

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

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In the Matter of the Petition	:	
of	:	
<b>JILL L. AND ZACH ZUNSHINE</b>	:	DECISION
	:	DTA NO. 828623
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 New York	:	
City Administrative Code for the Year 2014.	:	

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Petitioners, Jill L. and Zach Zunshine, filed an exception to the amended order of discontinuance of the Supervising Administrative Law Judge issued on September 13, 2018. Petitioner Zach Zunshine appeared pro se and on behalf of his spouse. The Division of Taxation appeared by Amanda Hiller, Esq. (Ellen K. Krejci, Esq., of counsel).

Petitioners filed a brief in support of their exception. The Division of Taxation did not file a brief in opposition. Oral argument was not requested. The six-month period for the issuance of this decision began on December 19, 2018, the due date for the Division's brief.

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

***ISSUE***

Whether the Supervising Administrative Judge properly declined to rule on a motion brought by petitioners subsequent to the Division of Taxation's filing of a notice of cancellation of deficiency and discontinuance of proceeding.

***FINDINGS OF FACT***

We find the following facts.

1. On March 13, 2018, petitioners, Jill L. and Zach Zunshine, filed a petition in the Division of Tax Appeals in protest of a notice of deficiency dated March 9, 2018. The notice asserted \$2,320.00 in additional New York State and New York City income tax due, plus interest, for the year 2014.

2. The Division of Taxation (Division) subsequently filed a notice of cancellation of deficiency and discontinuance of proceeding (notice of cancellation), dated June 13, 2018, thereby canceling the March 9, 2018 notice of deficiency.

3. On June 29, 2018, petitioners filed a motion for sanctions and to compel discovery. The motion for sanctions sought sanctions against the Division's representative for asserted inappropriate professional conduct. The motion to compel discovery sought answers to a request for admissions previously served upon the Division. The request for admissions sought admissions related to the validity of the notice of deficiency. The request is also relevant to petitioners' motion for sanctions.

4. By letter dated July 2, 2018, the Supervising Administrative Law Judge advised petitioners that, in light of the Division's notice of cancellation, petitioners' request for admissions was moot. The letter further advised that the Division of Tax Appeals lacks authority to sanction an attorney as sought in the motion. The Supervising Administrative Law Judge also returned the original of petitioners' motion with the letter. The Division of Tax Appeals retained a copy of the motion for its files.

5. On August 20, 2018, the Supervising Administrative Law Judge issued an order of discontinuance, which ordered the cancellation of the assessment and the discontinuance of the proceeding, with prejudice. As stated therein, the order of discontinuance was the final judgment in the matter for purposes of Tax Law § 3030 (i.e., a motion for costs).

6. On September 13, 2018, the Supervising Administrative Law Judge issued an amended order of discontinuance to correct an error in the August 20, 2018 order. Other than the correction, the amended order was, in substance, identical to the original.

***ARGUMENTS ON EXCEPTION***

Petitioners contend that the Supervising Administrative Law Judge erred in not ruling on the motion. Petitioners assert that the Supervising Administrative Law Judge thus deprived them of their right to appeal the ruling. Petitioners also argue that courts have inherent power to sanction litigants appearing in front of them and that the Division of Tax Appeals is a court with such authority.

***OPINION***

Although petitioners take exception to the order of discontinuance, which was the final judgment in this matter, their complaint is not with the substance of that order, but with the Supervising Administrative Law Judge's decision not to rule on their motion.

We agree with petitioners that the Supervising Administrative Law Judge incorrectly declined to rule on the motion. Considering that the motion was filed after the notice of discontinuance, it is understandable that the Supervising Administrative Law Judge might deem it reasonable to respond by letter, as he did. Strictly speaking, however, the matter was still open, as the order of discontinuance had not yet been issued.

Although the Supervising Administrative Law Judge did not issue an order on the motion, his opinion as to its merits is clearly set forth in the letter. Hence, there is no need to remand this matter for an order on the motion. Rather, given the circumstances, we deem the letter to be a denial of the motion included within the amended order of discontinuance.

As to the merits of the motion, we agree with the Supervising Administrative Law Judge that the motion for sanctions is beyond our authority. This Tribunal's jurisdiction is statutorily defined and cannot be extended in the absence of legislation (*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]; *Matter of Hooper*, Tax Appeals Tribunal, July 1, 2010). The authority to impose sanctions against the Division of Taxation has not been delegated to us (*cf.* Tax Law § 3030 [taxpayers who prevail in an administrative proceeding may be awarded costs under certain circumstances]).

The motion to compel answers to the request for admissions is moot given our lack of authority regarding sanctions and the cancellation of the deficiency.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Jill L. and Zach Zunshine is denied; and
2. The amended order of discontinuance, dated September 13, 2018, is affirmed.

DATED: Albany, New York  
June 13, 2019

s/ Roberta Moseley Nero  
Roberta Moseley Nero  
President

/s/ Dierdre K. Scozzafava  
Dierdre K. Scozzafava  
Commissioner

/s/ Anthony Giardina  
Anthony Giardina  
Commissioner