STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition	:	
of	:	
DALE E. MARTIN II	:	DETERMINATION DTA NO. 827756
for Redetermination of a Deficiency or for Refund of Personal Income Tax under Article 22 of the Tax Law for the Year 2013.	:	
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Petitioner, Dale E. Martin II, filed a petition for redetermination of a deficiency or for

refund of personal income tax under Article 22 of the Tax Law for the year 2013.

On March 2, 2017, the Division of Tax Appeals issued to petitioner a notice of intent to

dismiss petition pursuant to 20 NYCRR 3000.9(a)(4).[1] The Division of Taxation, by Amanda

Hiller, Esq. (Mary Hurteau, Esq., of counsel), submitted documents in support of dismissal.

Petitioner, appearing pro se, did not submit a response. After due consideration of the documents

submitted, Herbert M. Friedman, Jr., Supervising Administrative Law Judge, renders the

following determination.

FINDINGS OF FACT

1. Petitioner, Dale E. Martin II, filed a petition that was received by the Division of Tax

Appeals on July 5, 2016. The envelope containing the petition was postmarked July 1, 2016.

2. The petition challenged Notice and Demand for Payment of Tax Due number L-

044119231-4, dated December 18, 2015, and issued to "Dale E. Martin and Rhoda W. Martin"

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[1] The notice of intent to dismiss petition was originally sent to petitioner on January 13, 2017, but was returned as unclaimed. Subsequently, the Division of Tax Appeals was informed of a new address for petitioner. Thus, the notice of intent to dismiss petition was reissued to petitioner at the new address on March 2, 2017.

for personal income taxes due for the year 2013. Dale E. Martin has a different social security number than petitioner.

3. Attached to the petition was a consolidated statement of tax liabilities dated June 7, 2016, issued to Dale E. Martin, and listing assessment number L-044119231-4. No other notice was referenced in or attached to the petition.

4. On March 2, 2017, the Division of Tax Appeals issued to petitioner a Notice of Intent to Dismiss Petition pursuant to 20 NYCRR 3000.9(a)(4). The subject notice stated, in pertinent part:

> ". . . Tax Law § 173-a(2) specifically provides, inter alia, that a taxpayer is not entitled to a hearing before the Division of Tax Appeals with respect to a notice of additional tax due and a notice and demand.

> The petition in this matter appears to have been filed in protest of a Notice and Demand for Payment of Tax Due, Assessment No. L-044119231, issued on December 18, 2015. This notice is insufficient to confer jurisdiction upon the Division of Tax Appeals to consider the merits of the petition."

CONCLUSIONS OF LAW

A. 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]).

B. Tax Law § 173-a(2) provides that the Division of Tax Appeals lacks jurisdiction to consider the merits of a petition that is filed in protest of a notice and demand for payment of tax due.

C. In this case, petitioner filed a petition challenging a notice and demand for payment of additional tax due. Tax Law § 173-a(2) denies petitioner a right to a hearing with respect to the

subject notice. Consequently, the Division of Tax Appeals is without jurisdiction to hear and determine this matter (***see Matter of Rodriguez***, Tax Appeals Tribunal, March 20, 2017).

D. It must also be noted that petitioner has a different social security number from that on the notice and demand attached to his petition. Thus, petitioner has not demonstrated the existence of a notice issued to him giving him rights to a hearing (***see*** Tax Law §§ 2000, 2006[4]).

E. IT IS ORDERED, on the supervising administrative law judge's own motion, that the petition be, and it is hereby, dismissed with prejudice as of this date.

DATED: Albany, New York
             April 27, 2017

                              /s/ Herbert M. Friedman, Jr.
                              SUPERVISING ADMINISTRATIVE LAW JUDGE