

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
LI LAN LIAO	:	DETERMINATION DTA NO. 830546
for Revision of a Determination of Corporation Tax under Article 9-A of the Tax Law for the Period Ending December 31, 2015.	:	

Petitioner, Li Lan Liao filed a petition for revision of a determination of corporation tax under article 9-A of the Tax Law for the period ending December 31, 2015. 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. (Colleen McMahon, of counsel), submitted a letter in support of the dismissal. Petitioner, appearing by T & T Professional Associates (Chun Lam Tam, EA), did not submit a response by November 8, 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, Li Lan Liao, filed a petition that was received by the Division of Tax Appeals on July 27, 2021. The priority mail envelope containing the petition, bears a United States Postal Service (USPS) postmark indicating the petition was mailed on July 22, 2021.

2. The petition included a warrant, ID number E-148603273-W001-8. The warrant bears assessment numbers L-052858554 and L-051744254 and was issued by the Department of Taxation and Finance to petitioner on July 15, 2021.

3. The petition did not include a copy of a conciliation order or any other notice.

4. On October 8, 2021, Supervising Administrative Law Judge Herbert M. Friedman, Jr., of the Division of Tax Appeals issued a notice of intent to dismiss petition (notice of intent) to petitioner. The notice of intent stated, in sum, that the petition did not identify or include a statutory notice and 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 (Division's) representative submitted a letter on October 26, 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 § 2000 and 2008 because the petition neglected to include a copy of the statutory notice or conciliation order issued to petitioner, and included a copy of a tax warrant which does not provide a hearing the Division is in agreement with the proposed dismissal.”

6. Neither petitioner nor petitioner's representative 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 Trib.*, 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 3000.3 (b) (8), a petition shall contain, “for the sole purpose of establishing the timeliness of a 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 identify or attach a notice, the Division of Tax Appeals lacks jurisdiction of the subject matter of the petition and the dismissal is warranted (*see* 20 NYCRR 3000.9 [a] [4] [i]).

D. While the petition included a copy of a tax warrant, Tax Law § 2000 does not provide jurisdiction to the Division of Tax Appeals for reviewing petitions or providing hearings for tax warrants. The filed petition is not in proper form.

E. The petition of Li Lan Liao is dismissed.

DATED: Albany, New York
February 3, 2022

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