

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
DANIEL INGOGLIA	:	ORDER
		DTA NO. 824661
for Revision of a Determination or for Refund of Sales and	:	
Use Taxes under Articles 28 and 29 of the Tax Law for the	:	
Period September 1, 2001 through November 30, 2002.	:	

Petitioner, Daniel Ingoglia, filed a petition for revision of a determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period September 1, 2001 through November 30, 2002.

On October 25, 2011, the Division of Tax Appeals issued to petitioner a Notice of Intent to Dismiss Petition pursuant to 20 NYCRR 3000.9(a)(4). On October 27, 2011, the Division of Taxation, by Mark F. Volk, Esq. (John E. Matthews, Esq., of counsel), submitted a letter in support of dismissal. On November 25, 2011, petitioner, appearing by James P. Napolitano, CPA, submitted a letter and documents in opposition to dismissal. Pursuant to 20 NYCRR 3000.5(d) and 3000.9(a)(4), the 90-day period for issuance of this order commenced on November 25, 2011. After due consideration of the documents submitted, Timothy Alston, Administrative Law Judge, renders the following order.

ISSUE

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

FINDINGS OF FACT

1. Petitioner, Daniel Ingoglia, filed a petition, dated August 17, 2011 and received by the Division of Tax Appeals on September 16, 2011, seeking revision of Notice of Determination number L-024753543.¹

2. Petitioner previously filed a petition protesting notice number L-024753543 on December 2, 2009. Said petition was dismissed as untimely filed pursuant to an administrative law judge determination dated March 3, 2011 (*see Matter of Ingoglia*, Division of Tax Appeals, March 3, 2011 [DTA No. 823385]). No exception was filed with the Tax Appeals Tribunal for review of that determination.

3. In response to the Notice of Intent to Dismiss, petitioner submitted a large volume of documents apparently pertaining to the merits of the subject assessment and a narrative recounting petitioner's efforts to resolve the matter with the Division of Taxation.

CONCLUSIONS OF LAW

A. Tax Law § 2010(4) provides:

A determination issued by an administrative law judge shall finally decide the matters in controversy unless any party to the hearing takes exception by timely requesting a review by the tax appeals tribunal as provided for in [Tax Law § 2006].

B. Here, petitioner's protest of notice number L-024753543 was finally decided pursuant to Tax Law § 2010(4) by the administrative law judge determination issued on March 3, 2011. The Tax Law does not provide petitioner with the right to file an additional petition protesting

¹ Among the documents attached to the petition was a proposed (and unsigned) Consent form issued by the Division's Bureau of Conciliation and Mediation Services (BCMS) proposing a final disposition of a different notice number. The petition itself, however, does not indicate a protest of such other notice number and a BCMS Consent is not a petitionable document. Hence, the subject petition is considered a protest of L-024753543 only. If petitioner files (or has filed) a petition in respect of such other notice number, that petition would be considered in due course.

the same notice number. The Division of Tax Appeals thus lacks jurisdiction to consider the subject petition.

C. Furthermore, given the untimely status of the petition filed on December 2, 2009, the present petition, filed in protest of the same statutory notice, is also necessarily untimely.

D. In the absence of jurisdiction, the merits of the assessment may not be addressed herein.

E. The petition of Daniel Ingoglia, dated August 17, 2011, and received by the Division of Tax Appeals on September 16, 2011, is hereby dismissed.

DATED: Troy, New York
January 5, 2012

/s/ Timothy Alston
ADMINISTRATIVE LAW JUDGE