

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
JENNIFER SACKARIS SEGRETO : DETERMINATION
for Redetermination of a Deficiency or for Refund of New : DTA NO. 830162
York State Personal Income Tax under Article 22 of Tax :
Law for Years 2013 and 2014. :

Petitioner, Jennifer Sackaris Segreto, 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 2013 and 2014. 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, appearing by Amanda Hiller, Esq. (Michael Trajbar, Esq., of counsel), submitted a letter in support of the dismissal. Petitioner, appearing pro se, did not submit a response by July 7, 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 has subject matter jurisdiction over the petition.

FINDINGS OF FACT

1. Petitioner, Jennifer Sackaris Segreto, filed a petition that was received by the Division of Tax Appeals on December 7, 2020. The envelope containing the petition bears a USPS shipping label indicating the petition was mailed on November 30, 2020.

2. The petition lists notices numbered L-041637682, L-042538079, L-044015260, L-044401652, and L-049447647. These notices were not identified as to tax type, period, date, or taxpayer. They also were not attached to the petition.

3. The petition attached a consolidated statement of tax liabilities but did not attach any other notice, in particular the notices listed in fact 2. The consolidated statement is in petitioner's name and lists withholding tax notice numbers L-042587898 and L-042587897.

4. On December 21, 2020, the Division of Tax Appeals sent a letter to petitioner identifying the items missing from the petition and that failure to correct it within 30 days may result in a dismissal. The letter to petitioner indicated the following:

- i. Petitioner failed to provide a copy of the notices.
- ii. Although a consolidated statement of tax liabilities was attached to the petition, it is not a notice that is considered a statutory document that offers formal protest rights.
- iii. On page 2 of the petition, petitioner listed assessment numbers L-041637682, L-042538079, L-044015260, L-044401652, and L-049447647, but the consolidated statement of tax liabilities lists assessment numbers L-042587898 and L-042587897 and these numbers are not listed in the petition.
- iv. On page 3 of the petition, petitioner failed to indicate whether a conciliation conference was requested.
- v. In Section VIII of the petition, petitioner references a warrant.

5. Petitioner did not cure the deficiencies in the petition.

6. On June 7, 2021, the Division of Tax Appeals issued to petitioner 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.

7. In response to the notice of intent to dismiss petition, the Division of Taxation's (Division's) representative submitted a letter on June 21, 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, the petitioner neglected to

include a copy of the statutory notice or conciliation order issued to petitioner, the Division is in agreement with the proposed dismissal.”

8. Petitioner has not submitted 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’s 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. Pursuant to 20 NYCRR 3000.3 (b) (3), a petition shall contain “the date of the notice, the tax article involved, and the nature of the tax.”

D. Where the petitioner fails to correct the petition within the time prescribed, the Supervising Administrative Law Judge will issue a determination dismissing the petition (*see* 20

NYCRR 3000.3 [d]).

E. The petition in this case did not include or identify 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). Additionally, petitioner failed to correct the petition within the time period allowed (*see* 20 NYCRR 3000.3 [d]). Thus, as petitioner failed to attach or properly identify a notice contemplated by Tax Law § 2008, or correct the concerns identified, the Division of Tax Appeals lacks jurisdiction of the subject matter of the petition and dismissal is warranted (*see* 20 NYCRR 3000.3 [d]; 3000.9 [a] [4] [i]).

F. Additionally, the petition references case ID E-034658374 which appears to be a warrant. A warrant is not a document giving petitioner a right to a hearing in this forum. As a result, the Division of Tax Appeals is without jurisdiction to hear and determine this matter.

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
September 30, 2021

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