

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
BORIS REVZIN : DETERMINATION
for Redetermination of a Deficiency or for : DTA NO. 829769
Refund of New York State Personal Income Tax :
under Article 22 of the Tax Law for the Year 2006. :

Petitioner, Boris Revzin, 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 year 2006.

On January 28, 2020, 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. (Mary Hurteau, Esq., of counsel), submitted a letter and documentation in support of the dismissal. Petitioner, appearing pro se, submitted a letter in opposition to the dismissal. Pursuant to 20 NYCRR 3000.5 (d) and 3000.9 (a) (4), the 90-day period for issuance of this order began on February 27, 2020. As a result of the COVID-19 public health emergency, the deadline for the issuance of the determination was extended by an additional three months consistent with Tax Law 2010 (3). After due consideration of the documents submitted, Herbert M. Friedman, Jr., Supervising Administrative Law Judge, renders the following determination.

FINDINGS OF FACT

1. Petitioner, Boris Revzin, filed a petition that was received by the Division of Tax

Appeals on December 12, 2019. The envelope containing the petition bears a United States Postal Service postmark dated December 8, 2019.

2. The petition included a copy of a notice and demand for payment of tax due (notice and demand) bearing assessment number L-034528731, issued to petitioner on October 15, 2010.

3. The petition also included a copy of a notice of additional tax due bearing assessment number L-034528731, issued to petitioner on August 30, 2010.

4. The petition does not reference any other notices.

5. On January 28, 2020, the Division of Tax Appeals issued to petitioner 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 and notice for additional tax due, it appeared that the Division of Tax Appeals was without jurisdiction to consider the merits of the petition.

6. In response to the notice of intent to dismiss petition, the Division of Taxation's representative submitted a letter on February 7, 2020 stating: "[t]he Division is in receipt of the Notice of Intent to Dismiss the petition in the above referenced matter. Notices of Additional Tax Due (a copy of which is enclosed) issued on or after December 1, 2004, do not provide for a right to a hearing prior to payment of the assessment. Therefore, the Division is in agreement with the proposed dismissal."

7. The petitioner submitted a response to the notice of intent to dismiss the petition stating in sum that he does not owe any taxes and he did not receive any notices and demand from the Department of Taxation and Finance.

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 notice and demand and notice of additional tax due protested by petitioner here do not give rise to hearing rights (*see* Tax Law § 173-a [2]).

D. As the notice and demand and notice of additional tax due is insufficient to confer jurisdiction upon the Division of Tax Appeals to consider the merits of the petition filed, dismissal is warranted.

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
August 20, 2020

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