

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
ISA AND EMIS OLMEZ : DETERMINATION
for Redetermination of a Deficiency or for : DTA NO. 831203
Refund of New York State Personal Income Tax :
under Article 22 of the Tax Law for the Year 2019. :

Petitioners, Isa and Emis Olmez, 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 2019.

On February 28, 2024, the Division of Tax Appeals issued a notice of intent to dismiss petition to petitioners 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, appearing pro se, did not submit a response by March 29, 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, Isa and Emis Olmez, filed a petition with the Division of Tax Appeals on December 21, 2022.
2. The petition lists Yeter Olmez as petitioners' representative. The petition identifies

Ms. Yeter Olmez (Ms. Olmez) as petitioners' daughter and Ms. Olmez signed the petition on behalf of petitioners. An executed Division of Tax Appeals power of attorney form did not accompany the petition, and as such, it is unclear if Ms. Olmez is qualified to sign the petition or appear on behalf of petitioners.

3. The petition protests a conciliation order bearing CMS No. 000336155, dated November 25, 2022.

4. On April 3, 2023, the Division of Tax Appeals sent a letter to petitioners, notifying them that Ms. Olmez did not appear to qualify to represent them. The letter additionally states that since Ms. Olmez signed the petition as an unauthorized representative, the petition is not valid.

5. Petitioners did not cure the defects in the petition, as requested.

6. On February 28, 2024, the Division of Tax Appeals issued to petitioners a notice of intent to dismiss petition. The notice of intent stated that the Division of Tax Appeals lacked jurisdiction to review the merits of the petition because it was not in proper form, as representation of an individual in proceedings before the Division of Tax Appeals is limited to an attorney-at-law; a certified public accountant; an enrolled agent; or a public accountant enrolled with the New York State Education Department.

7. On March 12, 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 petition is not signed by the petitioners on page 3, and is signed by the petitioners' daughter Yeter Olmez, who is not qualified to represent the petitioners, as required by 20 NYCRR 3000.2, 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 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]). A petition shall contain “the signature of the petitioner or the petitioner’s representative” (20 NYCRR 3000.3 [b] [7]).

B. Pursuant to 20 NYCRR 3000.2 (a) (2), the following may act as the representative of a taxpayer in proceedings before the Division of Tax Appeals, if authorized by a proper power of attorney form: (i) an attorney-at-law licensed to practice in New York State; (ii) a certified public accountant duly qualified to practice in New York State; (iii) an enrolled agent enrolled to practice before the Internal Revenue Service; and (iv) a public accountant enrolled with the New York State Education Department. While Tax Law § 2014 specifically authorizes a spouse to represent a petitioner in proceedings before the Division of Tax Appeals, the statute does not

authorize a petitioner's child to represent a petitioner. In this case, a proper power of attorney form was not attached to the petition and Ms. Olmez does not appear to qualify as one of the four types of representation found under 20 NYCRR 3000.2 (a) (2).

C. On April 3, 2023, the Division of Tax Appeals made a written request asking petitioners to sign the petition since Ms. Olmez did not appear qualified to represent them. They failed to do so. 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]).

As petitioners 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
June 13, 2024

/s/ Donna M. Gardiner
SUPERVISING ADMINISTRATIVE LAW JUDGE