

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
KRYSTYN J. HAICH AND : DETERMINATION
ANNA M. NOWAK-HAICH : DTA NO. 831175
:
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 2018. :
:

Petitioners, Krystyn J. Haich and Anna M. Nowak-Haich, 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 2018.

On February 5, 2024, the Division of Tax Appeals issued to petitioners a notice of intent to dismiss petition pursuant to 20 NYCRR 3000.9 (a) (4). The Division of Taxation, appearing by Amanda Hiller, Esq. (Emil Kambala), submitted a letter in support of the dismissal. Petitioners did not submit a response by March 6, 2024, which date began the 90-day period for the issuance of this determination.

After due consideration of the documents submitted, Donna M. Gardiner, Supervising Administrative Law Judge, renders the following determination.

ISSUE

Whether the Division of Tax Appeals has jurisdiction over the petition.

FINDINGS OF FACT

1. Petitioners, Krystyn J. Haich and Anna M. Nowak-Haich, filed a petition with the Division of Tax Appeals on November 29, 2022. Included with the petition was correspondence, dated September 12, 2022, addressed to petitioners from the Division of Taxation (Division). This letter stated that a notice of disallowance, dated March 23, 2020, was issued to them for the year 2018. It further provided that since petitioners did not protest the notice of disallowance within two years, their formal protest rights had expired.

2. On February 6, 2023, the Division of Tax Appeals made a written request to petitioners for a copy of the statutory notice in protest.

3. No statutory notice was provided.

4. On February 5, 2024, the Division of Tax Appeals issued to petitioners a notice of intent to dismiss petition. The notice of intent to dismiss petition 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.

5. On February 15, 2024, the Division submitted a letter in response to the notice of intent to dismiss petition that stated:

“[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 because the petitioners neglected to include a copy of the statutory notice or conciliation order issued to petitioners[,] the Division is in agreement with the proposed dismissal.”

6. Petitioners did not respond 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*

Matter of New York State Dept. of Taxation & 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 a hearing is specifically provided for, modified or denied by another provision of this chapter” (Tax Law § 2006 [4]).

All proceedings in the Division of Tax Appeals “shall be commenced by the filing of 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 credit application . . . or any other notice which gives a person the right to a hearing” (Tax Law § 2008 [1]).

B. 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 attached.

C. On February 6, 2023, the Division of Tax Appeals made a written request to petitioners for a copy of the statutory notice. Petitioners failed to supply one. Where petitioners fail to correct the petition within the time prescribed, the supervising administrative law judge will issue a notice of intent to dismiss petition (*see* 20 NYCRR 3000.3 [d] [2]). Such notice of intent was issued on February 5, 2024. Petitioners failed to respond.

As petitioners failed to attach a notice contemplated by Tax Law § 2008, the Division of Tax Appeals lacks jurisdiction over the subject matter of the petition and, therefore, dismissal is warranted (*see* 20 NYCRR 3000.3 [d] [2]; 3000.9 [a] [4] [i]; *see also Matter of Richardson*, Tax Appeals Tribunal, November 17, 2022).

D. 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
May 30, 2024

/s/ Donna M. Gardiner
SUPERVISING ADMINISTRATIVE LAW JUDGE