

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
SEKOU KANTE : **DETERMINATION**
for Redetermination of a Deficiency or for Refund of New : **DTA NO. 830026**
York State Personal Income Tax under Article 22 of the :
Tax Law and the New York City Administrative Code for :
the Year 2016. :
_____ :

Petitioner, Sekou Kante, 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 and the New York City Administrative Code for the year 2016.

On January 11, 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, appearing by Harlem Tax (Waverly Lane, Jr.), 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.

ISSUE

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

FINDINGS OF FACT

1. Petitioner, Sekou Kante, filed a petition that was received by the Division of Tax Appeals on September 3, 2020. The envelope containing the petition does not bear a United States Postal Service postmark indicating when the petition was mailed.

2. The petition included a copy of: (i) a notice and demand for payment of tax due (notice and demand) bearing assessment number L-051461897, issued by the Division of Taxation on August 12, 2020; (ii) a response to taxpayer inquiry bearing assessment number L-051461897 issued by the Division of Taxation on July 20, 2020; and (iii) a notice of additional tax due bearing assessment number L-051461897 issued by the Division of Taxation and Finance on June 4, 2020.

3. The petition challenges the documents referenced in finding of fact 2.

4. On January 11, 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 a notice and demand, it appeared that the Division of Tax Appeals was without jurisdiction to consider the merits of the petition.

5. In response to the notice of intent to dismiss petition, the Division of Taxation'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 of Additional Tax Due and 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 of Additional Tax Due and Notice and Demand enclosed. Therefore, the Division is in agreement with the proposed dismissal."

6. Neither petitioner nor his representative submitted 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 notice and demand protested by petitioner here does not give rise to hearing rights (*see* Tax Law § 173-a [2]).

D. Additionally, the above-referenced response to taxpayer inquiry and notice of additional tax due are not statutory notices that offer rights to a hearing in the Division of Tax Appeals (*see* Tax Law § 173-a (2), §2008 and 20 NYCRR 3000.1 (k)).

E. 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.

F. The petition of Sekou Kante is dismissed.

DATED: Albany, New York
May 6, 2021

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