

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

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In the Matter of the Petition	:	
of	:	
<b>THOMAS CIMAGLIA</b>	:	DECISION
	:	DTA NO. 831421
for Redetermination of Deficiencies or for Refund of	:	
Sales and Use Taxes under Articles 28 and 29 of the	:	
Tax Law for the Period 2023.	:	

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Petitioner, Thomas Cimaglia, filed an exception to the determination of the Supervising Administrative Law Judge issued on September 5, 2024. Petitioner appeared pro se.

Petitioner did not file a brief in support of the exception. Oral argument was not requested. The six-month period for issuance of this decision began on October 3, 2024, the date that petitioner's exception was received.

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

### ***ISSUE***

Whether the Supervising Administrative Law Judge properly dismissed the petition.

### ***FINDINGS OF FACT***

We find the following facts.<sup>1</sup>

1. Petitioner, Thomas Cigmalia, filed a petition that was received by the Division of Tax Appeals on September 18, 2023, in protest of a Refund Claim Determination Notice

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<sup>1</sup> Official notice is being taken of the contents of the Division of Tax Appeals file in this matter pursuant to the State Administrative Procedure Act (SAPA) § 306 (4), which provides that "official notice may be taken of all facts of which judicial notice could be taken and of other facts within the specialized knowledge of the agency" (*see Matter of Lawson*, Tax Appeals Tribunal, October 4, 2001).

(Notice) (audit case ID X-191354559). The Notice was issued to Lisa A. Cimaglia and denied a refund claimed in the amount of \$1,454.79.

2. The petition did not include an appropriate statutory notice in petitioner's name. Rather, the petition included the Notice issued to Lisa A. Cimaglia on September 1, 2023. Under the heading "Reason(s) for Dispute" on the petition form, Mr. Cimaglia indicates that he received a bill from the Division regarding a recreational vehicle that petitioner sold to a dealership in Connecticut as a trade-in for a new vehicle. Mr. Cimaglia challenged the denial of the claimed refund of sales tax.

3. On October 30, 2023, the Division of Tax Appeals sent a letter to petitioner identifying the items missing from the petition and advising that failure to correct it within 30 days may result in a dismissal. The letter to petitioner indicated that the appropriate notice issued in petitioner's name was missing and that the petition did not include a taxpayer ID in Section II of the petition. The letter also provided petitioner with the name and telephone number of a Division of Taxation employee to contact if petitioner needed to obtain a copy of the statutory notice. The letter was sent to petitioner at the same address as listed on the petition.

4. Petitioner did not cure the deficiencies in the petition.

5. On September 5, 2024, the Supervising Administrative Law Judge issued a determination dismissing the petition with prejudice.

***THE DETERMINATION OF THE SUPERVISING ADMINISTRATIVE LAW JUDGE***

The Supervising Administrative Law Judge found that the petition did not include or identify a statutory notice in petitioner's name, nor did it include petitioner's taxpayer ID number as required by Tax Appeals Tribunal's Rules of Practice and Procedure (Rules). The Supervising Administrative Law Judge further observed that petitioner failed to correct such

defects despite having been requested to do so. Accordingly, the Supervising Administrative Law Judge dismissed the petition with prejudice.

### ***ARGUMENTS ON EXCEPTION***

The only argument petitioner raises on exception is that petitioner never received the letter from the Division of Tax Appeals dated October 30, 2023, requesting more information. The only issue on exception is whether the petition was properly filed with the Division of Tax Appeals pursuant to 20 NYCRR 3000 et. seq.

### ***OPINION***

Pursuant to Tax Law § 2000, the Division of Tax Appeals is “responsible for providing the public with a just system of resolving controversies with [the Division of Taxation] and to ensure that the elements of due process are present with regard to such resolution of controversies” (*Matter of Richardson*, Tax Appeals Tribunal, November 17, 2022, citing Tax Law § 2000). 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 hearing is specifically provided for, modified or denied by another provision of this chapter” (*Matter of Bokaer*, Tax Appeals Tribunal, December 5, 2024, citing Tax Law § 2006 [4]).

Pursuant to 20 NYCRR 3000.3 (a), all proceedings in the Division of Tax Appeals must be commenced by the filing of a petition. 20 NYCRR 3000.3 (b) sets forth the required information that must be included in the petition. Pursuant to 20 NYCRR 3000.3 (b) (1), the petition shall contain petitioner’s *name*, address and telephone number (emphasis added). Petitioner is required to provide a taxpayer identification number (*see* 20 NYCRR 3000.3 [b] [10]). Petitioner is required to provide a copy of the statutory notice being protested along with the petition (*see* 20 NYCRR 3000.3 [b] [8]). The regulations further provide that when a

petition is not in proper form, and petitioner fails to provide a corrected petition within the time allowed, the Supervising Administrative Law Judge “will issue a determination dismissing the petition” (*Matter of Leslie*, Tax Appeals Tribunal, April 22, 2015 citing 20 NYCRR 3000.3 [d] [2]).

Here, on the petition form, the name of petitioner was listed as “Thomas Cigmalia,” whereas the Notice was issued to “Lisa A. Cimaglia.” Further, petitioner failed to include the taxpayer ID in the petition. On October 30, 2023, the Division of Tax Appeals made a written request to petitioner for his taxpayer identification number and a copy of the statutory notice issued in his name. Petitioner failed to cure the deficiencies in the petition within the timeframe provided for under our Rules (*see* 20 NYCRR 3000.3 [d] [2]). Accordingly, the Supervising Administrative Law Judge issued a determination on September 5, 2024, dismissing the petition with prejudice (*id.*).

Under our Rules, a petition must include a copy of the statutory notice being protested (*see* 20 NYCRR 3000.3 [b] [8]). Based on the foregoing, we find that the Supervising Administrative Law Judge properly dismissed the petition.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Thomas Cimaglia is denied;
2. The determination of the Supervising Administrative Law Judge is affirmed; and
3. The petition of Thomas Cimaglia is dismissed, with prejudice.

DATED: Albany, New York  
April 3, 2025

/s/ Jonathan S. Kaiman  
Jonathan S. Kaiman  
President

/s/ Cynthia M. Monaco  
Cynthia M. Monaco  
Commissioner

/s/ Kevin A. Cahill  
Kevin A. Cahill  
Commissioner