

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
TODD W SPRINGER AND : DETERMINATION
JUDY L MCINTIRE-SPRINGER : DTA NO. 829953
for Redetermination of a Deficiency or for Refund of New :
York State Personal Income Tax under Article 22 of the :
Tax Law for Year 2013. :

Petitioners, Todd W. Springer and Judy L. McIntire-Springer, 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 year 2013.

On March 15, 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, appearing by Amanda Hiller, Esq. (Christopher O'Brien, Esq., of counsel), submitted a letter in support of the dismissal. Petitioners, appearing pro se, did not submit a response by August 11, 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 Division of Tax Appeals lacks subject matter jurisdiction in this matter.

FINDINGS OF FACT

1. Petitioners, Todd W. Springer and Judy L. McIntire-Springer, filed a petition with the Division of Tax Appeals in a priority mail envelope bearing a United States Postal Service

postmark of May 9, 2020.

2. The petition lists Mary T. Malazita, CPA, as petitioners' representative. Ms. Malazita is identified as a certified public accountant licensed to practice in Pennsylvania. There is no indication on the petition that Ms. Malazita is licensed to practice in New York. A Division of Taxation (Division) power of attorney form, executed in 2015, was attached to the petition. The 2015 power of attorney form indicated that Ms. Malazita was a certified public accountant duly qualified to practice in New York State. Several requests were made by the Division of Tax Appeals to have Ms. Malazita clarify this discrepancy, to no avail.

3. The petition challenges notice number L-041109186 and includes (i) a consolidated statement of tax liabilities pertaining to assessment numbers L-042733622 and L-041109186, issued by the Department of Taxation and Finance on December 29, 2015; and (ii) a notice of intercepted funds issued by the State of California Franchise Tax Board on January 26, 2016.¹

4. The petition did not include a notice from the Division notifying of formal protest rights as described in Tax Law § 2008.

5. The petitioners did not attach a copy of a conciliation order or reference any other notice.

6. On May 27, 2020, a telephone call was placed to petitioners by the Division of Tax Appeals to inform them that a statutory document is needed.

7. On July 17, 2020, a written request was made to petitioners' representative by the Division of Tax Appeals to provide a copy of the statutory notice at issue and to obtain special

¹ Assessment number L-041109186 applies to the tax year 2013. Assessment number L-042733622 applies to year 2014 and is the subject of a separate petition filed by petitioners. That matter is being handled separately as DTA number 829954.

permission as required by 20 NYCRR 3000.2 (a) (4). The representative failed to provide the notice or obtain special permission.

8. To date, no statutory notice or request for special permission has been received.

9. March 15, 2021, the Division of Tax Appeals issued to petitioners a notice of intent to dismiss petition. The notice stated, in sum, that the petition is in improper form and the Division of Tax Appeals lacks jurisdiction.

10. On July 12, 2021, the Division of Tax Appeals provided Ms. Malazita with a copy of the notice of intent to dismiss petition and another request to clarify the discrepancy in her qualifications between the 2015 power of attorney and the petition. Ms. Malazita did not respond to this request.

11. In response to the notice of intent to dismiss petition, the Division's representative submitted a letter on April 13, 2021 stating:

“[t]he Division is in receipt of the Notice of Intent to Dismiss the petition in the above referenced matter. As the petition submitted was not in proper form, as required by 20 NYCRR 3000.3 and Tax Law § 2008 because the petitioners' representative did not request special permission to represent petitioner [sic] with the Tribunal and neglected to include a copy of the statutory notice or conciliation order issued to petitioners, the Division is in agreement with the proposed dismissal. Please find a copy of the Notice and Demand for Assessment No. L-041109186 enclosed. Pursuant to Tax Law § 173-a, Notices and Demands issued on or after December 1, 2004 do not provide for a right to a hearing prior to payment of the assessment. The Division notes the underlying assessment L-041109186 is considered fully paid as of January 23, 2016. Any protest filed is now untimely.”

12. Petitioners did not submit a response to the notice of intent to dismiss 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.*). The Division of Tax Appeals is authorized “[t]o provide a hearing as a matter of right, to any petitioner upon such petitioner’ request . . . unless a right to such hearing is specifically provided for, modified or denied by another provision of this chapter” (Tax Law § 2006 [4]).

Tax Law § 2008 limits the jurisdiction of the Division of Tax Appeals to matters

“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 credit application, a cancellation, revocation or suspension of a license, permit or registration, a denial of an application for a license, permit or registration or any other notice which gives a person the right to a hearing in the division of tax appeals under this chapter or other law.”

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. The petition in this case did not include a required statutory notice or conciliation order and, therefore, fails to present a notice for which the Division of Tax Appeals has jurisdiction (*see* Tax Law § 2008).

D. Additionally, while the petition included a copy of a consolidated statement of tax and a notice of intercepted issued by the State of California Franchise Tax Board, these notices are insufficient to confer jurisdiction upon the Division of Tax Appeals to consider the merits of the petition and are not statutory notices that offer rights to a hearing in the Division of Tax Appeals (*see* Tax Law §§ 173-a [2]; 2008; 20 NYCRR 3000.1 [k]).

E. In sum, the Division of Tax Appeals lacks jurisdiction over the petition.

F. Pursuant to 20 NYCRR 3000.2 (a) (2), a taxpayer may be represented by: (i) an attorney-at-law licensed to practice in New York State; (ii) a certified public accountant duly qualified to practice in New York State; an enrolled agent enrolled to practice before the Internal Revenue Service; and (iv) a public accountant enrolled with the New York State Education Department. An attorney, certified public accountant or licensed public accountant authorized or licensed to practice in any other jurisdiction may represent a petitioner after receiving written permission from the Secretary of the Tax Appeals Tribunal (*see* 20 NYCRR 3000.2 [a] [4]). In this case, Ms. Malazita is listed on the petition as the petitioners' representative. However, Ms. Malazita provided conflicting information regarding her qualifications and never responded to requests for clarification. Further, she failed to obtain special permission from the Tax Appeals Tribunal. Her failure to do so meant she lacked the authority to represent the petitioners.

G. 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
November 04, 2021

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