

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
ROBERT ARIGO : DETERMINATION
 : DTA NO. 831178
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 2021. :

Petitioner, Robert Arigo, 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 2021.

On February 5, 2024, the Division of Tax Appeals issued a notice of intent to dismiss petition to petitioner pursuant to 20 NYCRR 3000.9 (a) (4). The Division of Taxation, appearing by Amanda Hiller, Esq. (Mark O’Higgins, Esq., of counsel), submitted a letter in support of the dismissal. Petitioner, appearing pro se, 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. Petitioner, Robert Arigo, filed a petition with the Division of Tax Appeals on November 28, 2022.
2. The petition challenges a notice of disallowance dated November 17, 2022.

3. Petitioner indicated on the petition that a conciliation conference was requested. However, there is no conciliation order attached to the petition.

4. The petition in this matter was signed by Craig Cheser, who is not qualified to represent petitioner at the Division of Tax Appeals.

5. On February 13, 2023, the Division of Tax Appeals made a written request to petitioner for a copy of the conciliation order issued to him and provided him with instructions for Mr. Cheser to request special permission to appear before the Division of Tax Appeals on his behalf.

6. Petitioner did not provide the information requested.

7. On February 5, 2024, the Division of Tax Appeals issued a notice of intent to dismiss petition to petitioner. The notice of intent to dismiss petition stated that the Division of Tax Appeals lacked jurisdiction to review the merits of the petition because it was not in proper form.

8. On February 15, 2024, in response to the notice of intent to dismiss petition, the Division of Taxation (Division) submitted a letter 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 the power of attorney or other authorization was not submitted pursuant to 20 NYCRR 3000.2 and Tax Law § 2008, the Division is in agreement with the proposed dismissal.”

9. 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 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 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 a right to a hearing” (Tax Law § 2008 [1]).

B. Pursuant to the Rules of Practice and Procedure of the Tax Appeals Tribunal, a petition must be signed by either petitioner or petitioner’s representative (*see* 20 NYCRR 3000.3 [b] [7]). In this case, the petition was signed by Mr. Cheser, who was not qualified to represent petitioner.

C. The Division of Tax Appeals made a written request to petitioner that explained that Mr. Cheser needed special permission from the Tax Appeals Tribunal for authorization to appear on behalf of petitioner pursuant to 20 NYCRR 3000.2 (a) (4). No special permission was requested. Where petitioner fails 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 to dismiss petition was issued on February 5, 2024. Petitioner failed to respond to it.

As petitioner failed to sign the petition, 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