

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
HAMBURG FLOOR COVERING, INC. : DETERMINATION
for Revision of a Determination or for Refund of Sales and : DTA NO. 829893
Use Taxes under Articles 28 and 29 of the Tax Law for the :
Periods September 1, 2019 through November 30, 2019. :

Petitioner, Hamburg Floor Covering., Inc., filed a petition for the redetermination of a deficiency or for refund of sales and use taxes under articles 28 and 29 of the Tax Law for the periods September 1, 2019 through November 30, 2019. On March 15, 2021, the Division of Tax Appeals issued to petitioner a notice of intent to dismiss petition pursuant to 20 NYCRR 3000.9 (a) (4). The Division of Taxation, by Amanda Hiller, Esq. (Patricia Heer, Esq., of counsel), submitted a letter and documentation in support of the dismissal. Petitioner, appearing by Todd Czarcinski, its president, did not submit a response by April 14, 2021, 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.

ISSUE

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

FINDINGS OF FACT

1. Petitioner, Hamburg Floor Covering, Inc., filed a petition that was received by the Division of Tax Appeals on March 16, 2020. The envelope containing the petition does not bear a United States Postal Service postmark indicating when the petition was mailed.

2. The petition, which was unsigned, challenged a notice bearing assessment number L-051138143 that was issued by the Department of Taxation and Finance on January 29, 2020. A copy of the notice was not attached to the petition.

3. The petition does not reference any other notice.

4. On May 29, 2020, a written request was made to petitioner by the Division of Tax Appeals to provide (i) a copy of the statutory notice at issue; (ii) to indicate whether a conciliation conference with the Bureau of Conciliation and Mediation Services (BCMS) was requested and/or provide a copy of the conciliation order; and (iii) a signature for the petition.

5. On June 9, 2020, the Division of Tax Appeals received a corrected petition that was signed by Todd Czarcinski, petitioner's president. The corrected petition also indicated that a conciliation conference was not requested with BCMS, and attached a notice and demand for payment with number L-051138143. No other notice was attached to the corrected petition.

6. On March 15, 2021, the Division of Tax Appeals issued to petitioner a notice of intent to dismiss petition. The notice stated, in sum, that as the petition had been filed in protest of a notice and demand, it appeared that the Division of Tax Appeals was without jurisdiction to consider the merits of the petition.

7. In response to the notice of intent to dismiss petition, the Division of Taxation's (Division's) representative submitted a letter on April 13, 2021 stating:

“[t]he Division is in receipt of the Notice of Intent to Dismiss the petition in the above referenced matter. Notices and Demand issued on or after December 1, 2004, do not provide for a right to a hearing prior to payment of the assessment. Therefore, the Division is in agreement with the proposed dismissal.”

8. Petitioner did not submit a response to the notice of intent to dismiss the petition.

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 Tribunal*, 151 Misc 2d 326 [Sup Ct, Albany County 1991, Keniry, J.]). Its power to adjudicate disputes is exclusively statutory (*id.*). Accordingly, absent legislative action, this forum cannot extend its authority to disputes that have not been specifically delegated to it (*see Matter of Hooper*, Tax Appeals Tribunal, July 1, 2010).

B. 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]) unless such right is specifically modified or denied by another provision of this chapter (*see* Tax Law § 2006 [4]; 20 NYCRR 3000.9 [a]).

C. The notice and demand protested by petitioner here does not give rise to hearing rights (*see* Tax Law § 173-a [3]). Further, petitioner has failed to identify any other statutory notice giving rise to hearing rights.

D. As a notice and demand is insufficient to confer jurisdiction upon the Division of Tax Appeals to consider the merits of the petition filed, dismissal is warranted.

E. The petition of Hamburg Floor Covering, Inc., is dismissed.

DATED: Albany, New York
July 08, 2021

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