

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

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In the Matter of the Petition	:	
of	:	
<b>INAM U. SATTI</b>	:	DECISION
	:	DTA NO. 821388
for Revision of a Determination or for Refund of	:	
Sales and Use Tax under Articles 28 and 29 of the	:	
Tax Law for the Periods Ended August 31, 2001	:	
through November 30, 2003.	:	

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Petitioner Inam U. Satti filed an exception to the order of the Administrative Law Judge dismissing the petition issued July 6, 2007. Petitioner appeared by Kestenbaum & Mark (Richard S. Kestenbaum, Esq.). The Division of Taxation appeared by Daniel Smirlock, Esq. (John E. Matthews, Esq., of counsel).

Petitioner filed a brief in support of his exception. The Division of Taxation filed a letter in lieu of a formal brief in opposition. Petitioner's request for oral argument was denied.

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

***ISSUE***

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

***FINDINGS OF FACT***

We find the following facts.

The petition in this matter appears to challenge a Notice of Determination dated October 3, 2005 (L026122078-9) asserting tax in the amount of \$1,012,527.94 for tax years 2001, 2002 and 2003.

On January 12, 2007, a letter was sent by the Petition Intake Unit in the Division of Tax Appeals to petitioner's representative, Evan Metalios, Esq., advising him that the Notice of Determination included in the petition did not correspond with the Notice of Determination for assessment L026122078. Further, the letter stated that there was no statutory document for assessment L025984000 attached to the petition and the Conciliation Order Dismissing Request was for New York State and New York City Personal Income Tax for the year 2002. The Division of Tax Appeals did not receive a response. On March 29, 2007, a second request was sent to petitioner's representative giving him an additional 30 days to submit a corrected petition. Petitioner's representative did not respond. On May 8, 2007, a Notice of Intent to Dismiss Petition was sent to petitioner's representative giving him 30 days to respond with the corrected petition. Petitioner's representative did not respond to the notice.

On July 6, 2007, the Administrative Law Judge Daniel J. Ranalli issued an Order Dismissing Petition for lack of jurisdiction. This exception followed.

***OPINION***

We affirm the order of the Administrative Law Judge.

The Tax Law provides with regard to sales and use tax that:

After ninety days from the mailing of a notice of determination, such notice shall be an assessment of the amount of tax specified in such notice, together with the interest, additions to tax and penalties stated in such notice, except only for any such tax or other amounts as to which the taxpayer has within such ninety day period applied to the Division of Tax Appeals for a hearing (Tax Law § 1138[a]).

In the alternative, a taxpayer may also, within the same 90 day period, file a request for a conciliation conference with the Bureau of Conciliation and Mediation Services (“BCMS”) (*see*, Tax Law §§ 170[3-a], 2006[4]; 20 NYCRR 4000.3[c]). If a taxpayer first elects to file a request for conciliation with BCMS, the conciliation orders are binding upon the Department and the taxpayer unless a petition is filed with the Division of Tax Appeals within 90 days after the conciliation order is issued (*see*, Tax Law § 170[3-a][e]; 20 NYCRR 4000.3[c], 4000.6[b]).

A proceeding in the Division of Tax Appeals is commenced by filing a petition challenging a statutory notice pursuant to such rules and regulations as may be provided by the Tax Appeals Tribunal (Tax Law §§ 2000, 2006[4]; 20 NYCRR 3000.1[k]). The rules of the Tax Appeals Tribunal for the Division of Tax Appeals require where a conciliation order has been issued, it must be attached to a petition for purposes of determining whether the petition is timely filed (20 NYCRR 3000.3[b][8]).

In this case, the incorrect conciliation order was attached to the petition. Petitioner’s representative was notified that the petition was not in proper format in that it did not include a notice of determination that corresponded with assessment L026122078 and there was no statutory document attached to the petition for assessment L025984000. Petitioner’s representative was given 30 days to provide the corrected documents. A second request letter was sent to petitioner’s representative giving an additional 30 days to provide the corrected petition. Petitioner’s representative did not respond to the notice or provide the requested copy that would enable the Division of Tax Appeals to determine the timeliness of the petition.

Consequently, the Division of Tax Appeals is without jurisdiction to hear and determine this matter.

Accordingly, it is ORDERED, ADJUDGED, and DECREED that:

1. The exception of Inam U. Satti is dismissed;
2. The order of the Administrative Law Judge is affirmed; and
3. The petition of Inam U. Satti is dismissed with prejudice.

DATED: Troy, New York  
March 27, 2008

/s/ Charles H. Nesbitt  
Charles H. Nesbitt  
President

/s/ Carroll R. Jenkins  
Carroll R. Jenkins  
Commissioner

/s/ Robert J. McDermott  
Robert J. McDermott  
Commissioner