

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition :
of :
NASHANET LESLIE : DECISION
 : DTA No. 825985
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 2010. :

Petitioner, Nashanet Leslie, filed an exception to the determination of the Administrative Law Judge issued on June 2, 2014. Petitioner appeared *pro se*. The Division of Taxation appeared by Amanda Hiller, Esq. (Leo Gabovich).

Petitioner did not file a brief in support of her exception. The Division of Taxation filed a letter brief in lieu of a formal brief in opposition. No reply brief was filed. Petitioner's request for oral argument was denied. Any reply brief that would have been filed was due on October 22, 2014, which date began the six-month period for the issuance of this decision.

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

ISSUE

Whether the petition in this matter should be dismissed because it was not in the form required by the regulations of the Tax Appeals Tribunal.

FINDINGS OF FACT

We find the following facts.

1. The Bureau of Conciliation and Mediation Services (BCMS) of the Division of Taxation (Division) issued to petitioner a conciliation order dated October 4, 2013 sustaining a January 12, 2012 refund denial for personal income tax under Article 22 of the Tax Law for year 2010 (conciliation order).

2. Petitioner filed a petition with the Division of Tax Appeals on November 29, 2013. The petition indicated in the caption that it was filed under Article 22 of the Tax Law for the year 2010. Petitioner listed the CMS number assigned to the matter by BCMS in the space provided for the notice or assessment number. Petitioner indicated that she was petitioning for a redetermination of a deficiency of personal income tax. Petitioner listed her address as the same Monticello Avenue, Bronx, NY 10466 address to which the conciliation order was mailed. Petitioner stated that the amount of tax determined was \$1,900.00, but did not fill in the blank space on the petition form for the amount of tax contested. Finally, while attaching a copy of the conciliation order, which was dated October 4, 2013, petitioner indicated that the conciliation order was issued on May 15, 2013.

3. A notice of intent to dismiss petition (notice of intent) was issued by the Supervising Administrative Law Judge on March 7, 2014. The notice of intent was mailed by certified mail to petitioner's address as listed on the petition. The notice of intent explained that according to the regulations of the Division of Tax Appeals, "the petition shall contain the amount of tax in controversy and a statement of the facts upon which the petitioner relies to establish each said error." The notice of intent stated that the petition in this matter did not include "the amount of

tax in controversy and failed to include a statement of facts.” Finally, the notice of intent allowed thirty days from March 7, 2014 for the parties to submit written comments on the proposed dismissal.

4. On April 3, 2014, the Division filed a two-sentence response acknowledging receipt of the notice of intent and stating that “[A]s the petition submitted was not in proper form, the Division is in agreement with the proposed dismissal.”

5. The thirty-day time period for the parties to respond to the Notice of Intent concluded on April 7, 2014.¹ No response to the notice of intent was received from petitioner prior to April 7, 2014.

6. On April 21, 2014, the Division of Tax Appeals received back from the United States Postal Service (USPS), petitioner’s copy of the notice of intent that had been originally mailed to both parties on March 7, 2014. The copy of the envelope contained in the Division of Tax Appeals’ file regarding this matter indicates that it was returned to the Division of Tax Appeals both because it was “UNCLAIMED” and because the USPS was “UNABLE TO FORWARD.” An unsigned “NOTICE” was mailed by regular mail to petitioner by the Division of Tax Appeals on April 23, 2014 containing the original notice of intent together with the envelope in which it was mailed. The notice stated that:

“Your Notice of Intent to Dismiss Petition was mailed to you by certified mail. However, it was returned to this office unclaimed by the U.S. Postal Service. We are re-mailing it to you by regular mail as a courtesy. Please note that the 30-day period for the filing of a response to the Notice of Intent to Dismiss runs *from the original date of mailing.*”

¹ The thirty-day time period concluded on April 6, 2014. However, since April 6, 2014 was a Sunday, any response was due by Monday, April 7, 2014 (*see* Tax Law § 691 [c]; General Construction Law §§ 20, 25-a; *Matter of American Express Co.*, Tax Appeals Tribunal, July 3, 1991).

This notice was mailed to petitioner's address as listed on the petition and did not mention the USPS notation that it was unable to forward the original notice of intent sent by certified mail.

7. On June 2, 2014, the Supervising Administrative Law Judge issued a determination dismissing the petition filed in this matter, which first repeated the language contained in the notice of intent (*see* Finding of Fact 3), and then concluded as follows:

“Pursuant to 20 NYCRR 3000.3 (d) (2), where the petitioner fails to serve a corrected petition within the time prescribed in 20 NYCRR 3000.3 (d) (1), the supervising administrative law judge will issue a determination dismissing the petition.

No response having been received from the petitioner as of this date; therefore,

IT IS ORDERED, on the administrative law judge's own motion, that the petition be, and it is hereby, dismissed with prejudice as of this date.”

8. On June 30, 2014, petitioner filed with the Tax Appeals Tribunal, a notice of exception to the Administrative Law Judge's determination. Petitioner's address is listed on the notice of exception as an East 237th Street, Bronx, NY 10466 address.

OPINION

The Division of Tax Appeals is “responsible for providing the public with a just system of resolving controversies with [such] department of taxation and finance and to ensure that the elements of due process are present with regard to such resolution of controversies” (Tax Law § 2000). This is done through the administrative hearing process, which begins with a taxpayer filing a petition, and includes the review of such petition and the providing of an administrative hearing with regard to the issues set forth in such petition (Tax Law § 2000). The administrative hearing process is governed by the “rules, regulations, forms and instructions” prescribed by this

Tribunal (Tax Law § 2006 [4]). It is these rules, regulations, forms and instructions that are at issue in the present matter, in particular, those dealing with the content of a petition filed with the Division of Tax Appeals. As stated in the determination, the petition filed in the present matter was dismissed because it did not include the amount in controversy or a statement of facts relied upon by petitioner to evidence the errors that petitioner alleges were made by the Division.

Our regulations require that the petition set forth both “the amount of tax in controversy” (20 NYCRR 3000.3 [b] [4]), and the facts that are the basis of the allegation that the Division’s action in the particular matter was in error (20 NYCRR 3000.3 [b] [5]). Furthermore, the regulations provide that when a petition is not in proper form, and the petitioner fails to provide a corrected petition within the time allowed, the Supervising Administrative Law Judge “will issue a determination dismissing the petition” (20 NYCRR 3000.3 [d] [2]). However, the regulations envision the exercise of discretion by the Supervising Administrative Law Judge in these matters. For example, a petition is required to list the organization within the Division that sent the statutory notice at issue; however we have never seen, nor do we expect ever to see, a petition dismissed for failure to include this information (*see* 20 NYCRR 3000.3 [b] [3]; *see also Matter of Buyrite Motors, Inc.*, Tax Appeals Tribunal, February 18, 1993 [“Clearly, some of the information required by the regulations, e.g. the petitioner’s telephone number, is not critical to the facial validity of the petition”]).

The petition form itself states “[T]he amount of tax determined was” followed by a blank line on which to fill in the relevant information, and then continues with “and the amount of tax contested is” followed by another blank line on which to fill in the relevant information. There are instructions on the face of the form stating that if the matter involves a refund, the amounts

should be entered in parentheses (TA-10 [11/10]). In this case, petitioner listed \$1,900.00 as the amount of tax that was determined to be due, but failed to enter an amount on the blank line regarding the amount of tax contested. Petitioner, appearing *pro se*, appears somewhat confused by the form, such as when she indicates that a deficiency rather than a refund is involved in this matter, and then does not include the \$1,900.00 in parentheses. She then fails to fill in the blank indicating the amount in controversy. We find that dismissing the petition herein for petitioner's failure to technically fill in the blank, when the petition in other places on the form clearly indicates the amount of tax at issue, would be in direct opposition to our duty to provide a hearing process that ensures elements of due process (*see* Tax Law § 2000).

The next issue, whether the petition should be dismissed for petitioner's failure to provide the facts upon which she relies to show that the Division has made errors, is more difficult.² The petition is intended to state the errors that petitioner alleges the Division has made and the facts that petitioner intends to prove to establish these errors. The dismissal of petitions that do not allege any errors or facts is intended to eliminate unnecessary hearings, by eliminating petitions that do not assert any errors (*see Matter of Waterset Enterprises, Inc.*, Tax Appeals Tribunal, January 16, 1992 [differentiating the purpose of dismissing petitions from the purpose of dismissing exceptions]). While it is true that "pleadings shall be liberally construed so as to do substantial justice," it is equally true that pleadings must fulfill their purpose, which, in the Division of Tax Appeals, "is to give the parties and the Division of Tax Appeals fair notice of the

² The regulations and petition form also require that petitioner state "each and every error" which it is alleged the Division made. As the failure to comply with this provision is not set forth as an error of petitioner in this matter in either the notice of intent or the determination, it is assumed that the Supervising Administrative Law Judge found petitioner's general disagreement with the Division's actions was adequate to meet the regulatory requirements (20 NYCRR 3000.3 [b] [5]). We agree.

matters in controversy and the basis for the parties' respective positions" (20 NYCRR 3000.4 [a]). The petition in this matter does not give notice to the Division or the Division of Tax Appeals of the basis for petitioner's position in this matter, because petitioner has asserted no facts in support of her position.

Furthermore, although the language of the notice of intent may have been somewhat unclear to the *pro se* petitioner in this matter, the notice of intent did clearly provide petitioner with an opportunity to comment on the proposed dismissal. Petitioner did not avail herself of this opportunity, either within the 30 days provided for by the notice of intent, or during the almost two months between the end of the 30-day period and the issuance of the determination.³ Thus, the determination of the Administrative Law Judge dismissing the petition with prejudice must stand.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Nashanet Leslie is denied;
2. The determination of the Administrative Law Judge is affirmed;
3. The petition of Nashanet Leslie is dismissed with prejudice; and

³ We recognize that there is an issue with petitioner's address, which appears to have changed sometime between the filing of the petition and the filing of the exception. While petitioner may not have received notice of the information that was missing from her petition until after her time to submit such information had lapsed, it was petitioner's responsibility to inform the Division of Tax Appeals of any change of address (*compare Captain Tony's Pizza & Pasta Emporium, Inc.*, Tax Appeals Tribunal, September 14, 1989 [matter remanded where there were issues with proper mailing by the Division of Tax Appeals]).

4. The refund denial, dated January 12, 2012 is sustained.

DATED: Albany, New York
April 22, 2015

/s/ Roberta Moseley Nero
Roberta Moseley Nero
President

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

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