

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petitions	:	
of	:	
KJSS CORP.	:	ORDER
	:	DTA NOS. 829568
for Revision of Determinations or for Refund of New York	:	AND 829827
State Sales and Use Taxes Under Articles 28 and 29 of the Tax	:	
Law for the Periods March 1, 2015 through November 30,	:	
2017.	:	

Petitioner, KJSS Corp., filed petitions for revision of determinations or for refund of New York State sales and use taxes under articles 28 and 29 of the Tax Law for the periods March 1, 2015 through November 30, 2017.

Petitioner, appearing by Tony Lam, its president, brought a motion on August 27, 2021 pursuant to 20 NYCRR 3000.8 seeking an order to recuse the administrative law judge assigned to the case. The Division of Taxation did not respond to the motion. Based upon the motion papers and documents submitted therewith, and all pleadings and documents submitted in connection with this matter, Herbert M. Friedman, Jr., Supervising Administrative Law Judge, renders the following order.

ISSUE

Whether the administrative law judge assigned to these matters should be recused.

FINDINGS OF FACT

1. On September 24, 2019, petitioner, KJSS Corp., filed a petition with the Division of Tax Appeals contesting notice of determination number L-049240275, which asserted penalties

under article 28 for the period March 1, 2015 through November 30, 2017. That matter was given DTA number 829568 and assigned to Administrative Law Judge Winifred M. Maloney.

2. On January 7, 2020, petitioner filed a petition with the Division of Tax Appeals contesting notice of determination number L-049482544, which asserted sales and use taxes for the period March 1, 2015 through November 30, 2017. That matter was given DTA number 829827 and assigned to Administrative Law Judge Winifred M. Maloney.

3. The two matters have been associated for a hearing to be held on September 9, 2021.

4. On August 27, 2021, petitioner filed the instant motion seeking the recusal of Administrative Law Judge Maloney. Petitioner's motion consists of an unsworn letter from its president, Tony Lam, and a photocopy of State Administrative Procedure Act § 301. In his letter, Mr. Lam alleges that the administrative law judge has a "heavy bias and prejudice" against petitioner.

5. Petitioner's motion does not contain an affidavit or other evidence in support.

CONCLUSIONS OF LAW

A. Section 3000.8 (a) of the Rules of Practice and Procedure of the Tax Appeals Tribunal provides in part that:

"(1) Either party may move before the supervising administrative law judge to recuse the administrative law judge or presiding officer assigned to its case on the basis that the administrative law judge or presiding officer has a personal bias with respect to the case or that the administrative law judge or presiding officer is otherwise disqualified to hear and decide the case.

(2) The motion to recuse the administrative law judge or presiding officer must be accompanied by an affidavit setting forth the facts upon which the assertion of bias or other disqualification is based. . . ."

B. In the instant case, petitioner fails to meet the fundamental requirement of an accompanying affidavit with its motion. Without the required affidavit, petitioner's motion lacks

the evidentiary basis for alleged facts supporting the proposed recusal. Bald, conclusory assertions of bias in an unsworn letter are insufficient. As a result, petitioner's motion does not comply with 20 NYCRR 3000.8 and must be denied.

C. Petitioner's motion for recusal of the administrative law judge is denied.

DATED: Albany, New York
September 2, 2021

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