

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
SIR JAMES CABINETRY, INC. : ORDER
 : DTA NO. 823958
for Revision of a Determination or for Refund of Sales and :
Use Taxes under Articles 28 and 29 of the Tax Law for the :
Period March 1, 2007 through February 28, 2009. :

Petitioner, Sir James Cabinetry, Inc., filed a petition for revision of a determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period March 1, 2007 through February 28, 2009.

On January 4, 2011, the Division of Tax Appeals issued to petitioner a Notice of Intent to Dismiss Petition pursuant to 20 NYCRR 3000.9(a)(4)(i). The Division of Taxation, by Mark Volk, Esq. (John E. Matthews, Esq., of counsel), submitted an affidavit and exhibits, dated March 1, 2011, in support of dismissal. Petitioner, appearing by Kenneth A. Francis, EA, submitted a letter, dated March 14, 2011, in opposition to dismissal. Pursuant to 20 NYCRR 3000.5(d) and 3000.9(a)(4), the 90-day period for issuance of this order commenced on March 7, 2011, the date set by the Division of Tax Appeals for submissions by the parties. After due consideration of the documents submitted, Joseph W. Pinto, Jr., Administrative Law Judge, renders the following order.

ISSUE

Whether the Division of Tax Appeals lacks jurisdiction over the subject matter of the petition filed in this matter.

FINDINGS OF FACT

1. Petitioner, Sir James Cabinetry, Inc., filed a petition with the Division of Tax Appeals on November 2, 2010, protesting Notice of Determination L-033477590-5.¹ In its petition, petitioner asserted that the Notice of Determination was in error because it had timely filed all its sales and use tax returns for the period in issue, March 1, 2007 through February 28, 2009; that the Division of Taxation had made the determination of tax without examining or auditing its books and records; and that it had agreed to the erroneous determination because of bad advice.

2. Petitioner did not request a conciliation conference in the Bureau of Conciliation and Mediation Services (BCMS).

3. On January 4, 2011, the Division of Tax Appeals issued to petitioner a Notice of Intent to Dismiss the petition. The notice of intent explained this action as follows:

Pursuant to § 2006.4 of the Tax Law, a petition must be filed within ninety days from the date a statutory notice is issued.

The Notice of Determination appears to have been issued on April 5, 2010, but the petition was not filed until November 2, 2010 or two hundred eleven days later.

4. The notice protested by petitioner was notice number L-033477590-5, issued to Abdool Mandal. The identity of the taxpayer to whom the protested notice was issued was not readily discernible from the single page of the notice attached to the petition. However, the Division's submission of the entire notice in its response to the Notice of Intent to Dismiss clearly indicates

¹Petitioner provided the notice number on the front page of the petition as well, but did not attach a full copy of the notice to its petition even though it did not request a conference.

that the notice protested by petitioner was issued to Abdool Mandal at an address different from the address listed by petitioner on its petition.

CONCLUSIONS OF LAW

A. The Division of Tax Appeals is an adjudicatory body of limited jurisdiction; its powers are limited to those conferred by its authorizing statute (*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 Tribunal*, 151 Misc 2d 326, 573 NYS2d 140 [1991]).

Accordingly, a party to a proceeding cannot confer jurisdiction on the Division of Tax Appeals to decide matters outside the scope of its authority (*see Strina v. Troiano*, 119 AD2d 566, 500 NYS2d 736 [1986] [subject matter jurisdiction cannot be conferred by consent or stipulation of the parties, and a defect in subject matter jurisdiction cannot be waived]).

B. Tax Law § 2008(1) provides:

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, 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 in the division of tax appeals under this chapter or other law.

C. In this instance, petitioner has protested a Notice of Determination that was not issued to it and that asserted additional sales and use tax due from another, distinctly separate, taxpayer. The Notice of Determination issued to Abdool Mandal (L-033477590-5) made it clear that it was separate and distinct from any notice issued to the business “to which this notice relates.” Simply stated, notice number L-033477590-5 did not confer a right to a hearing on petitioner. (Tax Law § 2008[1]; 20 NYCRR 3000.1[k].)

D. The petition of Sir James Cabinetry, Inc. is dismissed.

DATED:Troy, New York
May 12, 2011

/s/ Joseph W. Pinto, Jr.
ADMINISTRATIVE LAW JUDGE