

STATE OF NEW YORK
DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
GROTTO D'ORO BAY CORP. : ORDER
 : DTA# 816776
for Redetermination of a Deficiency, Revision of a :
Determination or for Refund of Corporation Franchise :
Tax, Personal Income Tax, and Sales and Use Taxes under :
Articles 9-A, 22, 28 and 29 of the Tax Law for the Period :
December 1, 1993 through December 15, 1997. :

Petitioner, Grotto D'Oro Bay Corp., 3206 Emmons Avenue, Brooklyn, New York 11235, filed a petition for redetermination of a deficiency, revision of a determination or for refund of corporation franchise, personal income, and sales and use taxes under Articles 9-A, 22, 28 and 29 of the Tax Law for the period December 1, 1993 through December 15, 1997.

By previous Order of this administrative law judge (*Matter of Grotto D'Oro Bay Corp.*, Division of Tax Appeals, September 16, 1999), the original petition filed in this matter was determined to be invalid because it was signed by Ben Faga, who could not legally represent the corporate petitioner. Failure to file a valid petition requires a finding that the Division of Tax Appeals does not have jurisdiction over this matter (Tax Law § 2008; 20 NYCRR 3000.3; *Matter of Levin*, Tax Appeals Tribunal, April 16, 1998, *dismissed for lack of personal jurisdiction* App. Division. 3, October 20, 1998, Case #82927, *lv denied* 92 NY2d 819, 685 NYSed 421). Therefore, petitioner was directed to file a corrected petition signed by Joseph Faga, a person having authority to sign a petition on behalf of the corporate petitioner, within 30 days of the issuance of such Order (*see*, 20 NYCRR 3000.3[d]). The Order having been issued on September 16, 1999, the corrected petition was due by October 18, 1999.¹ No corrected petition was filed with the Division of Tax Appeals.

¹Thirty days from September 16, 1999 was October 16, 1999. However, since October 16, 1999 was a Saturday, the corrected petition was required to be filed by Monday, October, 18, 1999 (*see*, General Construction Law §§ 20, 25-a; *Matter of American Express Co.*, Tax Appeals Tribunal, July 3, 1991).

THEREFORE, it is

ORDERED, ADJUDGED and DECREED, that pursuant to 20 NYCRR 3000.3[d] the petition of Grotto D'Oro Bay Corp. is dismissed.

DATED: Troy, New York
November 12, 1999

/s/ Roberta Moseley Nero
ADMINISTRATIVE LAW JUDGE