

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
WILLIAM GRAZIANO : DETERMINATION
for Redetermination of a Deficiency or for Refund of : DTA NO. 825978
New York State Personal Income Tax under Article 22 :
of the Tax Law for the Year 2007. :

Petitioner, William Graziano, filed a petition 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 2007.

On February 21, 2014, the Division of Tax Appeals issued to petitioner a Notice of Intent to Dismiss Petition pursuant to 20 NYCRR 3000.9(a)(4). On February 24, 2014, petitioner submitted a letter in opposition to dismissal. On April 25, 2014, the Division of Taxation, by Amanda Hiller, Esq. (Leo Gabovich, Law Clerk) submitted an affidavit and other documents in support of dismissal.¹ Pursuant to 20 NYCRR 3000.5(d) and 3000.9(a)(4), the 90-day period for issuance of this order commenced May 7, 2014. After due consideration of the documents and arguments submitted, Donna M. Gardiner, Administrative Law Judge, renders the following determination.

ISSUE

Whether the petition in this matter is properly subject to dismissal.

¹ By letter dated March 14, 2014, the due date for the Division of Taxation's response to the Notice of Intent to Dismiss was extended until May 7, 2014.

FINDINGS OF FACT

1. Petitioner, William Graziano, filed a petition with the Division of Tax Appeals, dated as signed on November 24, 2013, and stamped as received by the Division of Tax Appeals on November 27, 2013. Attached to the petition were: a statement of proposed audit changes, a notice of deficiency, a notice and demand, a tax warrant and a consolidated statement of tax liabilities.

2. A Statement of Proposed Audit Changes, Assessment ID Number L-038078147-5, dated June 12, 2012, was issued to petitioner for additional personal income tax for the year 2007 in the amount of \$721.00 plus penalty and interest for a total balance due of \$1,495.99.

3. The Notice of Deficiency, Assessment ID Number L-038078147-5, dated August 1, 2012, was issued to petitioner for personal income tax in the amount of \$721.00 plus interest and penalty totaling \$1,511.09 for the year 2007.

4. The Notice and Demand, Assessment ID Number L-038078147-5, dated November 23, 2012, was issued to petitioner in the amount of \$1,546.11, which resulted from the unpaid Notice of Deficiency set forth in Finding of Fact 3 with accrued penalty and interest as of the date of the Notice and Demand.

5. Also attached to the petition was a Warrant from the Commissioner of Taxation and Finance against petitioner filed in Oswego County, which was recorded on April 30, 2013 for the unpaid income tax liability as set forth in the Notice of Deficiency with an updated total amount due of \$1,593.52, reflecting accrued interest and penalty on the unpaid liability.

6. The last document attached was a consolidated statement of tax liabilities dated October 15, 2013, addressed to petitioner for the 2007 unpaid income tax liability that set forth an updated total amount due of \$1,653.21.

7. In the petition, petitioner states that he does not believe that he owes this liability as he was incarcerated from November 7, 2007 until October 29, 2013. Petitioner claims that his former wife filed a joint income tax return with him for the tax year 2007 and he provided her name. Petitioner claims that he made three attempts by mail to inquire about this liability, yet received no response.

8. The Notice of Intent to Dismiss Petition advised that the petition was subject to dismissal on the basis that:

Pursuant to § 2006(4) of the Tax Law, a petitioner [sic] liability will become final and irrevocable unless a petition is filed within ninety (90) days from when the statutory notice was issued.

The Notice of Deficiency (Assessment No. L-038078147) was issued to petitioner on August 1, 2012. However, the Division of Tax Appeals did not receive the petition until November 27, 2013, or four hundred and eighty three (483) days later.

9. Petitioner's February 24, 2014 letter in response to the Notice of Intent provides, in relevant part, as follows:

As I stated in my petition/previous paperwork, I was incarcerated since 2007. More than once I attempted to write to the tax dept. to resolve this matter. I never got responses. Just a few more notices. My hands were sort [of] tied on doing much more th[a]n the mail I was sending.

I was released from prison to the half way house in Oct. 2013 (the 29th). Once I was able to get out I attempted to handle this once again.

I beg for your understanding and let me know where I stand.

Also effective Friday 2/28/14 I am leaving Albany and going home [wherein he provides, as his home address, the address to which the Division addressed all of the documents sent to petitioner that he submitted with his petition].

At no point does petitioner allege that he timely filed his petition contesting the Notice of Deficiency, despite his acknowledgment that he received of all the notices that were attached to his petition.

10. The Division of Taxation (Division) submitted an affidavit and attached documents in response to the Notice of Intent, pointing out that a Notice of Deficiency was issued to petitioner on August 1, 2012, as evidenced by documentation showing that the notice was mailed to petitioner by certified mail at his last known address. The Division argues that since the petition herein was not filed until November 24, 2013, it was untimely filed and the Division of Tax Appeals lacks jurisdiction to review the notice.

CONCLUSIONS OF LAW

A. The Division of Tax Appeals is an adjudicatory body of limited jurisdiction whose powers are confined to those expressly conferred in its authorizing statute (*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 Tribunal*, 151 Misc 2d 326 [1991]). In the absence of legislative action, this forum cannot extend its authority to disputes that have not been specifically delegated to it (*Matter of Hooper*, Tax Appeals Tribunal, July 1, 2010).

B. Section 2006(4) of the Tax Law requires the Tax Appeals Tribunal:

[t]o provide a hearing as a matter of right, to any petitioner upon such petitioner's request, pursuant to such rules, regulations, forms and instructions as the tribunal may prescribe, *unless a right to such a hearing is specifically provided for, modified or denied by another provision of this chapter* (emphasis added).

C. Tax Law § 2008(1), in turn, provides:

All proceedings in the division of tax appeals shall be commenced by the filing of a petition with the division of tax appeals protesting any written notice of the division of taxation which has advised the petitioner of a tax deficiency . . . ,

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.

D. Article 22 of the Tax Law, which imposes the state personal income tax, contains provisions that provide for, modify or deny the right to a hearing with respect to personal income tax (*see Matter of Dreisinger*, Tax Appeals Tribunal, July 20, 1989). Accordingly, it is necessary to look to the provisions of Article 22 of the Tax Law to determine petitioner's right to a hearing. Under Article 22 of the Tax Law, there is a strict 90-day statutory time limit for filing a petition for a hearing with the Division of Tax Appeals (Tax Law § 689(b); § 170[3-a][e]; 20 NYCRR 4000.5[c][4]), and the Division of Tax Appeals lacks jurisdiction to consider the merits of a petition filed beyond such 90-day time limit (*Matter of Voelker*, Tax Appeals Tribunal, August 31, 2006).

E. In view of the foregoing, petitioner is not entitled to a hearing before the Division of Tax Appeals. With respect to the Notice of Deficiency accompanying the petition, petitioner does not dispute that the petition was untimely filed. Rather, petitioner argues that he wrote letters seeking additional information. In light of this admission, the Division of Tax Appeals is without jurisdiction to address the merits of the notice. Furthermore, and with respect to the Notice and Demand accompanying the petition, Article 22 of the Tax Law does not provide taxpayers with the right to a hearing to contest a Notice and Demand. In fact, the right to such a hearing, is specifically denied by operation of law (Tax Law § 173-a[2]; *see Matter of Chait*, Tax Appeals Tribunal, April 22, 2010).

F. The petition of William Graziano is hereby dismissed.

DATED: Albany, New York
July 31, 2014

/s/ Donna M. Gardiner
ADMINISTRATIVE LAW JUDGE