

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
INDRA MAHARAJ : DETERMINATION
for Redetermination of a Deficiency or for : DTA NO. 831385
Refund of New York State and New York City :
Personal Income Tax under Article 22 of the Tax :
Law and the Administrative Code of the City of :
New York for the Year 2013. :

Petitioner, Indra Maharaj, filed a petition for redetermination of a deficiency or for refund of New York State and New York City personal income tax under article 22 of the Tax Law and the Administrative Code of the City of New York for the year 2013.

On February 28, 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. (Daniel Schneider, Esq., of counsel), submitted a letter in support of the dismissal. Petitioner, 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. Petitioner, Indra Maharaj, filed a petition with the Division of Tax Appeals on July 18,

2023.

2. Attached to the petition was a tax warrant issued by the Department of Taxation and Finance referring to assessment number L-046405652.

3. No statutory notice or conciliation order was attached to the petition.

4. On August 11, 2023, the Division of Tax Appeals made a written request to petitioner for a copy of the appropriate statutory notice being protested. In the written request, it states that a tax warrant is not a notice that offers appeal rights with the Division of Tax Appeals.

5. On August 16, 2023, petitioner provided a copy of a notice and demand for payment of tax due (notice and demand) dated June 19, 2017, bearing assessment number L-046405652.

6. On February 28, 2024, the Division of Tax Appeals issued to petitioner a notice of intent to dismiss petition. The notice of intent to dismiss petition stated that the Division of Tax Appeals lacked jurisdiction to review the merits of the petition because a taxpayer is not entitled to a hearing before the Division of Tax Appeals with respect to a notice and demand.

7. On March 13, 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 and agrees as the Division of Tax Appeals lacks jurisdiction over the matter. Therefore, the Division is in agreement with the proposed dismissal regarding the Notice and Demand for Payment of Tax Due, dated June 19, 2017. Also enclosed is the underlying notice, Notice of Additional Tax Due, dated May 11, 2017, which also does not provide formal protest rights.”

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]).

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 August 11, 2023, the Division of Tax Appeals made a written request asking petitioner to supply a statutory notice. Petitioner failed to do so. 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 was issued on February 28, 2024.

Petitioner failed to supply a notice that provides hearing rights pursuant to Tax Law § 2008. Instead, petitioner provided a copy of a notice and demand. This notice is insufficient to confer jurisdiction upon the Division of Tax Appeals to consider the merits of the petition (*see* Tax Law § 173-a [2]; *Matter of Alesi*, Tax Appeals Tribunal, June 9, 2022).

D. As petitioner failed to provide a 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).

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
June 13, 2024

/s/ Donna M. Gardiner
SUPERVISING ADMINISTRATIVE LAW JUDGE