

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
PARIS BAGUETTE AMERICA, INC. : DETERMINATION
for Revision of a Determination or for Refund of Highway : DTA NO. 828493
Use Taxes under Article 21 of the Tax Law for the Period
ending April 30, 2017. :

Petitioner, Paris Baguette America, Inc., filed a petition for revision of a determination or for refund of highway use tax under article 21 of the Tax Law for the period ending April 30, 2017.

On November 30, 2018, the Division of Tax Appeals issued to petitioner a notice of intent to dismiss petition pursuant to 20 NYCRR 3000.9 (a) (4). Due to a mailing error, the Division of Tax Appeals reissued the notice of intent to dismiss petition on January 9, 2019. The parties were given until February 8, 2019 to respond. The Division of Taxation, appearing by Amanda Hiller, Esq. (Brian Evans, Esq., of counsel), submitted a letter in support of the dismissal. Petitioner, appearing pro se, did not submit a response by February 8, 2019, which date triggered the 90-day deadline for issuance of this determination. After due consideration of the documents submitted, Herbert M. Friedman, Jr., Supervising Administrative Law Judge, renders the following determination.

FINDINGS OF FACT

1. Petitioner, Paris Baguette America, Inc, filed a petition that was received by the Division of Tax Appeals on November 28, 2017. The envelope containing the petition bears a

United States Postal Service (USPS) label dated November 22, 2017.

2. The petition lists Dylan Ahn as petitioner's representative. The petition identifies Mr. Ahn as an employee of petitioner and Mr. Ahn signed the petition on behalf of petitioner. An executed Division of Tax Appeals power of attorney form did not accompany the petition, and as such, it is unclear if Mr. Ahn is qualified to sign the petition or appear on behalf of petitioner.

3. The petition protests a notice of determination bearing assessment number L-047420081, dated as issued to petitioner on November 1, 2017.

4. On December 5, 2017, the Division of Tax Appeals sent a letter to the attention of Mr. Ahn, advising him that the petition was not complete in that the tax article and the power of attorney form were not included. The letter further explained that failure to correct it within 30 days may result in a dismissal.

5. Petitioner did not cure the deficiencies in the petition, as requested.

6. A paralegal for the Division of Tax Appeals spoke with Mr. Ahn on March 9, 2018, to discuss the petition. Mr. Ahn indicated that the assessment had been paid in full, thus, petitioner did not wish to pursue the matter at the Division of Tax Appeals. The appropriate withdrawal of petition form was provided to Mr. Ahn via facsimile; however, a completed withdrawal form was not returned to the Division of Tax Appeals.

7. On November 30, 2018, Herbert M. Friedman, Jr., Supervising Administrative Law Judge of the Division of Tax Appeals, issued to petitioner a notice of intent to dismiss petition (notice of intent). The notice of intent stated, in sum, that the petition filed was not in proper form, as an executed power of attorney did not accompany the petition.

8. The November 30, 2018 notice of intent was reissued on January 9, 2019, following a

mailing error. Both parties were given until February 8, 2019 to respond.

9. In response to the notice of intent, the Division of Taxation (Division) submitted a letter dated January 31, 2019 stating:

“[t]he Division is in receipt of the Notice of Intent to Dismiss the petition in the above referenced matter. As the petition submitted was not in proper form, as required by 20 NYCRR 3000.3 and Tax Law § 2008, a duly executed power of attorney did not accompany the Petition which was signed by Petitioner’s employee who is not an officer and who does not satisfy the requirements of a qualified representative under 20 NYCRR 3000.2, the Division is in agreement with the proposed dismissal.”

10. The notice of intent issued to petitioner via certified mail was returned to the Division of Tax Appeals from USPS as “unclaimed” on March 7, 2019. The notice of intent was remailed to petitioner via regular mail on March 7, 2019.

11. Petitioner has not submitted a response to the notice of intent.

CONCLUSIONS OF LAW

A. A proceeding in the Division of Tax Appeals is commenced by filing 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, a denial of a refund . . . or any other notice which gives a person the right to a hearing” (Tax Law § 2008 [1]), pursuant to such rules and regulations as may be provided by the Tax Appeals Tribunal (Tax Law § 2006 [4]).

B. Pursuant to 20 NYCRR 3000.3 (b) (7), a petition shall contain “the signature of the petitioner or the petitioner’s representative.”

C. Where a petition is filed by a corporation, it may act through one of its officers or employees. When a corporation acts through an employee, a power of attorney form must be filed (20 NYCRR 3000.2 [a]).

D. The Tax Appeals Tribunal's Rules of Practice and Procedure requires a petition to contain an original or a legible copy of the power of attorney (20 NYCRR 3000.3 [b] [9]).

E. Where a filed petition is not in proper form, the supervising administrative law judge shall provide petitioner with a statement indicating the requirements with which the petition does not comply, and allow petitioner an additional 30 days to file a corrected petition with the supervising administrative law judge (20 NYCRR 3000.3 [d] [1]).

F. Where, upon notice, the petitioner fails to correct the petition within the time prescribed, the supervising administrative law judge will issue a determination dismissing the petition (20 NYCRR 3000.3 [d] [2]).

G. The petition in this matter was signed by an employee of petitioner, without the requisite authority or a proper power of attorney attached. The Supervising Administrative Law Judge granted petitioner an opportunity to correct the petition pursuant to 20 NYCRR 3000.3 (d); however, petitioner did not respond. Despite indicating that the petition would be withdrawn, the Division of Tax Appeals has not received a withdrawal form from petitioner. As petitioner failed to correct the petition within the time period allowed, and the petition did not include a required power of attorney, the petition must be dismissed (*see* Tax Law § 2008; 20 NYCRR 3000.3 [d]).

H. IT IS ORDERED, on the supervising administrative law judge's own motion, that the petition be, and it is hereby, dismissed with prejudice as of this date.

DATED: Albany, New York
April 25, 2019

/s/ Herbert M. Friedman, Jr.
SUPERVISING ADMINISTRATIVE LAW JUDGE