

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
LEV AND ANNA PAUKMAN : DETERMINATION
for Redetermination of a Deficiency or for Refund of New : DTA NO. 829596
York State Personal Income Tax under Article 22 of the :
Tax Law for the Years 2007 through 2011. :

Petitioners, Lev and Anna Paukman, filed a petition for the redetermination of a deficiency or for refund of New York State personal income tax under article 22 of the Tax Law for the years 2007 through 2011.

On January 11, 2021, the Division of Tax Appeals issued to petitioners 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 a letter and documentation in support of the dismissal. Petitioners, appearing pro se, did not submit a response by February 10, 2021, 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. Petitioners filed a petition that was received by the Division of Tax Appeals on October 3, 2019. The envelope containing the petition bears a United States Postal Service postmark indicating the petition was mailed on October 1, 2019.
2. The petition included the following: (i) copy of a notice deficiency bearing

assessment number L-03544989, issued by the Division of Taxation (Division) on February 23, 2011; (ii) a copy of a notice and demand for payment due bearing assessment number L-035228351, for the 2008 tax year, issued by the Division on December 31, 2010; (iii) copy of a notice and demand for payment due bearing assessment number L-035041074, for the 2009 tax year, issued by the Division on November 23, 2010; (iv) a copy of a notice and demand for payment due bearing assessment number L-038508139 for the 2010 tax year issued by the Division on August 29, 2012; and (v) a copy of a notice and demand for payment due bearing assessment number L-038961074 for the 2011 tax year, issued by the Division on January 4, 2013.

3. The petition challenged the notices and demand and notice of deficiency.

4. On January 11, 2021, the Division of Tax Appeals issued to petitioners a notice of intent to dismiss petition. The notice stated, in sum, that as the petition had been filed in protest of a notice and demand, it appeared that the Division of Tax Appeals was without jurisdiction to consider the merits of the petition. Further, the petition appeared untimely with regard to the challenge to the notice of deficiency.

5. In response to the notice of intent to dismiss petition, the Division's representative submitted a letter on February 2, 2021 stating: "[t]he Division is in receipt of the Notice of Intent to Dismiss the petition in the above referenced matter. Notices and Demand issued on or after December 1, 2004, do not provide for a right to a hearing prior to payment of the assessment. Please find copies of the Notice and Demand enclosed. As for the Notice of Deficiency L-035449892, the Department does not have sufficient documentation to submit on the failure to a timely protest at this time. Therefore, the Division is in agreement with the proposed dismissal regarding the Notices and Demand."

6. Based on the Division's response, the notice of intent to dismiss petition mailed on January 11, 2021 has been rescinded with respect to notice of deficiency number L-035449892 only. A new DTA number, 830332, has been assigned to the petition challenging notice of deficiency number L-035449892 and that matter will continue in due course.

7. The petitioners did not submit a response to the notice of intent to dismiss the 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 [Sup Ct, Albany County 1991, Keniry, J.]). Its power to adjudicate disputes is exclusively statutory (*id.*). Accordingly, absent legislative action, this forum cannot extend its authority to disputes that have not been specifically delegated to it (*see Matter of Hooper*, Tax Appeals Tribunal, July 1, 2010).

B. A proceeding in the Division of Tax Appeals is commenced by filing 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 gives a person the right to a hearing” (Tax Law § 2008 [1]) unless such right is specifically modified or denied by another provision of this chapter (*see* Tax Law § 2006 [4]; 20 NYCRR 3000.9 [a]).

C. The notices and demands protested by the petitioners here do not give rise to hearing rights (*see* Tax Law § 173-a [2]).

D. As the notices mentioned above are insufficient to confer jurisdiction upon the Division of Tax Appeals to consider the merits of the petition filed, dismissal is warranted.

E. The petition of Lev and Anna Paukman is dismissed.

DATED: Albany, New York
May 6, 2021

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