

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
RAYMOND MORRISON	:	DECISION
	:	DTA NO. 819105
for Redetermination of a Deficiency/Revision of a	:	
Determination or for Refund of Sales and Use Taxes	:	
under Article(s) 28 and 29 of the Tax Law for the	:	
Period September 1, 1997 through May 31, 1999.	:	

Petitioner Raymond Morrison d/b/a Morrison Auto Repair, 2303 Albemarle Road, Brooklyn, New York 11210, filed an exception to the determination of the Administrative Law Judge issued on September 30, 2002. Petitioner appeared by Warren A. Atkinson, CPA. The Division of Taxation appeared by Barbara G. Billet, Esq. (John E. Matthews, Esq., of counsel).

Petitioner did not file a brief in support of his exception. The Division of Taxation filed a brief in opposition and petitioner filed a reply brief. Oral argument was not requested.

After reviewing the entire record in this matter, the Tax Appeals Tribunal renders the following decision.

ISSUE

Whether the petition filed in this matter with the Division of Tax Appeals should be dismissed for its failure to comply with the requirements of section 3000.3(b)(5) of the Rules of Practice and Procedure of the Tax Appeals Tribunal.

FINDINGS OF FACT

We find the following facts.

Petitioner, Raymond Morrison, filed a petition with the Division of Tax Appeals on March 19, 2002.

On March 28, 2002, a letter was sent to petitioner by the Division of Tax Appeals advising petitioner that his petition did not contain any allegation of errors made by the Division of Taxation, as required, nor was the Power of Attorney form enclosed with the petition properly completed. Petitioner made no response to the March 28, 2002 letter.

On June 3, 2002, a letter was sent to petitioner requesting that petitioner provide the same information sought in the March 28, 2002 letter. Petitioner made no response to the June 3, 2002 letter.

On September 6, 2002, a Notice of Intent to Dismiss Petition was sent to petitioner. Said Notice was based on petitioner's failure to provide the information requested in the previous two letters to petitioner. Said Notice of Intent to Dismiss Petition and letter advised petitioner that he had 30 days within which to furnish the information requested or to submit comments on the proposed dismissal.

On September 30, 2002, Administrative Law Judge Daniel J. Ranalli issued an Order Dismissing Petition on the grounds that the petition filed by petitioner on or about March 19, 2002 did not contain separately numbered paragraphs stating, in clear and concise terms, each and every error which the petitioner alleges has been made by the Division of Taxation, together with a statement of the facts upon which the petitioner relies to establish each said error, as required by section 3000.3(b)(5) of the Rules of Practice and Procedure of the Tax Appeals Tribunal ("Tribunal").

On or about October 3, 2002, petitioner's representative submitted page 2 of the petition containing a statement of the alleged errors of the Division of Taxation.

ARGUMENTS ON EXCEPTION

On exception, petitioner argues that he should be entitled to a hearing on the merits of his petition.

In opposition, the Division requests that the Administrative Law Judge's order should be affirmed.

OPINION

Pursuant to section 3000.3(b) of our regulations, a petition filed with the Division of Tax Appeals must contain, among other items,

(5) separately numbered paragraphs stating, in clear and concise terms, each and every error which the petitioner alleges has been made by the division, bureau or unit (e.g. in issuing a notice of deficiency or in denying a refund application), together with a statement of the facts upon which the petitioner relies to establish each said error.

When the petition is not in the form required by section 3000.3(b), the petition shall be returned to the petitioner "together with a statement indicating the requirements with which the petitioner does not comply, and extend to the petitioner an additional 30 days within which to file a corrected petition with the supervising administrative law judge" (20 NYCRR 3000.3[d][1]). If the petitioner fails to timely file a corrected petition, the petition is to be dismissed (*see*, 20 NYCRR 3000.3[d][2]).

In this case, it is clear that the Notice of Intent to Dismiss Petition sent to petitioner on September 6, 2002 allowed petitioner 30 days from the date of that Notice to respond. However,

an order dismissing the petition was entered on September 30, 2002, or 24 days after the date of that Notice.

Based on the foregoing, we rescind the September 30, 2002 order of the Administrative Law Judge dismissing the petition filed in this matter, deem the material filed on October 3, 2002 to be included in petitioner's petition, and remand this proceeding to the Division of Tax Appeals for appropriate action on the petition.

Accordingly, it is ORDERED, ADJUDGED and DECREED that this matter be remanded to the Division of Tax Appeals for appropriate action.

DATED: Troy, New York
June 26, 2003

/s/Donald C. DeWitt

Donald C. DeWitt
President

/s/Carroll R. Jenkins

Carroll R. Jenkins
Commissioner