

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
ROBERT E. JONES : DETERMINATION
for Redetermination of a Deficiency or for Refund of New : DTA NO. 830101
York State Personal Income Tax under Article 22 of the :
Year 2012. :
:

Petitioner, Robert E. Jones, 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 2012.

On June 7, 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 pro se, submitted oppositions to dismissal on June 11 and 29, 2021. The 90-day deadline for issuance of this determination began on July 7, 2021. 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 over the petition.

FINDINGS OF FACT

1. Petitioner filed a petition that was received by the Division of Tax Appeals on October 20, 2020. The envelope containing the petition bears a United States Postal Service postmark indicating the petition was mailed on October 13, 2020.

2. The petition included a copy of a notice and demand for payment of tax due (notice and demand) bearing assessment number L-044369331, issued by the Division of Taxation on March 14, 2016.

3. The petition challenges the notice and demand and states that petitioner will suffer a hardship if forced to comply with the notice.

4. On June 7, 2021, the Division of Tax Appeals issued to petitioner a notice of intent to dismiss petition. The notice of intent 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 June 22, 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. The petitioner submitted two responses to the notice of intent to dismiss the petition stating that the tax dispute has been ongoing since 2012 and that did not receive any replies from the Department of Taxation and Finance to the letters that he sent to them. Moreover, petitioner adds that the asserted liability creates a financial hardship.

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. Although petitioner’s argument is sympathetic, the notice and demand protested by petitioner here does not give rise to hearing rights (*see* Tax Law § 173-a [2]).

D. As the notice mentioned above 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
September 30, 2021

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