

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

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|--|---|----------------|
| In the Matter of the Petition                      | : |                |
| of   | : |                |
| <b>52 PHOENIX MANAGEMENT CORPORATION</b>           | : | DECISION       |
|  | : | DTA NO. 822994 |
| for Revision of a Determination or for Refund of   | : |                |
| New York State Sales and Use Tax under Articles 28 | : |                |
| and 29 of the Tax Law for the Periods June 1, 2007 | : |                |
| through November 30, 2007.                         | : |                |

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Petitioner, 52 Phoenix Management Corporation, filed an exception to the order of the Administrative Law Judge issued on July 21, 2009. Petitioner appeared *pro se*. The Division of Taxation appeared by Daniel Smirlock, Esq. (John E. Matthews, Esq., of counsel).

Petitioner did not file a brief. The Division of Taxation did not file a brief in opposition. Oral argument was not requested.

After reviewing the entire record in this matter, the Tax Appeals Tribunal renders the following decision.

***ISSUE***

Whether the Division of Tax Appeals has subject matter jurisdiction to entertain the petition.

***FINDINGS OF FACT***

We find the following facts:

The petition in this matter, filed by Michael Nugent, appears to challenge two Notices of Determination (L-029706758 and L-030007848) asserting tax due in the amount of \$401.00 plus interest and penalty for the period June 1, 2007 through November 30, 2007.

On April 17, 2009, a letter was sent by the Petition Intake Unit of the Division of Tax Appeals to Michael Nugent advising him that the petition he had filed, apparently on behalf of petitioner, was not complete in that it did not contain the name of the corporate petitioner and did not identify the relationship of Michael Nugent to the corporate petitioner. He was given 30 days to complete the petition and to provide the information requested.

On May 4, 2009, Michael Nugent provided an amended page 1 of the petition identifying “52 Phoenix Mgmt. Corp.” as petitioner. However, no information was provided to identify the relationship, if any, of Michael Nugent to petitioner.

On May 28, 2009, a Notice of Intent to Dismiss Petition was sent to petitioner giving it an additional 30 days to submit written comments on the proposed dismissal. Petitioner did not submit any written comments.

On July 21, 2009, Administrative Law Judge Daniel J. Ranalli issued an Order Dismissing Petition for lack of jurisdiction. This exception followed.

### ***OPINION***

A proceeding in the Division of Tax Appeals is commenced by filing a petition challenging a statutory notice pursuant to such rules and regulations as may be provided by the Tax Appeals Tribunal (“Tribunal”) (*see*, Tax Law §§ 2000, 2006[4]; 20 NYCRR 3000.1[k]). Where a corporation files a petition, it may act through one of its officers or employees. Where the corporation acts through an employee, a power of attorney must be filed (*see*, 20 NYCRR 3000.2[a][1]). Additionally, if authorized by a proper power of attorney, a petitioner may appear by an attorney-at-law licensed to practice in New York State; a certified public accountant duly qualified to practice in New York State; an enrolled agent enrolled to practice before the Internal Revenue Service; or a public accountant enrolled with the New York State Education

Department under Article 149 of the Education Law (*see*, 20 NYCRR 3000.2[a][2]). No person other than those described in the Tribunal's regulations may represent a taxpayer in filing a petition or at a hearing or argument upon such petition (*see*, 20 NYCRR 3000.2[d]).

The Rules of Practice and Procedure of the Tribunal require that a petition shall contain, among other things, the name, address and telephone number of the petitioner's representative, if any, and the original or a legible copy of the power of attorney (*see*, 20 NYCRR 3000.3[b][2],[9]). In this case, the petition contained no information indicating the relationship, if any, of Michael Nugent to petitioner, whom he alleged to represent, nor was a power of attorney provided indicating that he was qualified and authorized to represent petitioner before the Division of Tax Appeals.

When a petition is not in the form required by the Tribunal's regulations, the Supervising Administrative Law Judge shall promptly return it to the petitioner together with a statement indicating the requirements with which the petition does not comply, and extend to petitioner an additional 30 days within which to file a corrected petition. Where petitioner fails to serve a corrected petition within the time prescribed by the Tribunal's regulations, the Supervising Administrative Law Judge will issue a determination dismissing the petition (*see*, 20 NYCRR 3000.3[d]).

Petitioner was allowed 30 days to submit information indicating its relationship to Michael Nugent, who signed the petition on its behalf. No information was provided. Consequently, the Supervising Administrative Law Judge dismissed the petition.

Petitioner has offered no evidence below, and no argument on exception, that demonstrates that the Administrative Law Judge's order is incorrect. As a result, we affirm the order of the Administrative Law Judge and conclude that the Division of Tax Appeals is without jurisdiction

to hear and determine this matter based on the failure of petitioner to file a corrected petition within the time allowed by the Rules of Practice and Procedure of the Tribunal.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of 52 Phoenix Management Corporation is dismissed;
2. The order of the Administrative Law Judge is affirmed; and
3. The petition of 52 Phoenix Management Corporation is dismissed with prejudice.

DATED: Troy, New York  
February 4, 2010

/s/ Charles H. Nesbitt  
Charles H. Nesbitt  
President

/s/ Carroll R. Jenkins  
Carroll R. Jenkins  
Commissioner