

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
RAMONA WILLIAMS : ORDER
for Redetermination of a Deficiency or for Refund of DTA NO. 825555
Personal Income Tax under Article 22 of the Tax Law
for the Year 2009. :

Petitioner, Ramona Williams, filed a petition 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 2009.

On June 7, 2013, the Division of Tax Appeals issued to petitioner a Notice of Intent to Dismiss Petition pursuant to 20 NYCRR 3000.9(a)(4). On June 20, 2013, petitioner, appearing pro se, submitted a letter in opposition to dismissal. On June 20, 2013, the Division of Taxation, by Amanda Hiller, Esq. (John E. Matthews, Esq., of counsel) submitted a letter in support of dismissal. Pursuant to 20 NYCRR 3000.5(d) and 3000.9(a)(4), the 90-day period for issuance of this order commenced June 20, 2013. After due consideration of the documents and arguments submitted, Thomas C. Sacca, Administrative Law Judge, renders the following order.

ISSUE

Whether the petition in this matter is properly subject to dismissal.

FINDINGS OF FACT

1. On March 7, 2013, petitioner, Ramona L. Williams, filed a petition with the Division of Tax Appeals. The petition indicates that petitioner is requesting that a tax lien for the year 2009 be vacated.

2. The Petition Intake Unit of the Division of Tax Appeals, by letter dated March 19, 2013, advised petitioner that the petition could not be processed further until certain items were corrected. Specifically, the letter stated that the petition was missing the notice/assessment number, a copy of the notice/assessment/order, the amount of tax determined to be due and the amount of tax contested. There was no response to this letter.

3. On June 7, 2013, the Petition Intake Unit of the Division of Tax Appeals issued a Notice of Intent to Dismiss Petition to petitioner. The Notice of Intent to Dismiss Petition indicated that the subject petition was not in proper form as it failed to contain certain required information and documentation, specifically, a copy of the order of conciliation or statutory notice being protested.

4. In response to the Notice of Intent to Dismiss Petition, petitioner forwarded a Certification of Tax Warrant that indicated a warrant had been docketed by the Commissioner of Taxation and Finance against petitioner in the Westchester County Clerk's Office on October 26, 2009 in the amount of \$1,092.83. Petitioner also forwarded a Certification of Satisfaction of Judgment that indicated the tax warrant had been fully satisfied on February 5, 2010.

5. On June 20, 2013, the Division of Taxation sent a letter indicating its support of the proposed dismissal.

CONCLUSIONS OF LAW

A. Tax Law § 2008 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 or other notice which gives a person the right to a hearing in the Division of Tax Appeals.

B. 20 NYCRR 3000.3(b)(8), which relates to the form of a petition in the Division of Tax Appeals, provides that the petition shall contain “for the sole purpose of establishing the timeliness of the petition, a legible copy of the order of the conciliation conferee if issued; if no such order was previously issued, a legible copy of any other statutory notice being protested . . .”

C. 20 NYCRR 3000.3(d) provides as follows:

Failure to correct. (1) Where the petition filed by a petitioner is not in the form required by this section, the supervising administrative law judge shall promptly return it to the petitioner together with a statement indicating the requirements with which the petition does not comply, and extend to the petitioner an additional 30 days within which to file a corrected petition with the supervising administrative law judge. The supervising administrative law judge shall then forward the corrected petition to the office of counsel pursuant to subdivision (c) of this section. For purposes of the time limitations, a corrected petition is deemed to have been filed at the time the original petition was filed.

(2) Where the petitioner fails to serve a corrected petition within the time prescribed in paragraph (1) of this subdivision, the supervising administrative law judge will issue a determination dismissing the petition.

D. Notwithstanding the letter dated March 19, 2013 and the Notice of Intent to Dismiss Petition dated June 7, 2013 (*see* Findings of Fact 2 and 3), advising that failure to correct would result in dismissal proceedings (20 NYCRR 3000.3[d]), it remains that Ms. Williams has failed to file a petition which complies with the provisions of 20

NYCRR 3000.3(b)(8). In response to the Notice of Intent to Dismiss Petition, petitioner filed a certificate of tax warrant and a certificate of satisfaction of judgment with the petition, neither of which satisfy the requirement of filing a statutory notice, as defined in 20 NYCRR 3000.1[k]. Despite having been afforded the opportunity to correct the petition, as required by 20 NYCRR 3000.3(d)(1), Ms. Williams has failed to serve a corrected petition.

In addition, petitioner seeks to vacate a tax warrant filed by the Division of Taxation. Unfortunately, the Division of Tax Appeals has no authority to review activities conducted by the Division to collect unpaid taxes after the assessments have become fixed and final (*Matter of Driscoll*, Tax Appeals Tribunal, April 11, 1991; *Matter of Pavlak*, Tax Appeals Tribunal, February 12, 1998). Since jurisdiction is lacking, the Division of Tax Appeals is without authority to consider petitioner's request. Under all of these circumstances, the petition must be dismissed for lack of jurisdiction (20 NYCRR 3000.3[b][8]; [d][2]).

E. The petition of Ramona Williams is hereby dismissed.

DATED:Albany, New York
August 29, 2013

/s/ Thomas C. Saccá
ADMINISTRATIVE LAW JUDGE