

STATE OF NEW YORK
DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
ESTATE OF FRANCESCA MAVARO	:	
A.K.A. FRANCES MICELI	:	DETERMINATION
for Redetermination of a Deficiency or for Refund	:	DTA NO. 830079
of Estate Tax under Article 26 of the Tax Law.	:	

Petitioner, the Estate of Francesca Mavaro a.k.a. Frances Miceli, filed a petition for the redetermination of a deficiency or for refund of estate tax under article 26 of the Tax Law. 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. (David Demeter, Esq., of counsel), submitted a letter in support of the dismissal. Petitioner, appearing by Dominick Sorrentino, Esq., 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 Division of Tax Appeals lacks jurisdiction over the petition.

FINDINGS OF FACT

1. Dominick Sorrentino, Esq., the Executor of petitioner, the Estate of Francesca Mavaro a.k.a. Frances Miceli, filed a petition with that was received by the Division of Tax Appeals on October 15, 2020.
2. The petition challenges a consolidated statement of estate tax liabilities pertaining to assessment number L-051509435 and issued under article 26 of the Tax Law by the Division of Taxation (Division) on June 25, 2020.
3. The petition also challenges a letter confirming that there were adjustments made to the New York state estate return, pertaining to case ID X187949833, issued by the Division on June 3, 2020.
4. The petition does not challenge any other notice.
5. Petitioner argues that the decedent was not a domiciliary of New York pursuant to Tax Law § 604 (b) (1) (A) and, thus, the tax at issue was erroneously assessed.
6. 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 the surrogate's court had exclusive jurisdiction over the matter pursuant to Tax Law § 998. Consequently, the Division of Tax Appeals lacked jurisdiction of the subject matter of the petition.
7. In response to the notice of intent to dismiss petition, the Division submitted a letter on February 5, 2021 stating that under Tax Law § 998, the surrogate's court that has jurisdiction over the estate of a decedent shall also have jurisdiction of that estate's tax proceedings. Therefore, the Division is in agreement with the proposed dismissal.
8. 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 in the division of tax appeals” (Tax Law § 2008 [1]).

C. Surrogate’s Court Procedure Act (SCP) § 201 confers upon the surrogate’s court: “full and complete general [subject matter] jurisdiction in law and in equity to administer justice in all matters relating to the affairs of decedents . . . to try and determine all questions, legal or equitable, arising between any or all of the parties to any action or proceeding. . . as to any and all matters necessary to be determined in order to make a full, equitable and complete disposition of the matter . . .” (SCP § 201 [3]).

D. Tax Law § 998 provides taxpayers with both the right and the means to protest a notice of deficiency or a notice of disallowance of a claim for refund issued by the Division with respect to estate taxes. Indeed, the surrogate’s court is granted exclusive jurisdiction over proceedings concerning deficiencies or refunds under this section (*see* Tax Law § 998 [h]). In this case, petitioner has challenged a tax liability assessed under article 26 of the Tax Law. As a result, the Division of Tax Appeals is without jurisdiction to hear this matter.

E. The petition of the Estate of Francesca Mavaro a.k.a. Frances Miceli is dismissed.

DATED: Albany, New York
May 6, 2021

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