

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
DOUGLAS C. SCHOTTENSTEIN	:	DETERMINATION
		DTA NO. 831298
for Redetermination of a Deficiency or for Refund of New York State and New York City Personal Income Taxes under Article 22 of the Tax Law and the Administrative Code of the City of New York for the Year 2021.	:	

Petitioner, Douglas C. Schottenstein, filed a petition for redetermination of a deficiency or for refund of New York State and New York City personal income taxes under article 22 of the Tax Law and the Administrative Code of the City of New York for the year 2021.

On December 13, 2024, the Division of Tax Appeals issued to petitioner 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. Petitioner, appearing by Jerry Schwartz, Accountant, did not submit a response by January 13, 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. Petitioner, Douglas C. Schottenstein, filed a petition with the Division of Tax Appeals on May 30, 2023.

2. The petition appears to protest assessment numbers L-056920782 and L-055354400, but no statutory notices were included with the petition.

3. On June 9, 2023, the Division of Tax Appeals made a written request to petitioner requesting copies of the statutory notices being protested. On June 20, 2023, petitioner submitted a conciliation order, CMS No. 000342903, for assessment number L-055354400 for the year 2019. Thereafter, the petition was severed and DTA number 851062 was assigned to address the protest of the conciliation order for the year 2019. This determination addresses only the year 2021.

4. Petitioner failed to provide a statutory notice for the year 2021.

5. On December 13, 2024, the Division of Tax Appeals issued to petitioner a notice of intent to dismiss petition. The notice stated, in sum, that the Division of Tax Appeals appeared to lack 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[,] the Division is in agreement with the proposed dismissal.”

7. Petitioner 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 June 9, 2023, the Division of Tax Appeals made a written request to petitioner for a copy of the statutory notice. Petitioner failed to provide one. Where 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 13, 2024. Petitioner failed to respond.

As petitioner failed to attach a notice contemplated by Tax Law § 2008 (1), 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 petitioner provided a copy of a consolidated statement of tax liabilities, this is not a statutory notice that offers hearing rights at the Division of Tax Appeals (*see Matter of*

Mostovoi, Tax Appeals Tribunal, May 23, 2019 [wherein the Tax Appeals Tribunal held that a consolidated statement of tax liabilities does not qualify as a statutory notice because such statement reports a taxpayer's past-due tax liabilities]).

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 10, 2025

/s/ Donna M. Gardiner
SUPERVISING ADMINISTRATIVE LAW JUDGE