

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
THOMAS ROBERTS	:	DECISION
for Redetermination of a Deficiency or for Refund of	:	DTA NO. 831624
New York State Personal Income Tax under Article 22	:	
of the Tax Law for the Year 2021.	:	

Petitioner, Thomas Roberts, filed an exception to the determination of the Supervising Administrative Law Judge issued on August 28, 2025, which dismissed petitioner’s petition based on the failure to provide a statutory notice establishing the timeliness of the petition, which confers jurisdiction to the Division of Tax Appeals to hear the matter. Petitioner appeared pro se. The Division of Taxation appeared by Amanda Hiller, Esq. (Mary Ellen Ladouceur, Esq., of counsel).

Petitioner filed a brief in support of the exception. On November 26, 2025, the Division of Taxation filed a letter indicating that it will not file a brief in opposition. Petitioner’s request for oral argument was not granted. The six-month period for issuance of this decision began on November 26, 2025, the date that the Division of Taxation’s letter 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.

FINDINGS OF FACT

We find the facts as set forth below.

1. Petitioner, Thomas Roberts, filed a petition with the Division of Tax Appeals on March 18, 2024. Petitioner's address as set forth on the petition was listed as 98 Front St. Brooklyn, NY 11201.
2. A statutory notice or conciliation order was not attached to the petition.
3. On April 11, 2024, the Division of Tax Appeals made a written request to petitioner at the address provided on the petition to forward a copy of the statutory notice within 30 days of the date of the letter and advised that the "[f]ailure to provide or correct this information may result in your petition being dismissed (rejected)."
4. Petitioner did not respond to the request nor provide any statutory notice.
5. On November 18, 2024, the Division of Tax Appeals issued another letter to petitioner to the address provided on the petition, stating that the Division of Tax Appeals did not receive a response to the April 11, 2024 letter, and that if a response was not received, the Division of Tax Appeals "will commence proceedings to close your case and it will not be heard." That follow-up letter was returned as "undeliverable" by the United States Postal Service on December 1, 2024.
6. On December 11, 2024, petitioner spoke with the Division of Tax Appeal's Petition Intake staff by telephone and provided additional details regarding petitioner's mailing address, specifically, the apartment number "Apt. PH1K," which petitioner had not previously provided.
7. On December 11, 2024, the Division of Tax Appeals sent a letter to petitioner at the expanded address indicating that it had come to the attention of the Division of Tax Appeals that there was a pending case with the Bureau of Conciliation and Mediation Services (BCMS) of the

Division of Taxation (Division) and that the Division of Tax Appeals cannot consider a petition when there is a pending case in BCMS. Enclosed with that letter was Form TA-135, *Withdrawal of Petition for Matter Currently Pending in the Bureau of Conciliation and Mediation Services*. The letter requested that petitioner return the form for the withdrawal of the petition within 15 days. Petitioner did not respond to the December 11, 2024 letter.

8. On August 28, 2025, the Supervising Administrative Law Judge issued a determination dismissing the petition. A copy of that determination was mailed to the expanded address provided by petitioner.

THE DETERMINATION OF THE SUPERVISING ADMINISTRATIVE LAW JUDGE

The Supervising Administrative Law Judge concluded that petitioner is required to provide a copy of the statutory notice being protested; that on April 11, 2024, the Division of Tax Appeals made a written request to petitioner for a copy of the statutory notice; that to date, petitioner has not provided it and pursuant to 20 NYCRR 3000.3 [d] [2], said petition was “dismissed with prejudice.”

ARGUMENTS ON EXCEPTION

On exception, petitioner claims to have not received a notice dated April 11, 2024 or “a “determination form [sic] the conciliation process” or any notice of determination, until he “received a final order unfolding the Divisions determination by default.” Petitioner further asserts that the matter was submitted for conciliation and a determination was never made. Petitioner also claims that the tax assessed was in error and offered an explanation of the merits of the case. Petitioner did not include a copy of a statutory notice at any stage of the tax appeals process.

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 with regard to 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]).

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).

Petitioner’s failure to include a copy of a statutory notice under protest with the petition precluded the Division of Tax Appeals from making a facial determination of the timeliness of the petition and therefore prevented it from asserting jurisdiction over the 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 “promptly 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 was received by the Division of Tax Appeals on March 18, 2024. In a letter dated April 11, 2024 from the Division of Tax Appeals, in accordance with the Tax Appeals Tribunal’s Rules of Practice and Procedure (20 NYCRR 3000.3 [b] [8]), petitioner was provided with an additional 30 days to provide a copy of the conciliation order or the statutory notice being protested. On November 18, 2024, the Division of Tax Appeals sent a second notice to petitioner indicating that no response was received to the April 11, 2024 letter, and included a copy of that letter. On December 11, 2024, by telephone, petitioner provided their apartment number for the first time in the appeal process. On that same day, petitioner indicated to the Division of Tax Appeals that they had a pending case for this matter in BCMS.¹

As for petitioner’s receipt or non-receipt of notices, we do not know the address petitioner provided to the Division, including during the BCMS process. However, the record herein does reflect that the address provided on the petition to the Division of Tax Appeals may have been incomplete, as it lacked petitioner’s apartment number. While that may explain that petitioner may not have received certain notices prior to the December 11, 2024 phone call, their confirmation on that call that the matter has an open case with the BCMS was significant as another reason that prevented the Division of Tax Appeals from proceeding with this matter, as the resulting order from that conciliation conference is the statutory notice which would then establish whether a timely protest has been filed with the Division of Tax Appeals (Tax Law § 2008 [1]).

¹ The December 11, 2024 letter from the Division of Tax Appeals stated “Per our recent discussion, it has come to our attention there is a pending case with the Bureau of Conciliation and Mediation Services (BCMS). You cannot have a petition at the Division of Tax Appeals (DTA), while you have a case pending at BCMS.”

The December 11, 2024 letter sent to petitioner by the Division of Tax Appeals was delivered to the complete address confirmed by petitioner. That letter was not returned to the Division of Tax Appeals. The letter requested information about the case before BCMS, including either a copy of the order issued by the Division, or a copy of the notice of withdrawal of the matter submitted to the Division by petitioner. Petitioner did not respond to this letter and therefore the Division of Tax Appeals had no indication of the case being resolved or closed with BCMS, nor did it have a copy of any statutory notice establishing the timeliness of the petition to confer jurisdiction upon it.

Further, as petitioner confirmed that they proceeded to a conciliation conference, it follows to reason that they were aware of a determination of tax due that may or may not have been pursuant to a notice which would give rise to jurisdiction for the Division of Tax Appeals, had it been timely appealed.

Tax Law requires that the Division and the Division of Tax Appeals use the “last known address” for mailing notices and petitions to taxpayers (*see* Tax Law § 691). A taxpayer’s last known address “shall be the address given in the last return filed by him, unless subsequently to the filing of such return the taxpayer shall have notified the tax commission of a change of address” (Tax Law § 691 [b]). Notification of a change of address has been clarified to mean a taxpayer providing “clear and concise notification” of any change of address (*Matter of Oberlander*, Tax Appeals Tribunal, August 24, 2020, referencing *Tadros v Commr*, 763 F2d 89 [2d Cir 1985]; *Matter of Kallianpur*, Tax Appeals Tribunal, May 29, 2019). Tax Law does not specifically set forth what constitutes appropriate notice of a change of address. Petitioner’s confirmation of their current and correct full mailing address on the December 11, 2024 call leads us to conclude that the Division of Tax Appeals properly mailed the December 11, 2024

notice to petitioner's self-confirmed address and that the dismissal of petitioner's petition based on the failure to respond to the December 11, 2024 notice resulted in an appropriate dismissal.

Petitioner was given multiple opportunities to perfect their petition in accordance with the Tax Law by providing a statutory notice, such as either a notice of determination or a conciliation order. It is noted that petitioner was given a period well in excess of the 30 days provided for by 20 NYCRR 3000.3 [d] [2], and yet still failed to timely perfect and file a petition.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

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

DATED: Albany, New York
May 21, 2026

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

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