

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
BERNADETTE MCRAE-ELLIOTT : DETERMINATION
for Redetermination of a Deficiency or for Refund of New : DTA NO. 829891
York State Personal Income Tax under Article 22 of the :
Tax Law the Years 2003 and 2005. :

Petitioner, Bernadette McRae-Elliott, 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 years 2003 and 2005. On March 15, 2021, 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. (Ellen E. Krejci, Esq., of counsel), submitted a letter and documentation in support of the dismissal. Petitioner did not submit a response by April 14, 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.

ISSUE

Whether the petition should be dismissed based on lack of subject matter jurisdiction.

FINDINGS OF FACT

1. Petitioner filed a petition that was received by the Division of Tax Appeals on March 13, 2020. The envelope containing the petition does not bear a postmark indicating when

the petition was mailed.

2. The petition included a copy of: (i) a consolidated statement of tax liabilities issued by the Department of Taxation and Finance on March 3, 2020 pertaining to assessment numbers L-031958350 and L-028681413; (ii) a notice and demand for payment of tax due (notice and demand) bearing assessment number L-028681413 issued by the Department of Taxation and Finance on July 23, 2007; and (iii) a notice and demand for payment of tax due (notice and demand) bearing assessment number L-031958350 issued by the Department of Taxation and Finance on August 3, 2009.

3. The petition does not reference any other notice.

4. On May 29, 2020, a written request was made by the Division of Tax Appeals to petitioner advising that a consolidated statement of tax liabilities is not a notice that offers appeals rights and to provide a copy of the appropriate statutory notice.

5. On July 7, 2020, the Division of Tax Appeals received a written request from petitioner seeking additional time to provide the appropriate notice.

6. On August 21, 2020, the Division of Tax Appeals received from petitioner copies of the two notices of demands referenced in finding of fact 2.

7. On March 15, 2021, 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 notices and demands, it appeared that the Division of Tax Appeals was without jurisdiction to consider the merits of the petition.

8. In response to the notice of intent to dismiss petition, the Division of Taxation's representative submitted a letter on April 14, 2021 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 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 Notices of Additional Tax Due enclosed. Therefore, the Division is in agreement with the proposed dismissal.”

Attached to the Division’s submission were copies of notices of additional tax due, numbers L-031958350 and L-028681413, issued to petitioner on May 18, 2009 and June 4, 2007, respectively.

9. Petitioner 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 petitioner here do not give rise to hearing

rights (see Tax Law § 173-a [2]). Likewise, petitioner does not have hearing rights emanating from the notices of additional tax due referenced in finding of fact 8 (*id.*).

D. Finally, the consolidated statement of tax liabilities attached to the petition is not a statutory notice that offer rights to a hearing in the Division of Tax Appeals (*see* Tax Law § §2008; 20 NYCRR 3000.1 [k]; *see also Matter of Mostovoi*, Tax Appeals Tribunal, May 23, 2019).

E. The petition of Bernadette McRae-Elliott is dismissed.

DATED: Albany, New York
July 08, 2021

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