

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
BORIS REVZIN	:	DECISION
for Redetermination of a Deficiency or for Refund of	:	DTA NO. 829769
Personal Income Tax under Articles 22 of the	:	
Tax Law for the Year 2006.	:	

Petitioner, Boris Revzin, filed an exception to the determination of the Administrative Law Judge issued on August 20, 2020. Petitioner appeared pro se. The Division of Taxation appeared by Amanda Hiller, Esq. (Mary Hurteau, Esq., of counsel).

Petitioner did not file a brief in support of the exception. The Division of Taxation filed a letter brief in opposition. Petitioner did not file a reply brief. Oral argument was not requested. The six-month period for the issuance of this decision began on January 13, 2021, the due date for petitioner's reply brief.

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

ISSUE

Whether the Division of Appeals has jurisdiction over the petition.

FINDINGS OF FACT

We find the facts as determined by the Administrative Law Judge. Those facts appear below, numbered 1 through 7. We have added a finding of fact, numbered 8 below.

1. Petitioner, Boris Revzin, filed a petition that was received by the Division of Tax Appeals on December 12, 2019. The envelope containing the petition bears a United States Postal Service postmark dated December 8, 2019.

2. The petition included a copy of a notice and demand for payment of tax due (notice and demand) bearing assessment number L-034528731, issued to petitioner on October 15, 2010.

3. The petition also included a copy of a notice of additional tax due bearing assessment number L-034528731, issued to petitioner on August 30, 2010.

4. The petition does not reference any other notices.

5. On January 28, 2020, the Division of Tax Appeals issued to petitioner a notice of intent to dismiss petition. The notice stated, in sum, that as the petition had been filed in protest of a notice and demand and a notice of additional tax due, it appeared that the Division of Tax Appeals was without jurisdiction to consider the merits of the petition.

6. In response to the notice of intent to dismiss the petition, the Division of Taxation's (Division) representative submitted a letter on February 7, 2020 stating: "[t]he Division is in receipt of the Notice of Intent to Dismiss the petition in the above referenced matter. Notices of Additional Tax Due (a copy of which is enclosed) issued on or after December 1, 2004, do not provide for a right to a hearing prior to payment of the assessment. Therefore, the Division is in agreement with the proposed dismissal."

7. The petitioner submitted a response to the notice of intent to dismiss the petition stating in sum that he does not owe any taxes and he did not receive any notices and demand from the Department of Taxation and Finance.

8. The October 15, 2010 notice and demand and the August 30, 2010 notice of additional tax due indicate that those documents were issued to petitioner following federal audit changes

for the tax year 2006; that petitioner did not report such changes to the Division as required by Tax Law § 659; and that the Division assessed additional tax in accordance with such changes.

THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE

The Administrative Law Judge determined that the notice and demand and notice of additional tax due under protest by the petition did not give rise to hearing rights in the Division of Tax Appeals. The Administrative Law Judge dismissed the petition accordingly.

ARGUMENTS ON EXCEPTION

Petitioner recounts difficult personal circumstances surrounding his tax problems but offers no arguments regarding the issue of jurisdiction. The Division agrees with the determination.

OPINION

The Tax Appeals Tribunal must “provide a hearing as a matter of right, to any petitioner upon such petitioner’s request . . . unless a right to such a hearing is specifically provided for, modified or denied by another provision of [the Tax Law]” (Tax Law § 2006 [4]).

A proceeding in the Division of Tax Appeals begins with “the filing of 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 . . . or any other notice which gives a person the right to a hearing in the division of tax appeals” (Tax Law § 2008 [1]).

The jurisdiction of the Division of Tax Appeals and this Tribunal is limited to that conferred by the legislature and may not be extended (*Matter of Hooper*, Tax Appeals Tribunal, July 1, 2010).

A taxpayer must report any change or correction to federal taxable income made by the Internal Revenue Service to the Division within 90 days after the final determination of such

change or correction (Tax Law § 659). Such a report must either concede the accuracy of the change or correction or explain why the change or correction is erroneous (Tax Law § 659). If a taxpayer fails to report such a federal change or correction as required, the Division may assess a deficiency based on the federal change or correction by issuing a notice of additional tax due (Tax Law § 681 [e] [1]). There is no limitations period for the issuance of such a notice (Tax Law § 681 [e] [1]).

Petitioner did not comply with the reporting requirements of Tax Law § 659. The Division thus properly issued the notice of additional tax due dated August 30, 2010.

A deficiency in a notice of additional tax due issued under Tax Law § 681 (e) (1) is deemed an assessment of tax as of the date mailed unless the taxpayer complies with the reporting requirements under Tax Law § 659 within 30 days after mailing. Petitioner did not so comply, and the deficiency remains unpaid.

The Division may issue a notice and demand for an unpaid assessed income tax liability (Tax Law § 692 [b]). The Division thus properly issued the notice and demand dated October 15, 2010.

Tax Law § 173-a (2) provides that any authorized notice and demand or notice of additional tax due issued under article 22 shall be construed as specifically denying and modifying the right to a hearing with respect to any such notice for purposes of Tax Law § 2006 (4).

Additionally, a notice of additional tax due issued under Tax Law § 681 (e) (1) is not considered a notice of deficiency for purposes of Tax Law § 689 (b), which authorizes the filing of a petition with the Division of Tax Appeals in protest of a notice of deficiency, and thus may

not be contested by filing a petition in the Division of Tax Appeals (Tax Law § 681 [e] [2]; *Matter of Hooper*).

Accordingly, the Tax Law specifically denies petitioner a right to a hearing in the Division of Tax Appeals with respect to the notice of additional tax due dated August 30, 2010 and the notice and demand dated October 15, 2010.

The Administrative Law Judge thus properly dismissed the petition for lack of jurisdiction.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Boris Revzin is denied;
2. The determination of the Administrative Law Judge is sustained; and
3. The petition of Boris Revzin is dismissed with prejudice.

DATED: Albany, New York
June 3, 2021

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

/s/ Anthony Giardina
Anthony Giardina
Commissioner