

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	DETERMINATION
RICARDO BERROSPI	:	DTA NO. 830999

Petitioner, Ricardo Berrospi, filed a petition in protest of his 2021 School Tax Relief credit. On July 28, 2023, 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. (Christopher O'Brien, Esq., of counsel), submitted a letter in opposition to the dismissal. Petitioner did not submit a response by October 12, 2023, which date commenced the 90-day period for the issuance of this determination.

After due consideration of the entire record in this matter, Donna M. Gardiner, 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, Ricardo Berrospi, filed a petition with the Division of Tax Appeals on June 10, 2022. The petition challenges a notice of disallowance (notice) of a 2021 School Tax Relief (STAR) credit.

2. The STAR credit was disallowed on the basis that:

“You received the benefit of a STAR exemption on another property. You cannot receive a check for the STAR credit in the same year that you received the benefit of the STAR exemption. You can verify that your property received the STAR

exemption by reviewing the school tax bill for the property. A married couple can receive STAR for only one residence, unless legally separated.”

3. The notice was issued on March 24, 2022, from the Office of Real Property Tax Services (ORPTS) – 5310-PDL of the Division of Taxation (Division). On the face of the notice is a property key, a property description and a confirmation number that begins with the letters STEX. No explanation is provided as to what that confirmation number relates to. On its face, the notice provides two options for filing a protest: either by filing a request for conciliation conference with the Division’s Bureau of Conciliation and Mediation Services or by filing a petition with the Division of Tax Appeals.

4. The notice also states that:

“[y]ou may appear on your own behalf or have an authorized representative present your case for review. An authorized representative must have a completed power of attorney form on file with the department. You can get Form POA-1, *Power of Attorney*, on our website at www.tax.ny.gov (search: *poa*).”

5. Petitioner attached, to his petition, a copy of form RP-5310-DPLR, issued to him, dated August 31, 2001. This form contains the following instructions:

“To be eligible to receive a check for the 2021 STAR credit, your property must be the primary residence of one of the owners.

You registered with the New York State Department of Taxation and Finance for the School Tax Relief (STAR) credit. However, we are unable to confirm this property is the primary residence of any of the owners. Therefore, we intend to deny you a 2021 STAR credit on this property.

What to do next

You do not need to do anything unless you disagree. If you disagree, within 30 days of the date of this notice, send us:

- a copy of this letter,
- a brief letter of explanation, and
- a copy of at least two documents to confirm that the property is your primary residence.

Fax or mail this information to us.

Fax: 518-435-8634

Mail:

**NYS TAX DEPARTMENT
ORPTS STAR RESOLUTION UNIT – DLPR
W A HARRIMAN CAMPUS
ALBANY NY 12227-0801”**

6. Petitioner did not apply for a STAR credit on his personal income tax return.

Petitioner did not receive a notice of disallowance that referenced a denial of a credit with respect to his income tax filing or a case identification number that reflects any review conducted by the income tax section of the Division.

7. A conciliation order was not attached to the petition.

8. On July 28, 2023, the Division of Tax Appeals issued to petitioner a notice of intent to dismiss petition. The notice stated, in sum, that the Division of Tax Appeals lacked jurisdiction to review the merits of the petition because it was not in proper form because the petition did not include a statutory notice. Additionally, pursuant to Tax Law § 2008 (1), the Division of Tax Appeals does not have jurisdiction over a property tax.

9. On October 4, 2023, the Division sent a letter in response to the notice of intent to dismiss petition. The Division asserts that the issue in this case involves a STAR credit under the Tax Law and does not relate to a STAR exemption under the Real Property Law. As set forth in finding of fact 2, the notice specifically stated that, since petitioner received a benefit under the STAR exemption, he was not entitled to receive a check pursuant to the STAR credit.

10. Petitioner did not submit a response to the notice of intent to dismiss petition.

CONCLUSIONS OF LAW

A. Petitioner is protesting a notice of disallowance of a 2021 STAR credit. Therefore, it must be determined whether such a notice is a statutory notice that gives rise to protest rights before the Division of Tax Appeals.

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]). 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 (1) 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. As set forth in finding of fact 6, the notice of disallowance of the STAR credit does not reference any personal income tax return or provide any indication to establish that the personal income tax return for the year in question was reviewed in order to disallow the STAR credit.

C. Pursuant to 20 NYCRR 3000.3 (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.” In this case, no statutory notice was provided.

D. As there was no statutory notice provided, pursuant to Tax Law § 2008 (1), the Division of Tax Appeals lacks jurisdiction over the subject matter of the petition and, thus, dismissal is warranted (*see* 20 NYCRR 3000.3 [d] [2]; 3000.9 [a] [4] [i]; *Matter of Richardson*, Tax Appeals Tribunal, November 17, 2022).

E. It is ORDERED, on the motion of the supervising administrative law judge, that the petition is dismissed with prejudice as of this date.

DATED: Albany, New York
January 04, 2024

/s/ Donna M. Gardiner
SUPERVISING ADMINISTRATIVE LAW JUDGE