

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition	:	
of	:	
<b>MERVIN PINNEY</b>	:	DETERMINATION DTA NO. 831500
for Redetermination of a Deficiency or for Refund of New York State Personal Income Tax under Article 22 of the Tax Law for the Years 2018 and 2019.	:	

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Petitioner, Mervin Pinney, 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 years 2018 and 2019.

On January 16, 2026, the Division of Tax Appeals issued a notice of intent to dismiss petition pursuant to 20 NYCRR 3000.9 (a) (4). The Division of Taxation, appearing by Amanda Hiller, Esq. (Albert Gawer, Esq., of counsel), submitted a letter in support of the dismissal. Petitioner, appearing pro se, did not submit a response by February 17, 2026, which date commenced 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, Mervin Pinney, filed a petition with the Division of Tax Appeals on November 15, 2023.

2. The petition appears to protest assessment number L-054976451, but a statutory notice was not included with the petition.
3. On May 22, 2024, the Division of Tax Appeals made a written request to petitioner for a copy of the statutory notice.
4. Petitioner failed to provide a notice.
5. On January 16, 2026, the Division of Tax Appeals issued a notice of intent to dismiss petition. The notice of intent to dismiss petition stated that it appeared the Division of Tax Appeals lacked jurisdiction to review the merits of the petition because it was not in proper form.
6. On February 5, 2026, 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. Because the petitioner neglected to include a copy of the statutory notice or conciliation order issued to petitioner, the petition submitted was not in proper form as required by 20 NYCRR 3000.3 and Tax Law § 2008. The Division is therefore 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 (*see* 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 (*see Matter of New York State Dept. of Taxation & Fin. v Tax Appeals Trib.*, 151 Misc 2d at 332). 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 . . . or any other notice which expressly 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.

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).

C. While the petition included a copy of a statement of proposed audit change, such document does not give rise to hearing rights at the Division of Tax Appeals (*see Matter of Etienne*, Tax Appeals Tribunal, July 7, 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  
April 30, 2026

/s/ Donna M. Gardiner  
SUPERVISING ADMINISTRATIVE LAW JUDGE