

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
PATRICE BRINSON : DETERMINATION
for Redetermination of a Deficiency or for Refund of : DTA NO. 828439
Personal Income Tax under Article 22 of the Tax :
Law for the Years 2013 through 2015. :

Petitioner, Patrice Brinson, filed a petition for redetermination of a deficiency or for refund of personal income tax under article 22 of the Tax Law for the years 2013 through 2015.

On March 30, 2018, the Division of Tax Appeals issued to petitioner a notice of intent to dismiss petition pursuant to 20 NYCRR 3000.9 (a) (4). The Division of Taxation, by Amanda Hiller, Esq. (Christopher O'Brien, Esq., of counsel), submitted documents in support of dismissal. Petitioner, appearing pro se, did not submit a response by April 29, 2018, which date triggered the 90 day deadline for issuance of this determination. After due consideration of the documents submitted, Herbert M. Friedman, Jr., Supervising Administrative Law Judge, renders the following determination.

FINDINGS OF FACT

1. Petitioner, Patrice Brinson, filed a petition that was received by the Division of Tax Appeals on October 24, 2017. The envelope containing the petition bears a United States Postal Service postmark dated October 21, 2017.

2. The petition did not have the required statutory document attached, specifically, a notice of deficiency, notice of determination, license or registration denial, or refund denial notice.
3. The petition did not reference any notice or assessment identification number.
4. The petition did not reference the tax article involved.
5. The petition did not have a copy of a conciliation order.
6. On November 17, 2017, the Division of Tax Appeals sent a letter to petitioner informing her of the items missing from her petition and that failure to correct it within 30 days may result in dismissal. Additional requests for a copy of the notice at issue or its number were made by the Division of Tax Appeals to petitioner, to no avail.
7. Petitioner did not cure the deficiencies in her petition.

CONCLUSIONS OF LAW

A. 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 Department of Taxation and Fin. v Tax Appeals Tribunal*, 151 Misc 2d 326 [Supp Ct, Albany County 1991, Keniry, J.]). Its power to adjudicate disputes is exclusively statutory (*id.* at 332). 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. Pursuant to 20 NYCRR 3003.3 (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.”

C. Pursuant to 20 NYCRR 3000.3 (b) (3), a petition shall contain “the date of the notice, the tax article involved, and the nature of the tax.”

D. Where the petitioner fails to correct the petition within the time prescribed, the Supervising Administrative Law Judge will issue a determination dismissing the petition (20 NYCRR 3000.3 [d]).

E. The petition in this case did not include the required statutory notice or conciliation order and, therefore, the petition does not appear to have been timely filed. Additionally, petitioner failed to include the date of the notice or tax article involved, and failed to correct the petition within the time period allowed. Thus, as petitioner failed to attach or identify the notice at issue, the Division of Tax Appeals lacks jurisdiction of the subject matter of the petition and dismissal is warranted (*see* 20 NYCRR 3000.3 [d]; 3000.9 [a] [4] [i]).

F. 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
_____ July 19, 2018

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