

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

| | | |
|---|---|----------------|
| In the Matter of the Petition | : | |
| of | : | DECISION |
| MARYELLEN ELDREDGE | : | DTA NO. 831320 |
| for Revision of a Determination or for Refund | : | |
| of Sales and Use Taxes under Articles 28 and | : | |
| 29 of the Tax Law for the Periods March 1, 2019 | : | |
| through May 31, 2022. | : | |

Petitioner, Maryellen Eldredge, filed an exception to the determination of the Supervising Administrative Law Judge issued on April 24, 2025, which dismissed petitioner’s petition based on the failure to provide certain missing information required to complete the petition, such as a statutory notice establishing the timeliness of the petition to confer jurisdiction to the Division of Tax Appeals to hear the matter. Petitioner appeared by Anthony Bonelli, EA. The Division of Taxation appeared by Amanda Hiller, Esq. (Eric R. Gee, Esq., of counsel).

Petitioner filed a letter brief in support of the exception. The Division of Taxation (Division) filed a letter brief in opposition. Petitioner did not file a reply brief. Petitioner’s request for oral argument was denied. The six-month period for issuance of this decision began on August 27, 2025, the date that the last brief was due to be filed.

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

ISSUE

Whether the Supervising Administrative Law Judge properly dismissed the petition.

FINDINGS OF FACT

We find the facts in the record, as set forth below.

1. Petitioner filed a petition that was received by the Division of Tax Appeals on May 31, 2023. The envelope containing the petition bears a United States Postal Service shipping label indicating that the petition was mailed on May 25, 2023.

2. The petition failed to include a copy of the statutory notice under protest to establish the timeliness of the petition.

3. On August 3, 2023, the Division of Tax Appeals sent a letter to petitioner identifying that the notice is missing from the petition and advising that failure to correct it within 30 days may result in a dismissal.

4. On August 18, 2023, the Division of Tax Appeals sent another letter to petitioner identifying that the notice is still missing from the petition and advising that failure to correct it within 15 days may result in a dismissal. The letter to petitioner indicated that the petition was missing the following: a statutory notice which is being challenged, and which is issued in the name of “Maryellen Eldredge” as the responsible person of the business assessed. The letter further provided that such notice is required as it offers formal protest rights from the Division. The letter also provided petitioner with the name and telephone number of a Division employee to contact if petitioner needed to obtain a copy of the statutory notice under protest.

5. Petitioner took no steps to cure the petition.

6. On April 24, 2025, the Supervising Administrative Law Judge issued a determination dismissing the petition.

THE DETERMINATION OF THE SUPERVISING ADMINISTRATIVE LAW JUDGE

The Supervising Administrative Law Judge concluded that petitioner did not timely

correct the defect of failing to establish the timeliness of the petition pursuant 20 NYCRR 3000.3 (b) (8) and therefore dismissed the petition pursuant to 20 NYCRR 3000.3 (d).

ARGUMENTS ON EXCEPTION

On exception, petitioner explains the merits of the case and provides a copy of a statutory notice contested, which is directed to a business for which petitioner asserted that the Division determined her to be a responsible person. Documentation establishing that petitioner was being held by the Division to be a responsible person for the business was not provided. For this same reason, the Division contends that the dismissal of the petition should be affirmed.

OPINION

The Division of Tax Appeals is responsible for providing the public with a just system of resolving controversies with the Division and to ensure that the elements of due process are present with regard to such resolution of controversies (Tax Law § 2000). This is accomplished through the administrative hearing process, which begins with the filing of a valid petition (*id.*). A taxpayer may file a petition “protesting any written notice of the division of taxation . . . which has advised the petitioner of a tax deficiency, a determination of tax due, a denial of a refund . . . or any other notice which expressly gives a person the right to a hearing” (Tax Law § 2008 [1]).

A petition protesting a statutory notice must be filed within statutory time limits (Tax Law §§ 2006 [4], 2008). For the sole purpose of establishing the timeliness of a petition, a legible copy of the statutory notice under protest must be attached to the petition (20 NYCRR 3000.3 [b] [8]). The date of the notice enables the Division of Tax Appeals to facially determine whether the petition is timely, and thus within its jurisdiction (*Matter of Richardson*, Tax Appeals Tribunal, November 17, 2022).

Petitioner's failure to include a copy of a statutory notice under protest with the petition, or at least a notice or assessment number for the notice issued to petitioner as a responsible person of the business, precludes the Division of Tax Appeals from making a facial determination of timeliness, and therefore jurisdiction over the matter (*id.*). As noted in *Matter of Richardson*, our jurisdiction is limited to that conferred by the Legislature and may not be extended.

For a petition found to not be in proper form, the Supervising Administrative Law Judge must "promptly return it to the petitioner, together with a statement indicating the requirements with which the petition does not comply, and extend to the petitioner an additional 30 days within which to file a corrected petition . . ." (20 NYCRR 3000.3 [d] [1]). If petitioner fails to make corrections as directed within the time prescribed, the Supervising Administrative Law Judge "will issue a determination dismissing the petition" (20 NYCRR 3000.3 [d] [2]).

The only statutory notice provided was a copy of a notice of determination issued to a business for which petitioner claims that the Division has determined her to be a responsible person. The petition did not include a copy of a statutory notice naming petitioner as a responsible person. Tax Law § 1133 imposes personal responsibility for payment of sales and use taxes on certain owners, officers, directors, employees, managers, partners, or members (responsible persons) of businesses that have outstanding sales tax liabilities. In order to proceed in this matter, petitioner was given an opportunity to provide the statutory notice issued in the name of petitioner as a responsible person of the business. Petitioner failed to provide this notice.

The August 3, 2023 letter from the Division of Tax Appeals identified the statutory notice issued to petitioner as a responsible person of the business as missing from the petition

and advised petitioner that failure to make the correction within 30 days could result in a dismissal pursuant to 20 NYCRR 3000.3 (d) (2). Petitioner failed to respond, and the Supervising Administrative Law Judge then issued a determination dismissing the petition.

Where the failure to comport with the Rules and the instructions raise a substantial question as to the facial validity of the petition, dismissal pursuant to 20 NYCRR 3000.3 (d) (2) is appropriate (*Matter of Richardson*). Petitioner's failure to include a copy of a statutory notice in her name precluded the Division of Tax Appeals from making a facial determination of timeliness such as to confer its jurisdiction over the petition, and, accordingly, dismissal here was appropriate.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Maryellen Eldredge is denied;
2. The determination of the Supervising Administrative Law Judge is affirmed; and
3. The petition of Maryellen Eldredge is dismissed.

DATED: Albany, New York
February 23, 2026

/s/ Jonathan S. Kaiman
Jonathan S. Kaiman
President

/s/ Cynthia M. Monaco
Cynthia M. Monaco
Commissioner

/s/ Kevin A. Cahill
Kevin A. Cahill
Commissioner