

STATE OF NEW YORK  
TAX APPEALS TRIBUNAL

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In the Matter of the Petition  
of  
**RICARDO BERROPSI**

DECISION  
DTA NO. 830999

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The Division of Taxation filed an exception to the determination of the Supervising Administrative Law Judge issued on January 4, 2024. The Division of Taxation appeared by Amanda Hiller, Esq. (Christopher O'Brien, Esq., of counsel). Petitioner appeared pro se.

The Division of Taxation filed a brief in support of its exception. Petitioner did not file a brief in opposition. The Division of Taxation's request for oral argument was denied. The six-month period for issuance of this decision began on June 5, 2024, the date that petitioner's brief in opposition was due.

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

***FINDINGS OF FACT***

We find the facts as determined by the Supervising Administrative Law Judge. We have combined findings of fact 4 and 5 to more fully reflect the record. Accordingly, findings of fact 5 through 10 have been renumbered to 5 through 9. As so modified, the Supervising Administrative Law Judge's findings of fact and combined findings of fact are set forth below.

1. Petitioner, Ricardo Berrospi, filed a petition with the Division of Tax Appeals on June 10, 2022. The petition challenges a notice of disallowance (notice) of a 2021 School Tax Relief (STAR) credit.

2. The STAR credit was disallowed on the basis that:

“You received the benefit of a STAR exemption on another property. You cannot receive a check for the STAR credit in the same year that you received the benefit of the STAR exemption. You can verify that your property received the STAR exemption by reviewing the school tax bill for the property. A married couple can receive STAR for only one residence, unless legally separated.”

3. The notice was issued on March 24, 2022, from the Office of Real Property Tax Services (ORPTS) – 5310-PDL of the Division of Taxation (Division). On the face of the notice is a property key, a property description and a confirmation number that begins with the letters “STEX”. No explanation is provided as to what that confirmation number relates to. On its face, the notice provides two options for filing a protest: either by filing a request for conciliation conference with the Division’s Bureau of Conciliation and Mediation Services or by filing a petition with the Division of Tax Appeals.

4. The notice also states that:

“[y]ou may appear on your own behalf or have an authorized representative present your case for review. An authorized representative must have a completed power of attorney form on file with the department. You can get Form POA-1, Power of Attorney, on our website at [www.tax.ny.gov](http://www.tax.ny.gov) (search: poa).”

Petitioner attached, to his petition, a copy of form RP-5310-DLPR, issued to him, dated August 31, 2001. This form contains the following instructions:

**“To be eligible to receive a check for the STAR credit, your property must be the primary residence of one of the owners.**

You registered with the New York State Department of Taxation and Finance for the School Tax Relief (STAR) credit. However, we are unable to confirm this property is the primary residence of any of the owners. Therefore, we intend to deny you a 2021 STAR credit on this property.

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**What to do next**

You do not need to do anything unless you disagree. If you disagree, within 30 days send us:

- a copy of this letter,
- a brief letter of explanation, and
- a copy of at least two documents to confirm that the property is your primary residence.

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**Fax or mail this information to us.**

Fax: 518-435-8634

Mail:

**NYS TAX DEPARTMENT  
ORPTS STAR RESOLUTION UNIT – DLPR  
W A HARRIMAN CAMPUS  
ALBANY NY 12227-0801”**

5. Petitioner did not apply for a STAR credit on his personal income tax return.

Petitioner did not receive a notice of disallowance that referenced a denial of a credit with respect to his income tax filing or a case identification number that reflects any review conducted by the income tax section of the Division.

6. A conciliation order was not attached to the petition.

7. On July 28, 2023, the Division of Tax Appeals issued to petitioner a notice of intent to dismiss petition. The notice stated, in sum, that the Division of Tax Appeals lacked jurisdiction to review the merits of the petition because it was not in proper form because the petition did not include a statutory notice. Additionally, pursuant to Tax Law § 2008 (1), the Division of Tax Appeals does not have jurisdiction over a property tax.

8. On October 4, 2023, the Division sent a letter in response to the notice of intent to dismiss petition. The Division asserts that the issue in this case involves a STAR credit under the

Tax Law and does not relate to a STAR exemption under the Real Property Tax Law. As set forth in finding of fact 2, the notice specifically stated that since petitioner received a benefit under the STAR exemption, he was not entitled to receive a check pursuant to the STAR credit.

9. Petitioner did not submit a response to the notice of intent to dismiss petition.

***THE DETERMINATION OF THE SUPERVISING ADMINISTRATIVE LAW JUDGE***

The Supervising Administrative Law Judge began her determination by framing the issue as whether a notice of disallowance of a STAR credit constitutes a statutory notice giving rise to protest rights before the Division of Tax Appeals.

The Supervising Administrative Law Judge noted that the Division of Tax Appeals is a forum of limited jurisdiction and its power to adjudicate disputes is purely statutory. Citing to the enabling statute creating the Division of Tax Appeals, the Supervising Administrative Law Judge observed that the Division of Tax Appeals' jurisdiction is limited to matters protesting any written notice advising a petitioner of a tax deficiency or a denial of a refund or credit application, or any other notice which gives a person the right to a hearing before the Division of Tax Appeals under the Tax Law or other law. The Supervising Administrative Law Judge found that the notice of disallowance of the STAR credit stated that the credit was disallowed because petitioner received the benefit of the STAR exemption on another property and petitioner cannot receive a check for the STAR credit in the same year that he received the benefit of the STAR exemption. The Supervising Administrative Law Judge further observed that the notice of disallowance failed to reference any personal income tax return, or otherwise establish that petitioner's personal income tax return was reviewed by the income tax section of the Division in determining to disallow the STAR credit. Finding that no statutory notice was provided with the

petition, the Supervising Administrative Law Judge concluded that the Division of Tax Appeals lacked jurisdiction over the subject matter of the petition and accordingly dismissed the petition.

### ***ARGUMENTS ON EXCEPTION***

The Division takes exception to the Supervising Administrative Law Judge's conclusion of law that finds there was no statutory notice that gives protest rights before the Division of Tax Appeals attached to the petition. The Division argues that the term "statutory notice" includes any written notice from the commissioner that advises a person of a denial of a refund or credit application if that notice gives the person a right to a hearing by the Division of Tax Appeals. Thus, according to the Division, the notice issued to petitioner, "Notice of Disallowance – 2021 STAR credit," and attached to the petition, confers the Division of Tax Appeals' jurisdiction over petitioner's protest. The Division also argues that the disallowed STAR credit is like any other personal income tax credit and is by its own language subject to Part VI of Article 22 of the Tax Law, relating to procedure and administration of personal income tax, and thus a protest of a notice of disallowance of a STAR credit lies within this Tribunal's jurisdiction as described in its enabling statute.

Petitioner did not respond to the Division's arguments on exception regarding the Supervising Administrative Law Judge's dismissal for lack of subject matter jurisdiction.

### ***OPINION***

The Division of Tax Appeals is a forum of limited jurisdiction (Tax Law § 2008; ***Matter of Scharff***, Tax Appeals Tribunal, October 4, 1990, ***revd on other grounds sub nom New York State Dept. of Taxation & Fin. v Tax Appeals Trib.***, 151 Misc 2d 326 [Sup Ct, Albany County 1991]). Its power to adjudicate disputes is exclusively statutory (***id.***). We cannot extend our authority to areas not specifically delegated to us (***Matter of Meltzer***, Tax Appeals Tribunal,

March 29, 2018). The Division of Tax Appeals is authorized “[t]o provide a hearing as a matter of right, to any petitioner upon such petitioner’s request . . . unless a right to such hearing is specifically provided for, modified or denied by another provision of this chapter” (Tax Law § 2006 [4]). Tax Law § 2008 (1) limits the jurisdiction of the Division of Tax Appeals to matters:

“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 credit application, a cancellation, revocation or suspension of a license, permit or registration, a denial of an application for a license, permit or registration or any other notice which gives a person the right to a hearing in the division of tax appeals under this chapter or other law.”

Pursuant to 20 NYCRR 3000.3 (b) (8), a 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.”

20 NYCRR 3000.1 (k) defines a statutory notice as “[a]ny written notice of the commissioner of taxation and finance (Division) which advises a person of a tax deficiency, determination of tax due, assessment, *or denial of a refund, credit or reimbursement application*, or of cancellation, revocation, suspension or denial of an application for a license, permit or registration, or of the denial or revocation of an exempt status, or any other notice which gives the person a right to a hearing in the division of tax appeals” (emphasis added).

The STAR credit is described in the Tax Law as a refundable credit against New York personal income tax equal to an amount of real property tax assessed against a property owned by New York homeowners who meet household income limits and claim that property as a primary residence, among other requirements (*see* Tax Law § 606 [eee] [2]). Pursuant to Tax Law § 606 (eee) (9), whether a taxpayer is required to file a tax return, the process for requesting advance payment of the credit is the same and requires registration with the Division to be

eligible. Pursuant to Tax Law § 606 (eee) (11), the provisions of Part VI of Article 22 of the Tax Law, relating to the administration and procedures related to personal income tax, shall apply to administration of the STAR credit.

We begin our analysis by determining whether the notice of disallowance here at issue falls within the definition of a statutory notice under the Tax Law. The Supervising Administrative Law Judge found that the notice attached to the petition was not a statutory notice because it does not reference a credit denial with respect to an income tax return, or a case ID number indicating review by an income tax unit within the Division. Thus, the Supervising Administrative Law Judge found that the Division of Tax Appeals lacked jurisdiction over the matter because no statutory notice was attached to the petition, as required by our Rules of Practice and Procedure (Rules) (*see* 20 NYCRR 3000.3 [b] [8]).

Tax Law § 2008 (1) does not limit the definition of a protestable notice of disallowance of a tax credit to credits claimed on a petitioner's tax return. However, our jurisdiction is limited and is "premised on the filing of a petition protesting a particular kind of written notice" (*see Matter of Globe Wholesale Tobacco Distrib., Inc.*, Tax Appeals Tribunal, November 7, 2019).

The notice here concerns a denial of a STAR credit that was disallowed on the basis that petitioner received the benefit of a STAR exemption on another property he owned. Additionally, the notice stated that petitioner "cannot receive a check for the STAR credit in the same year that you received the benefit of the STAR exemption" (*see* finding of fact 2). It is unclear whether the STAR credit comprises a credit against personal income tax, or rather represents a pre-paid rebate of real property tax.

We note that there is a difference between the STAR exemption and STAR credit under the statute. The STAR exemption is provided under and administered by the Real Property Tax

Law (RPTL). RPTL § 425 (17) provides that taxpayers may switch to the STAR credit from the STAR exemption pursuant to procedures developed by the Division. The administration of the STAR credit is governed by Tax Law § 606 (eee) (11), which provides in relevant part:

“The provisions of this article, including the provisions of sections six hundred fifty-three, six hundred fifty-eight, and six hundred fifty-nine of this article and the provisions of part six of this article relating to procedure and administration, including the judicial review of the decisions of the commissioner, except so much of section six hundred eighty-seven of this article that permits a claim for credit or refund to be filed after the period provided for in paragraph nine of this subsection and except sections six hundred fifty-seven, six hundred eighty-eight and six hundred ninety-six of this article, shall apply to the provisions of this subsection in the same manner and with the same force and effect as if the language of those provisions had been incorporated in full into this subsection and had expressly referred to the credit allowed or returns filed under this subsection, except to the extent that any such provision is either inconsistent with a provision of this subsection or is not relevant to this subsection. As used in such sections and such part, the term ‘taxpayer’ shall include a qualified taxpayer under this subsection and, notwithstanding the provisions of subsection (e) of section six hundred ninety-seven of this article, where a qualified taxpayer has protested the denial of a claim for credit under this subsection and the time to file a petition for redetermination of a deficiency or for refund has not expired, he or she shall, subject to such conditions as may be set by the commissioner, receive such information (A) that is contained in any return filed under this article by a member of his or her household for the taxable year for which the credit is claimed, and (B) that the commissioner finds is relevant and material to the issue of whether such claim was properly denied.”

Thus, Tax Law § 606 (eee) (11) brings the STAR credit squarely within the procedure and administration provisions of the personal income tax under Article 22 of the Tax Law. However, due to the dismissal of the petition for lack of subject matter jurisdiction pursuant to 20 NYCRR 3000.3 (b) (8) of our Rules for failure to attach a statutory notice, we have no record on which to base a decision as to whether a credit claim was made within the meaning of Part VI of Article 22. Specifically, the record lacks information on how the credit was claimed, including by persons who are not required to file a personal income tax return (*see* Tax Law § 606 [eee] [9]), and whether the STAR credit truly represents a credit against New York State personal income



tax, as the Division argues, rather than a rebate of real property tax. Without a more complete record, we are unable to determine whether the STAR credit is a tax credit for the purposes of Tax Law § 2008 (1) and thus whether the notice of disallowance of the STAR credit is a statutory notice as that term is defined under 20 NYCRR 3000.1 (k).

We have held that after review of a determination on exception, we may remand the case for additional proceedings before the administrative law judge, including for further fact finding as appropriate in order to obtain evidence necessary to establish the Division of Tax Appeals' jurisdiction over the matter (*see Matter of Mucci*, Tax Appeals Tribunal, December 20, 2001; *see also Matter of Karolight, Ltd.*, Tax Appeals Tribunal, February 8, 1990). Based on the foregoing, we remand this matter to the Supervising Administrative Law Judge for further proceedings consistent with this decision and specifically to: 1) determine whether the notice of disallowance of the STAR credit here at issue constitutes a statutory notice giving rights to a hearing before the Division of Tax Appeals; and 2) if the notice is found to be a statutory notice giving a right to a hearing before the Division of Tax Appeals, to hold a hearing on the merits of petitioner's protest of the notice of disallowance of the STAR credit.

This Tribunal will not retain jurisdiction over this matter. If either party wishes to take exception to the determination issued on remand, they may do so by filing a timely exception thereto.

Accordingly, it is ORDERED, ADJUDGED and DECREED that: this matter is remanded to the Supervising Administrative Law Judge in accordance with the foregoing decision.

DATED: Albany, New York  
December 5, 2024

/s/ Jonathan S. Kaiman  
Jonathan S. Kaiman  
President

/s/ Cynthia M. Monaco  
Cynthia M. Monaco  
Commissioner

/s/ Kevin A. Cahill  
Kevin A. Cahill  
Commissioner