

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of : ORDER
NARELLAN (NORTHEAST), INC. : DTA NO. 821249

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 2000 and 2001. :

Petitioner, Narellan (Northeast), Inc., c/o P.O. Box 907, Philmont, New York 12565, 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 2000 and 2001.

On November 14, 2006, the Division of Tax Appeals issued to petitioner a Notice of Intent
to Dismiss Petition pursuant to 20 NYCRR 3000.9(a)(4). Petitioner responded by a letter from
Robert K. Jones dated November 13, 2006. On November 27, 2006, the Division of Taxation,
by Mark F. Volk, Esq. (John E. Matthews, Esq., of counsel) submitted a letter agreeing with the
proposed dismissal. After due consideration of the documents and arguments submitted by the
parties, Brian L. Friedman, Administrative Law Judge, renders the following order.

ISSUE

Whether the failure to serve a corrected petition warrants a dismissal of the petition herein.

FINDINGS OF FACT

1. On July 31, 2006, the Division of Tax Appeals received a petition, pertaining to Notice
Nos. L026517982 and L026517983, from Narellan (Northeast), Inc., seeking administrative

review of a Conciliation Order Dismissing Request (CMS No. 214375) dated June 23, 2006.

The petition was signed on July 28, 2006 by Robert Jones.

2. On August 2, 2006, Maureen Urquhart of the Petition Intake, Review and Calendar Unit of the Division of Tax Appeals sent a letter to petitioner, c/o Robert Jones, P.O. Box 907, Philmont, New York 12565, which stated, in relevant part, as follows:

Reference is made to the petition recently filed with the Division of Tax Appeals

Unfortunately, we do not have all the information necessary to begin a proceeding with the Division of Tax Appeals, specifically:

Page 1 (4) - Taxpayer ID number (EIN number) is missing. Please write in the number and return the petition to me. A mailing label to my attention is also enclosed for your convenience.

In addition, please indicate if you are signing the petition as an officer of the corporation and your title.

Pursuant to the Rules of Practice and Procedure of the Tax Appeals Tribunal, you are hereby allowed thirty (30) days from the date of this letter to resubmit the petition.

3. On August 10, 2006, the Division of Tax Appeals received from Robert Jones another copy of the petition with a new page one attached thereto. The new page one of the petition contained the taxpayer ID number as requested by the Division of Tax Appeals. However, there was no indication on the petition as to whether Mr. Jones was an officer of the corporation, and no power of attorney was attached.

4. On November 14, 2006, the Division of Tax Appeals issued a Notice of Intent to Dismiss Petition which stated as follows:

You are hereby notified of our intent to dismiss the petition in the above referenced matter.

Pursuant to § 3000.3(b)(7) of the Rules of Practice and Procedure of the Tax Appeals Tribunal, a petition shall contain a [sic] the signature of the petitioner or the petitioner's representative.

The petition was signed by Robert Jones, as designated representative. However, a properly executed power of attorney in favor of Robert Jones was not submitted.

Pursuant to § 3000.3(d) of the Rules of Practice and Procedure of the Tax Appeals Tribunal, we must dismiss the petition if you do not correct this deficiency within thirty days from the date of this Notice.

5. Attached to the Notice of Intent to Dismiss Petition was a letter, also dated November 14, 2006, from the Petition Intake, Review and Exception Unit of the Division of Tax Appeals to Robert Jones which stated, in relevant part, as follows:

The petition filed in this matter was signed by you, as designated representative, without a properly executed power of attorney. It appears you are not an officer of Narellan (Northeast), Inc. Thus, the petition does not appear to be signed by an officer of the corporation or duly authorized representative. A power of attorney has not been submitted with a signature from a present officer. Therefore, the petition is defective and must be dismissed if not corrected.

6. By letter dated November 13, 2006, Robert Jones responded to the Notice of Intent to Dismiss Petition. In the letter, Mr. Jones stated that he is no longer an officer of the corporation and that "the corporation no longer exists either as best as I can ascertain." He acknowledged that "the officers of a corporation become liable for the outstanding tax." He also stated that he understands "that I will become liable for the debt as a result of my divorce settlement agreement, a matter which I have also previously advised you."

Mr. Jones's letter did not include a power of attorney appointing him as the duly authorized representative of petitioner, and it did not provide any information as to the names or addresses of corporate officers. Moreover, the response letter contained no documentation

relative to the “divorce settlement” by which Mr. Jones assumed liability for the deficiency at issue in this matter.

7. By letter dated November 27, 2006, the Division of Taxation acknowledged receipt of the Notice of Intent to Dismiss Petition and stated that since the petition submitted did not include the required power of attorney, the Division of Taxation is in agreement with the proposed dismissal.

CONCLUSIONS OF LAW

A. Tax Law § 2008 provides that all proceedings in the Division of Tax Appeals shall be commenced by the filing of a petition with the Division of Tax Appeals protesting any written notice of the Division of Taxation which has advised the petitioner of a tax deficiency or other notice which gives a person the right to a hearing in the Division of Tax Appeals.

B. Tax Law § 2014(1) states that the Tax Appeals Tribunal may promulgate rules and regulations to permit a corporation to be represented by one of its officers or employees.

20 NYCRR 3000.2(a) provides that where a corporation files a petition, it may act through one of its officers or employees. The regulation further states that where the corporation acts through an employee, a power of attorney executed by a corporate officer must be filed.

C. 20 NYCRR 3000.3(b)(7) which relates to the form of a petition in the Division of Tax Appeals provides that the petition shall contain “the signature of the petitioner or the petitioner’s representative.”

D. 20 NYCRR 3000.3(d) provides as follows:

Failure to correct. (1) Where the petition filed by a petitioner is not in the form required by this section, 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 the petitioner an additional 30 days within which to file a

corrected petition with the supervising administrative law judge. The supervising administrative law judge shall then forward the corrected petition to the office of counsel pursuant to subdivision (c) of this section. For purposes of the time limitations, a corrected petition is deemed to have been filed at the time the original petition was filed.

(2) Where the petitioner fails to serve a corrected petition within the time prescribed in paragraph (1) of this subdivision, a supervising administrative law judge will issue a determination dismissing the petition.

E. Despite two notifications to Robert Jones that the petition was defective, i.e., the August 2, 2006 letter from the Petition Intake, Review and Exception Unit of the Division of Tax Appeals and the subsequent November 14, 2006 Notice of Intent to Dismiss Petition, which also included a letter of explanation, petitioner has failed to file a petition which complies with the provisions of 20 NYCRR 3000.2(a) and 3000.3(b)(7). If, as Mr. Jones states, he is not an officer or employee of the corporation, he is not permitted to file a petition on its behalf unless duly authorized by a corporate officer. Absent such authorization, it must be found that the petition filed by the corporation is defective. Despite having been given the opportunity to correct the petition, as required by 20 NYCRR 3000.3(d), petitioner has failed to serve a corrected petition within the time prescribed in the regulation (30 days from the date of the Notice of Intent to Dismiss Petition). Accordingly, as the regulation so provides, the petition must be dismissed.

F. The petition of Narellan (Northeast), Inc. is hereby dismissed.

DATED: Troy, New York
March 1, 2007

/s/ Brian L. Friedman
ADMINISTRATIVE LAW JUDGE