

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
RICHARD SAN GIACOMO	:	DETERMINATION
	:	DTA NO. 831184
	:	

Petitioner, Richard San Giacomo, filed a petition on December 12, 2022.

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. (Amy Seidenstock, 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, Richard San Giacomo, filed a petition with the Division of Tax Appeals on December 12, 2022. Included with the petition was a consolidated statement of tax liabilities and a response to taxpayer inquiry issued to a taxpayer that is not part of this proceeding.
2. A statutory notice or conciliation order was not attached to the petition.
3. Petitioner failed to provide his social security number on the petition.

4. On February 13, 2023, the Division of Tax Appeals made a written request to petitioner for his full taxpayer identification number and a copy of the statutory notice being protested.

5. Petitioner did not provide the information requested.

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

7. 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 required by 20 NYCRR 3000.3 and Tax Law § 2008 because the petitioner neglected to include a copy of the statutory notice or conciliation order issued to petitioner [sic] the Division is in agreement with the proposed dismissal.”

8. 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 (Rules), 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” (20 NYCRR 3000.3 [b] [8]). In this case, no statutory notice was attached. Additionally, the Rules state that the petition must include a social security number or other numeric designation for proper identification of petitioner (*see* 20 NYCRR 3000.3 [b] [10]). Petitioner did not provide his social security number.

C. The Division of Tax Appeals made a written request to petitioner for both a statutory notice and his social security number. He failed to provide the information 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 attach a statutory 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. While the petition included a consolidated statement of tax liabilities and a response to taxpayer inquiry, these documents do not give rise to hearing rights at the Division of Tax

Appeals (*see Matter of Alesi*, Tax Appeals Tribunal, June 9, 2022; *Matter of Mostovoi*, Tax Appeals Tribunal, May 23, 2019; *see also Matter of Etienne*, Tax Appeals Tribunal, July 7, 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
May 16, 2024

/s/ Donna M. Gardiner
SUPERVISING ADMINISTRATIVE LAW JUDGE