

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
DMY ENTERPRISES, INC.	:	DETERMINATION DTA NO. 829690
for Redetermination of a Deficiency or for Refund of Corporation Franchise Tax under Article 9-A of the Tax Law for the period 2000 through 2007 and 2011.	:	

Petitioner, DMY Enterprises, Inc., filed a petition for redetermination of a deficiency or for refund of corporation franchise tax under article 9-A of the Tax Law for the period 2000 through 2007 and 2011. On November 17, 2020, the Division of Tax Appeals issued to petitioner a notice of intent to dismiss petition pursuant to 20 NYCRR 3000.9 (a) (4) on the ground that the Division of Tax Appeals lacks jurisdiction over the petition. The Division of Taxation, appearing by Amanda Hiller, Esq. (Robert J. Tompkins, Esq., of counsel), submitted a letter dated December 9, 2020, in support of dismissal. Petitioner, acting through its president, Dorothy Young, did not submit a response by December 17, 2020, which date triggered the 90-day deadline for issuance of this determination. With good cause, the deadline for the issuance of the determination was extended consistent with Tax Law 2010 (3). After due consideration of the documents submitted, Herbert M. Friedman, Jr., Supervising Administrative Law Judge, renders the following determination.

ISSUE

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

FINDINGS OF FACT

1. Petitioner, DMY Enterprises, Inc., filed a petition with the Division of Tax Appeals on October 26, 2019.

2. The petition included a consolidated statement of tax liabilities, issued by the Department of Taxation and Finance on June 28, 2019, pertaining to assessment numbers L-049668182, L-049668183, L-049668184, L-049668185, L-049668186, L-049756477, L-049805560, L-049756478, L-049805561, L-049756479, L-030504469, L-033465708, L-033465709, L-033465710, L-032767847, L-032802616, and L-050142208.

3. The petition also included a warrant, ID number E-016412404-W006-5, issued by the Department of Taxation and Finance on July 25, 2019. The warrant bears assessment numbers L-049668182, L-049668183, L-049668184, L-049668185, L-049668186, L-049756477, L-049805560, L-049756478, L-049805561, and L-049756479.

4. Petitioner did not attach a copy of a conciliation order.

5. On February 27, 2020, the Division of Tax Appeals sent a letter to petitioner detailing the items missing from the petition and that failure to correct it within 30 days may result in a dismissal. In particular, the identified missing items included a statutory notice or conciliation order.

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

7. On November 17, 2020, Supervising Administrative Law Judge Herbert M. Friedman, Jr., of the Division of Tax Appeals issued a notice of intent to dismiss petition (notice of intent) to petitioner. The notice of intent stated, in sum, that the petition did not identify or include a

statutory notice and that the Division of Tax Appeals was without jurisdiction to consider the merits of the petition.

8. In response to the notice of intent to dismiss, the Division of Taxation's (Division's) representative submitted a letter on December 9, 2020 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, the petitioner neglected to include a copy of the statutory notice or conciliation order issued to petitioner, the Division is in agreement with the proposed dismissal.”

9. Petitioner did not submit a response to the notice of intent.

CONCLUSIONS OF LAW

A. The Division of Tax Appeals is a forum of limited jurisdiction (Tax Law § 2008; *Matter of Scharff*, Tax Appeals Tribunal, October 4, 1990, *revd on other grounds sub nom New York State Department of Taxation and Fin. v Tax Appeals Trib.*, 151 Misc 2d 326 [Sup Ct, Albany County 1991, Keniry, J.]). Its power to adjudicate disputes is exclusively statutory (*id.*). 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” (Tax Law § 2006 [4]).

Tax Law § 2008 limits the jurisdiction of the Division of Tax Appeals to matters

“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, a cancellation, revocation or suspension of a license, permit or registration, a denial of an application for a license, permit or registration 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.”

B. Pursuant to 20 NYCRR 3000.3 (b) (8), a petition shall contain, “for the sole purpose of establishing the timeliness of a petition, a legible copy of the order of the conciliation conferee

