

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
CHUCK REALTY CORPORATION	:	DECISION
		DTA NO. 824156
for Redetermination of a Deficiency or for Refund	:	
of Corporate Franchise Tax under Article 9-A of		
the Tax Law for the Year 2003.	:	

Petitioner, Chuck Realty Corporation, filed an exception to the Order Dismissing Petition from the Chief Administrative Law Judge issued on July 06, 2011. Petitioner appeared by James D. Cardillo, Esq. and the Division of Taxation appeared by Mark Volk, Esq. (John E. Matthews, Esq., of counsel).

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

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.

By way of a Notice of Deficiency (L-032249740), the Division of Taxation (Division) notified petitioner that petitioner owed additional tax in the amount of \$176,085.00 for

petitioner's 2003 tax year. Petitioner filed a request for a conciliation conference with the Bureau of Conciliation and Mediation Services (BCMS). BCMS issued a Conciliation Order (CMS No: 235034), dated November 5, 2010, sustaining the statutory notice.

On February 2, 2011, a petition was filed challenging the additional tax asserted. The petition was signed by an individual who only provided his name but no corporate title or other designation indicating his authority to sign the petition on behalf of petitioner, a corporation.¹

A letter, dated February 10, 2011, was sent by the Petition Intake Unit of the Division of Tax Appeals to petitioner, advising petitioner that the petition was not complete in that it did not contain a title for the individual who signed the petition on behalf of petitioner. The letter advised petitioner that it had several days within which to send a corrected signature page that included the title of the individual signing the petition. Petitioner did not respond to this notice.

On March 15, 2011, a Notice of Intent to Dismiss Petition was sent to petitioner giving it 30 days to submit written comments with regard to the proposed dismissal. Petitioner did not respond to this Notice.

On May 3, 2011, a revised Notice of Intent to Dismiss Petition was sent to petitioner giving it 30 days to submit written comments with regard to the proposed dismissal. Petitioner did not respond to this Notice.

On July 6, 2011, Chief 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 Chief Administrative Law Judge.

¹ The petition form indicates that the title of the signer of the petition is to be provided when appropriate.

The Tax Law provides with regard to corporate tax that:

After ninety days from the mailing of a notice of deficiency, 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 § 1081[b]).

In the alternative, a taxpayer may also file, within the same 90 day period, a request for a conciliation conference with BCMS (*see* Tax Law §§ 170[3-a], 2006 [4]; 20 NYCRR 4000.3[c]). If a taxpayer first elects to file a request for a conciliation conference with BCMS, the conciliation order is 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], 4000.5[c][4]).

A proceeding before the Division of Tax Appeals is commenced by filing a petition challenging a statutory notice pursuant to such rules, regulations, forms and instructions as may be provided by the Tax Appeals Tribunal (Tax Law §§ 2000, 2006[4]; 20 NYCRR 3000.1[e]). The Rules of Practice and Procedure of the Tax Appeals Tribunal require that a petition be signed by the taxpayer or the taxpayer's representative (20 NYCRR 3000.3[b][7]).

In this case, petitioner is a corporate entity. The petition was signed by an individual who did not include a corporate title or any other indication of his authority to act as an "authorized person" for the corporation (*see* Business Corporation Law § 102[a][1]). The liabilities and representations of an individual are separate and distinct from the liabilities and representations of a corporation (*see Jenny Oil Corp.*, Tax Appeals Tribunal, June 20, 1996, *citing to Matter of On-Site Petroleum Unlimited*, Tax Appeals Tribunal, February 8, 1996; *Key Equip. Fin. v. South Shore Imaging, Inc.*, 69 AD3d 805 [2010]). Petitioner was notified that the petition was

not in the proper form because it did not include an indication of the authority of the individual executing the petition. Petitioner was given additional time to provide the missing information. The petition form itself (form TA-10) indicates that the person executing the petition is to provide their respective title, when appropriate. In the case of a corporate petitioner, such as the one at hand, a disclosure of the authority of the individual who signed the petition is necessary. Petitioner did not provide the requested information 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 Chuck Realty Corporation is denied;
2. The order of the Administrative Law Judge is affirmed; and
3. The petition of Chuck Realty Corporation is dismissed with prejudice.

DATED: Albany, New York
March 22, 2012

/s/ James H. Tully, Jr.
James H. Tully, Jr.
President

/s/ Charles H. Nesbitt
Charles H. Nesbitt
Commissioner