

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
WENDELL FLOWERS : DETERMINATION
for Redetermination of a Deficiency or for Refund of New : DTA NO. 830501
York State Personal Income Tax under Article 22 of the :
Tax Law for the Year 2016. :

Petitioner, Wendell Flowers, 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 2016. On October 8, 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. (Ellen Krejci, Esq., of counsel), submitted a letter in support of the dismissal. Petitioner, appearing pro se, submitted a letter in opposition.¹ Pursuant to 20 NYCRR 3000.5 (d) and 3000.9 (a) (4), the 90-day period for issuance of this determination began on November 8, 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 has subject matter jurisdiction over the petition.

¹ The original petition challenged a notice of additional tax due for 2016 and a refund denial for 2017. In his response, petitioner disputed the notice of intent to dismiss for 2017 only, and the Division of Taxation agreed that the petition should not be dismissed as to the challenge to 2017. As a result, that matter was severed from the instant case and is proceeding as DTA number 830728. This matter solely concerns the tax year 2016. Petitioner did not dispute the notice of intent to dismiss for that year.

FINDINGS OF FACT

1. Petitioner, Wendell Flowers, filed a petition that was received by the Division of Tax Appeals on June 21, 2021. The priority mail envelope containing the petition, bears a United States Postal Service postmark indicating the petition was mailed on June 14, 2021.

2. The petition includes a copy of a notice of additional tax due for the year 2016 bearing assessment number L-051551890 issued by the Division of Taxation (Division) on June 22, 2020.²

3. On October 8, 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 as it protests a notice of additional tax due and the Division of Tax Appeals lacks jurisdiction.

4. In response to the notice of intent to dismiss petition, the Division's representative submitted a letter on October 26, 2021 stating, in relevant part:

“[t]he Division is in receipt of the Notice of Intent to Dismiss the petition in the above referenced matter.

For tax year 2016, a Notice of Additional Tax Due, L-051551890, was issued on June 22, 2020. Notices of Additional Tax Due issued on or after December 1, 2004 do not provide for a right to a hearing. Therefore, the Division is in agreement with the proposed dismissal of the petition with regard to tax year 2016.”

5. Petitioner did not submit an opposition to dismissal of the petition with regards to the notice of additional tax due.

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*

² See footnote 1 for full procedural explanation.

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 of additional tax due protested by petitioner here does not give rise to hearing rights (*see* Tax Law § 173-a [2]).

D. As the notice of additional tax due is insufficient to confer jurisdiction upon the Division of Tax Appeals to consider the merits of the petition filed, dismissal is warranted.

E. The petition of Wendell Flowers is dismissed.

DATED: Albany, New York
February 3, 2022

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