

STATE OF NEW YORK
TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
JACOB AND CAROL FELDHEIM	:	DECISION DTA NO. 831454
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 2021.	:	

Petitioners, Jacob and Carol Feldheim, filed an exception to the determination of the Supervising Administrative Law Judge issued on October 9, 2025. Petitioners appeared by Morris Werner, Esq.¹ The Division of Taxation appeared by Amanda Hiller, Esq. (Lydia N. Filewych, Esq., of counsel).

Petitioners filed a brief in support of the exception. The Division of Taxation filed a letter brief in opposition. Petitioners filed a reply brief. The six-month period for issuance of this decision began on March 19, 2026, the date that petitioners reply brief was received.

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

ISSUE

Whether the Supervising Administrative Law Judge's dismissal of the petition was proper.

¹ Along with the initial petition in this matter, filed on November 13, 2023, petitioners filed a Power of Attorney indicating Morris Werner, Esq. as their duly appointed representative in this matter. Petitioners' exception did not list a representative but instead appears to have been signed by petitioner Jacob Feldheim. The Tax Appeals Tribunal and the Division of Tax Appeals have not been informed in writing of the discontinuance of representation by Attorney Werner and thus is treating the previously filed Power of Attorney as still being in full force and effect.

FINDINGS OF FACT

We find the facts as determined by the Supervising Administrative Law Judge, except for finding of fact 5, which has been modified. The Administrative Law Judge's findings of fact and the modified finding of fact are set forth below.

1. Petitioners, Jacob and Carol Feldheim, filed a petition with the Division of Tax Appeals on November 13, 2023.

2. A statutory notice or conciliation order was not attached to the petition.

3. On August 28, 2024, the Division of Tax Appeals made a written request to petitioners for a copy of the statutory notice.

4. Petitioners did not provide any statutory notice.

5. On June 13, 2025, the Division of Tax Appeals issued a notice of intent to dismiss petition to petitioners, with copies to their representative and the Division of Taxation. The notice of intent to dismiss stated that the Division of Tax Appeals lacked jurisdiction to review the merits of the petition because it was not in proper form. In the letter accompanying the notice of intent to dismiss, the Supervising Administrative Law Judge provided the parties with an additional 30 days to submit a response to the proposal. Petitioners responded by letter dated June 18, 2025, and received by the Division of Tax Appeals on June 20, 2025, but still did not provide a copy of the statutory notice.

6. On June 20, 2025, in opposition to the notice of intent to dismiss petition, petitioners argued that they are not required to provide a statutory notice with their petition. They claimed that "NYS did not dispute timeliness of petition. Rather 'a statutory notice was not included in petition.'" Petitioners stated that Tax Law § 2008 (1) does not require that a statutory notice be included with the petition.

7. On July 3, 2025, in response to the notice of intent to dismiss petition, the Division of Taxation (Division) submitted a letter that stated:‘

“[t]he Division is in receipt of the Notice of Intent to Dismiss the petition in the above referenced matter. The petition submitted was not in proper form, as required by 20 NYCRR 3000.3 and Tax Law § 2008 because the petitioner neglected to include a copy of the statutory notice or conciliation order issued to petitioner. The Division is in agreement with the proposed dismissal.”

THE DETERMINATION OF THE SUPERVISING ADMINISTRATIVE LAW JUDGE

The Supervising Administrative Law Judge concluded that petitioners are required to provide a copy of the statutory notice being protested; that on August 28, 2024, the Division of Tax Appeals made a written request to petitioners for a copy of the statutory notice that petitioners did not provide; and that pursuant to 20 NYCRR 3000.3 (d) (2), said petition was “dismissed with prejudice”

ARGUMENTS ON EXCEPTION

On exception, petitioners assert that the requirement to attach a statutory notice under 20 NYCRR 3000.3 (b) (8) is solely for the purpose of establishing the timeliness of a petition and therefore not a jurisdictional prerequisite. Petitioners further assert that adequate documentation establishing timeliness was submitted. Petitioners also argue that a “notice of adjusted assessment,” which was attached to the initial petition, constitutes a statutory notice under Tax Law § 2008 (1).

Petitioners also claim that the August 28, 2024, letter (*see* finding of fact 3) which erroneously referred to petitioners as “Jacob and Carol *Feldman*,” which the Division of Tax Appeals sent to both petitioners’ representative and to petitioners, deprived petitioners of their “procedural rights.” Petitioners argue that the dismissal of their petition “without full consideration” violates both state and federal constitutional due process protections. Petitioners

also assert that they were entitled, under the Americans with Disabilities Act (ADA), to “reasonable accommodation” for being of “advanced age.” Petitioners also seek equitable relief and costs “[p]ursuant to 20 NYCRR 3000.16 and Tax Law § 3030.”

The Division asserts that the Supervising Administrative Law Judge correctly decided the relevant issues in this matter. Specifically, the Division argues that the Division of Tax Appeals lacks jurisdiction to consider the merits of this matter due to petitioners’ failure to provide a statutory notice pursuant to 20 NYCRR 3000.1, which “must either fall within the enumerated categories or expressly confer hearing rights.” The Division also argues that petitioners’ statements regarding being notified of the right to claim a refund on the notice of adjusted assessment issued on September 14, 2023 is not an independent grant of protest rights. The Division further argues that petitioners did not take the appropriate preliminary steps for hearing rights to attach in this matter pursuant to a refund claim; specifically, by paying the full amount due, filing a refund claim, and receiving a denial, which would confer hearing rights upon contest. The Division also disputes petitioners’ claim that they provided adequate documentation to establish the timeliness of their petition.

Regarding petitioners’ “reasonable accommodation” argument, under the ADA, the Division argues that it is “unclear from petitioners’ arguments which reasonable accommodation petitioners requested and were denied” and that accordingly, petitioners have not established that they are individuals with disabilities in this regard.

The Division addresses petitioners’ due process claims by arguing that the Division of Tax Appeals and Tax Appeals Tribunal may set forth “reasonable rules, regulations, forms and instruction” to govern the tax appeals process, and further, that petitioners were not without recourse, as they “can pay the disputed liability and file a timely claim for refund.”

Finally, the Division asserts that petitioners' remaining arguments are based upon the merits of the underlying assessment and are therefore beyond the reach of the Division of Tax Appeals and Tax Appeals Tribunal in this matter, as the sole matter before the Tribunal is limited to whether the Supervising Administrative Law Judge properly determined that the Division of Tax Appeals lacks the jurisdiction to consider the merits of this matter.

OPINION

The Division of Tax Appeals is responsible for providing the public with a just system of resolving controversies with the Division and to ensure that the elements of due process are present regarding such resolution of controversies (Tax Law § 2000). This is accomplished through the administrative hearing process, which begins with the filing of a valid petition (*id.*).

A taxpayer may file 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, a denial of a refund . . . or any other notice which expressly gives a person the right to a hearing" (Tax Law § 2008 [1]).

It is well established that a petition protesting a statutory notice must be filed within statutory time limits (Tax Law §§ 2006 [4]; 2008). For the sole purpose of establishing the timeliness of a petition, a legible copy of the statutory notice under protest must be attached to the petition (20 NYCRR 3000.3 [b] [8]). The date of the statutory notice enables the Division of Tax Appeals to facially determine whether the petition is timely, and thus within its jurisdiction (*Matter of Richardson*, Tax Appeals Tribunal, November 17, 2022). The failure to include a copy of a statutory notice under protest with the petition precludes the Division of Tax Appeals from making a facial determination of the timeliness of the petition and therefore prevented it from asserting jurisdiction over this matter (*id.*). As we noted in *Matter of Richardson*, our

jurisdiction is limited to that conferred by the Legislature and may not be extended. For a petition found to not be in proper form, the Supervising Administrative Law Judge must “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 . . .” (20 NYCRR 3000.3 [d] [1]). If petitioner fails to make corrections as directed within the time prescribed, the Supervising Administrative Law Judge “will issue a determination dismissing the petition” (20 NYCRR 3000.3 [d] [2]).

The petition in this present matter was received by the Division of Tax Appeals on November 13, 2023. In a letter dated August 28, 2024, from the Division of Tax Appeals, petitioners were advised that the petition did not contain an appropriate statutory notice as required by the Tax Appeals Tribunal’s Rules of Practice and Procedure (Rules) (20 NYCRR 3000.3 [b] [8]). Petitioners were given 30 days to provide a copy of the statutory notice being protested and to otherwise correct their petition. While petitioners point out that their last name was misspelled on the August 28, 2024, letter, we note that the letter was addressed to their representative, with a copy forwarded to petitioners at the address provided on their petition. Petitioners do not deny receipt of the letter.

On June 13, 2025, the Supervising Administrative Law Judge issued a notice of intent to dismiss petition in this matter and forwarded to petitioners, their representative, and to the Division under cover of a letter that provided the parties with an additional 30 days to submit a response to the proposed dismissal. Petitioners responded by letter dated June 18, 2025, but did not include a copy of the statutory notice. Instead, they argued that they were not required to file a statutory notice under the law.

A statutory notice is defined as “any written notice of the Commissioner of Taxation and

Finance 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” (20 NYCRR 3000.1 [k]; *see also* Tax Law § 2008 [1]).

In failing to provide a statutory notice, petitioners deprived the Division of Tax Appeals of the ability to facially determine whether the petition was timely filed. The reason for the requirement that a statutory notice pursuant to Tax Law § 2008 (1) be included with a petition is set forth in 20 NYCRR 3000.3 (b) (8). The Rules are clear and unequivocal. All proceedings “must be commenced by the filing of a petition . . . and shall include all of the information required in subdivision (b) of this section” (20 NYCRR 3000.3 [a]). That subdivision sets forth ten distinct items that will constitute the form of a petition. It states, *inter alia*, that “the petition shall contain “for the sole purpose of establishing the timeliness of the petition . . . a legible copy of any other statutory notice being protested” (20 NYCRR 3000.3 [b] [8]).

Petitioners failed to comply with the basic requirement that allows the Division of Tax Appeals to determine whether jurisdiction has been conferred to consider the merits. It is noted that petitioners were given sufficient time and multiple opportunities to correct their petition in accordance with the Tax Law by providing a statutory notice, such as a notice of deficiency or a conciliation order. Where the failure to comport with the Rules and the instructions raises a substantial question as to the facial validity of the petition, dismissal pursuant to 20 NYCRR 3000.3 (d) (2) is appropriate (*see Matter of Richardson*).

We now address petitioners’ other assertions. First, petitioners claim that the requirement to attach a statutory notice is solely for the purposes of establishing timeliness and therefore not a

jurisdictional requirement. While the directive of 20 NYCRR 3000.3 (b) (8) sets forth the reason it is included, without demonstrating that a petition is timely, jurisdiction has not been established. The authority of the Division of Tax Appeals to determine and decide controversies is constrained to include only those matters in which a petition is filed “within ninety days from the time such liability is assessed” (Tax Law § 2006 [4]).

Next, petitioners declare that sufficient information was provided by which the timeliness of the petition could be established. The bare claim is made without substantiation or citation. If petitioners are relying on the notice of adjusted assessment issued on September 14, 2023, as providing that information, they are mistaken. A notice of adjusted assessment may establish that liability was assessed at some time prior to the date such notice was issued, but it does not establish when or that less than the statutory period for filing a petition has passed. Thus, there is no means by reference to that document through which the Division of Tax Appeals could determine the “time such liability is assessed” (*id.*) except that it was assessed at some time before September 14, 2023. Further, petitioners assert that the notice of adjusted assessment is itself a statutory document under the law sufficient to establish whether a petition is timely. That position is contrary to the plain language of the statutes and regulations which confer jurisdiction in the Division of Tax Appeals (Tax Law §§ 2000, 2006 [4], 2008 [b]; 20 NYCRR 3000.3).

Petitioners also argue that a summary determination, without a full hearing on the merits of their petition, violates their rights to due process of law under the New York State and United States Constitutions. In fact, the opposite is true. Determining jurisdiction is the first step to determining what process is due.

Petitioners assert that an error in the spelling of their last name in a letter from the Division of Tax Appeals dated August 28, 2024, alerting petitioners to defects in their petition

and allowing 30 days to correct, cannot serve as a jurisdictional bar. As noted above, petitioners do not deny receipt of that letter and a copy was also forwarded to their representative. Petitioners appended a copy of the letter to their exception, establishing beyond any question that it was received.

Further, on June 13, 2025, a second letter pursuant to 20 NYCRR 3000.3 (d) (1) was sent to petitioners and their representative, providing another 30-day period in which they could have provided the missing documentation. That letter included the correct spelling of petitioners' last names. While they did respond, they still did not include the necessary documents. In brief, petitioners were afforded ample opportunities and significant time to correct the defects in their petition and to provide a statutory notice and failed to do so. Inasmuch as petitioners received the notice wherein their last name was misspelled and were given an additional opportunity to respond, it is evident that it was a harmless error causing no prejudice to petitioners (*see Matter of Rathgaber*, Tax Appeals Tribunal, April 5, 1990).

Finally, petitioners also assert that they have been deprived of "reasonable accommodation" under the ADA being of "advanced age." The ADA protects people based on specific physical or mental impairment, not age (42 USC §§ 12101 et seq.). Thus, petitioners have not specified a disability for which accommodation should be provided.

Petitioners raise other arguments that are based upon the merits of the underlying assessment and beyond the reach of the Division of Tax Appeals and Tax Appeals Tribunal, as the sole matter before the Tribunal is whether the Supervising Administrative Law Judge properly determined that the Division of Tax Appeals lacks the jurisdiction to consider the merits of this matter and we so find.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Jacob and Carol Feldheim is denied;
2. The determination of the Supervising Administrative Law Judge is affirmed; and
3. The petition of Jacob and Carol Feldheim is dismissed.

DATED: Albany, New York
September 17, 2026

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

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