

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
TERRANCE AND NANCY KEATLEY	:	DETERMINATION
		DTA NO. 831294
for Redetermination of Deficiencies or for Refund of New	:	
York State Personal Income Tax under Article 22 of the	:	
Tax Law for the Years 2012, 2013 and 2014.	:	

Petitioners, Terrance and Nancy Keatley, filed a petition for redetermination of deficiencies or for refund of New York State personal income tax under article 22 of the Tax Law for the years 2012, 2013 and 2014.

On December 27, 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. (Christopher O'Brien, Esq., of counsel), submitted a letter in support of the dismissal. Petitioners, appearing by Nicholas J. Maura, CPA, did not submit a response by January 27, 2025, 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, Terrance and Nancy Keatley, filed a petition with the Division of Tax Appeals on May 5, 2023.

2. The petition appears to protest assessment numbers L-049343262, L-049688501 and L-050604216, but statutory notices were not included with the petition.

3. On July 3, 2023, the Division of Tax Appeals made a written request to petitioners for copies of the statutory notices being protested.

4. Petitioners did not provide any statutory notices.

5. On December 27, 2024, the Division of Tax Appeals issued to petitioners 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.

6. On January 7, 2025, the Division of Taxation (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 petitioner neglected to include a copy of the statutory notice or conciliation order issued to petitioner[s,] the Division is in agreement with the proposed dismissal.”

7. 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, 332 [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 notices were attached.

C. On July 3, 2023, the Division of Tax Appeals made a written request for petitioners to supply copies of the statutory notices. Petitioners failed to do so. Where a petitioner fails to correct the petition within the time prescribed, the supervising administrative law judge will issue a determination dismissing the petition (*see* 20 NYCRR 3000.3 [d] [2]). A notice of intent to dismiss petition was issued on December 27, 2024. Petitioners failed to respond.

As petitioners failed to attach any notices 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. Although petitioners provided a response to taxpayer inquiry for each of the years 2012, 2013 and 2014, such documents do not give rise to hearing rights at the Division of Tax Appeals (*see Matter of PC Touch Servs.*, Tax Appeals Tribunal, August 23, 2012).

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
April 17, 2025

/s/ Donna M. Gardiner
SUPERVISING ADMINISTRATIVE LAW JUDGE