 2012, that states "I have been informed from our Disclosure unit that since the information was taken off of our system, that we cannot provide you with a date and time that the information was obtained."

7. On September 16, 2012, petitioner submitted a letter that expanded on the basis for his opposition to the proposed dismissal. Petitioner believes the Notice and Demand for Payment of Tax Due to be retaliation by the Division for a complaint letter that he made with respect to an unrelated matter. He also states that he was denied "ample time and due process" because the notice, which pertained to the year 2008, was not issued to him until December 30, 2011. In support of this claim, petitioner states:

I am an honest and fair person and expect to be treated the same way. I take issue with the fact that I have paid for years the highest per capita taxes in the nation and then the very people that [*sic*] salaries I pay try to take advantage and screw me. We should not be at this point - it is obvious to the general observer that I am entitled the deduction and made the appropriate adjustment to correct it - the only explanation for the timing of this and the lack of acceptance based on a technicality is that it's retaliatory.

I am requesting that I am given a fair hearing to get this unjust charge dropped.

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 Trib.*, 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. A proceeding in the Division of Tax Appeals is commenced by filing a petition “protesting 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” (Tax Law § 2008[1]) unless such right is specifically modified or denied by another provision of this chapter (*see* Tax Law § 2006[4]; 20 NYCRR 3000.9[a]).

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. Recently, in *Matter of PC Touch Services* (Tax Appeals Tribunal, August 23, 2012), the Tribunal was called upon to determine whether, as here, the Division of Tax Appeals has subject matter jurisdiction to entertain a petition filed in protest of a notice and demand for payment of tax due and a response to taxpayer inquiry. There, the Tribunal held that neither notice was sufficient to confer jurisdiction upon the Division of Tax Appeals and instructed that “the only option for such a taxpayer is to pay the tax, apply for a refund and then petition for a hearing if the refund claim is denied” (*id.*).

E. Petitioner’s assertion that the Notice and Demand for Payment of Tax Due issued to him was retaliatory in nature is without merit. According to the notice, the assessment resulted from petitioner’s claiming an exemption in excess of what he was entitled to and petitioner does

not dispute this fact. The fact that the notice was issued more than two years after petitioner's return was filed is irrelevant, as it was issued well within the three-year statute of limitations for assessment (*see* Tax Law § 683[a]). Moreover, petitioner's unsubstantiated claim of retaliation by the Division, even if true, is insufficient to overcome the mandate of Tax Law § 173-a(2), which specifically denies petitioner's right to a hearing.

F. It is concluded that the Division of Tax Appeals is without jurisdiction over the petition filed in this matter because both the Notice and Demand for Payment of Tax Due and the Response to Taxpayer Inquiry are insufficient to confer jurisdiction upon the Division of Tax Appeals to consider the merits of the petition filed in this matter.

G. The petition of Noah A. Walters III is dismissed.

DATED: Albany, New York
December 6, 2012

/s/ Daniel J. Ranalli
SUPERVISING ADMINISTRATIVE LAW JUDGE