

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
ROY W. SECORD III : DETERMINATION
for Redetermination of a Deficiency or for Refund of : DTA NO. 830255
Personal Income Tax under Article 22 of the Tax Law :
for the Year 2007 and for Revision of a Determination :
or for Refund of Sales and Use Taxes under Articles :
28 and 29 of the Tax Law for the Periods ending :
November 30, 2007, February 29, 2008, May 31, 2008, :
and August 21, 2008. :

Petitioner, Roy W. Secord III, 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 2007 and for revision of a redetermination or refund of sales and use tax under articles 28 and 29 of the Tax Law for the periods ending November 30, 2007, February 29, 2008, May 31, 2008, and August 21, 2008.

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. (Maria Matos, 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, Roy W. Secord III, filed a petition that was received by the Division of Tax Appeals on January 28, 2021. The priority mail envelope containing the petition, bears a United States Postal Service (USPS) postmark indicating the petition was mailed on January 22, 2021.
2. The petition included a copy of proposed terms for installment payment agreement, case ID E-014034798, pertaining to assessment numbers L-036779641, L-034067489, L-034067488, L-034067487, and L-034067486, that was issued to petitioner on March 20, 2018.
3. The petition also included copy of a notice of revocation referencing an offer in compromise pertaining to case ID numbers E-014034798 and E-025078025, issued to petitioner on October 3, 2019.
4. The petition did not include a statutory notice from the Division of Taxation notifying petitioner of formal protest rights.
5. Petitioner did not attach a copy of a conciliation order.
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 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 22, 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 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’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. 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). As petitioner failed to attach or identify a notice identified

by Tax Law § 2008, 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]).

D. Additionally, the notice of revocation and copy of proposed terms for installment payment agreement that were attached to the petition do not give rise to hearing rights before the Division of Tax Appeals (*see* Tax Law § 2000).

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