

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
CYCLOMETRIX, LLC : DETERMINATION
for Revision of a Determination or for Refund of Sales and : DTA NO. 831251
Use Taxes under Articles 28 and 29 of the Tax Law for the :
Period March 1, 2021 through December 31, 2021. :

Petitioner, Cyclometrix, 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 period March 1, 2021 through December 31, 2021.

On June 14, 2024, 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, appearing by Amanda Hiller, Esq. (Salvatore Costanza, Esq., of counsel), submitted a letter in support of the dismissal. Petitioner, appearing by Sirocco Wilson, General Partner, did not submit a response by July 15, 2024, which date began the 90-day period for the issuance of this determination. After due consideration of the documents submitted, Donna M. Gardiner, Supervising Administrative Law Judge, renders the following determination.

ISSUE

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

FINDINGS OF FACT

1. Petitioner, Cyclometrix, LLC, filed a petition with the Division of Tax Appeals on March 2, 2023.

2. The petition included a copy of a consolidated statement of tax liabilities that the Division of Taxation (Division) issued to petitioner that pertained to assessment numbers L-055335595, L-054267448, L-056812618, and L-055552101.¹

3. A statutory notice or conciliation order was not attached to the petition for the assessments referenced in finding of fact 2.

4. On July 28, 2023, the Division of Tax Appeals made a written request to petitioner for copies of the statutory notices.

5. Petitioner did not provide them.

6. On June 14, 2024, the Division of Tax Appeals issued to petitioner a notice of intent to dismiss petition. The notice stated, in sum, that the Division of Tax Appeals lacked jurisdiction to review the merits of the petition because it was not in proper form.

7. On July 2, 2024, in response to the notice of intent to dismiss petition, the Division of Taxation (Division) submitted a letter that stated:

“[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 [sic]. The petitioner neglected to include a copy of the statutory notice or conciliation order issued to petitioner. Accordingly, the Division is in agreement with the proposed dismissal.”

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

CONCLUSIONS OF LAW

A. The Division of Tax Appeals is a forum of limited jurisdiction (Tax Law § 2008;

¹ The petition appears to protest seven notices with assessment numbers: L-055335595, L-054267448, L-056812618, L-055552101, L-057691402, L-057691403, and L-057691404. The petition has been separated and assessment numbers L-057691402, L-057691403 and L-057691404, issued to a responsible person, have been assigned DTA number 831348 and will proceed in due course. The remaining assessment numbers: L-055335595, L-054267448, L-056812618 and L-055552101 are addressed herein.

Matter of Scharff, Tax Appeals Tribunal, October 4, 1990, *revd on other grounds sub nom Matter of New York State Dept. of Taxation & Fin. v Tax Appeals Trib.*, 151 Misc 2d 326 [Sup Ct, Albany County 1991]). 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 a hearing is specifically provided for, modified or denied by another provision of this chapter” (Tax Law § 2006 [4]).

All proceedings in the Division of Tax Appeals “shall be commenced by the filing of 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 credit application . . . or any other notice which gives a person the right to a hearing” (Tax Law § 2008 [1]).

B. Pursuant to 20 NYCRR 3000.3 (b) (8), a petition shall contain, “for the sole purpose of establishing the timeliness of the petition, a legible copy of the order of the conciliation conferee if issued; if no such order was previously issued, a legible copy of any other statutory notice being protested.” In this case, no statutory notices were attached.

C. On July 28, 2023, the Division of Tax Appeals made a written request to petitioner for copies of the statutory notices. Petitioner failed to provide them. Where petitioner fails to correct the petition within the time prescribed, the supervising administrative law judge will issue a determination dismissing the petition (*see* 20 NYCRR 3000.3 [d] [2]). A notice of intent to dismiss petition was issued on June 14, 2024. Petitioner failed to respond.

As petitioner failed to attach a notice contemplated by Tax Law § 2008, the Division of Tax Appeals lacks jurisdiction over the subject matter of the petition and, therefore, dismissal is warranted (*see* 20 NYCRR 3000.3 [d] [2]; 3000.9 [a] [4] [i]; *see also Matter of Richardson*, Tax

Appeals Tribunal, November 17, 2022).

D. While the petition included a copy of a consolidated statement of tax liabilities, this is not a statutory notice that offers hearing rights at the Division of Tax Appeals (*Matter of Mostovoi*, Tax Appeals Tribunal, May 23, 2019 [wherein the Tax Appeals Tribunal held that a consolidated statement of tax liabilities does not qualify as a statutory notice because such statement reports a taxpayer's past-due tax liabilities]).

E. It is ORDERED, on the motion of supervising administrative law judge, that the petition is dismissed with prejudice as of this date.

DATED: Albany, New York
October 3, 2024

/s/ Donna M. Gardiner
SUPERVISING ADMINISTRATIVE LAW JUDGE