

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition :  
of :  
**COOLER RUNNINGS JAMAICAN** :  
**RESTAURANT, LLC** : DETERMINATION  
: DTA NO. 830184  
for Revision of a Determination or for Refund of Sales and :  
Use Taxes under Articles 28 and 29 of the Tax Law for the :  
Periods Ended August 31, 2014 through February 28, 2017. :  
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Petitioner, Cooler Runnings Jamaican Restaurant, LLC, 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 periods ended August 31, 2014 through February 28, 2017. On July 23, 2021, 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 grounds that the petition was insufficient and that the Division of Tax Appeals lacks jurisdiction over this matter. The Division of Taxation, appearing by Amanda Hiller, Esq. (Mary Humphrey, of counsel), submitted a letter in support of the dismissal. Petitioner, appearing by Dave Britton Esq., did not submit a response by August 23, 2021, which date triggered the 90-day deadline for issuance of this determination.<sup>1</sup> After due consideration of the documents submitted, Herbert M. Friedman, Jr., Supervising Administrative Law Judge, renders the following determination.

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<sup>1</sup> Mr. Britton submitted a letter on petitioner's behalf that was postmarked August 24, 2021, after the deadline established for a response. As a result, that letter has not been considered in this determination.

***ISSUE***

Whether the petition should be dismissed as the Division of Tax Appeals lacks jurisdiction.

***FINDINGS OF FACT***

1. On July 27, 2017, petitioner, Cooler Runnings Jamaican Restaurant, LLC, by its owner Windel Cargill, signed a consent to a statement of proposed audit change for sales and use taxes for the period June 1, 2014 through February 28, 2017 (period in issue). The consent specifically waived the right to a hearing to contest the validity and amount of the tax, interest and penalty consented to for the period in issue.

2. A notice and demand for payment of tax due bearing assessment number L-047046684 was issued by the Department of Taxation and Finance on September 15, 2017 for the period in issue.

3. Petitioner filed a petition that was received by the Division of Tax Appeals on December 14, 2020. The envelope containing the petition does not bear a United States Postal Service postmark indicating when the petition was mailed.

4. The petition challenges notice and demand notice number L-047046684. Petitioner asserts that the calculation of interest made on the assessment of sales tax owed for the periods June 1, 2014 through February 28, 2017 failed to make adjustments as payments were made and applied. Petitioner further asserts that the interest represents over 33% of the amount assessed and payment were made initially towards the said amount assessed. It does not challenge any other notice.

### **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.* at 332). 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]).

B. Pursuant to subdivision eighteenth of section 171 of the Tax Law, the Commissioner of Taxation and Finance shall:

“Have authority to enter into a written agreement with any person, relating to the liability of such person (or of the person for whom he acts) in respect of any tax or fee imposed by the tax law or by a law enacted pursuant to the authority of the tax law or article two-E of the general city law, *which agreement shall be final and conclusive*, and except upon a showing of fraud, malfeasance, or misrepresentation of a material fact: (a) the case shall not be reopened as to the matters agreed upon or the agreement modified, by any officer, employee, or agent of this state, and (b) in any suit, action, or proceeding, such agreement, or any determination, assessment, collection, payment, cancellation, abatement, refund or credit made in accordance therewith, shall not be annulled, modified, set aside or disregarded . . . “ (emphasis added).

The consent at issue was an agreement entered into by the Division and petitioner pursuant to the authority of subdivision eighteenth of section 171 of the Tax Law. Moreover, petitioner has not alleged fraud, malfeasance, or misrepresentation of a material fact that might set aside the consent. Thus, petitioner is precluded from challenging the agreement (*see Matter of Javed*, Tax Appeals Tribunal, October 6, 2011; *Matter of BAP Appliance Corp.*, Tax Appeals Tribunal, May 28, 1992).

