

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
THEODORE S. AND BETH A. LIAROS : DETERMINATION
for Revision of a Determination or for Refund of : DTA NO. 828531
Sales and Use Taxes under Articles 28 and 29 :
of the Tax Law for the Periods ending :
May 31, 2015 through August 31, 2016, and for :
Review of a Notice of Proposed Driver's License :
Suspension Referral Issued on February 15, 2017 :
Pursuant to Tax Law § 171-v. :

Petitioners, Theodore S. and Beth A. Liaros, filed a petition for revision of a determination or for refund of sales and use taxes under article 28 and 29 of the Tax Law for the periods ending May 31, 2015 through August 31, 2016, and for review of a notice of proposed driver's license suspension referral issued on February 15, 2017 pursuant to Tax Law § 171-v.

On July 6, 2018, the Division of Tax Appeals issued to petitioners a notice of intent to dismiss petition, pursuant to 20 NYCRR 3000.9 (a) (4), on the basis that the petition did not appear to be timely filed, failed to include requisite notices, and challenged notices that were not issued to petitioners. The Division of Taxation, appearing by Amanda Hiller, Esq. (Hannelore Smith Esq., of counsel), submitted documents in support of dismissal. Petitioner, appearing pro se, did not submit a response by September 20, 2018, which date triggered the 90-day deadline for issuance of this determination. After due consideration of the documents submitted, Herbert M. Friedman, Jr., Supervising Administrative Law Judge, renders the following determination.

FINDINGS OF FACT

1. Petitioners, Theodore S. and Beth A. Liaros, filed a petition with the Division of Tax Appeals on December 19, 2017, in protest of: (i) a conciliation order dated September 8, 2017, in the name of Beth Liaros, CMS No. 273804 (conciliation order); (ii) a consolidated statement of tax liabilities, in the name of Beth Liaros, bearing collection case ID E-133510596 and; (iii) a consolidated statement of tax liabilities dated May 5, 2017 and issued to Theodore's Original Charcoal Broiled Hot. The petition did not reference or include any tax liability documents in the name of Theodore Liaros.¹

2. Beth Liaros filed a separate petition protesting the same conciliation order referenced above, and the consolidated statement of tax liabilities for collection case E-133510596. The DTA number assigned to address that protest is DTA No. 828658.

3. A consolidated statement of tax liabilities appears to have been issued by the Department of Tax and Finance to Theodore's Original Charcoal Broiled Hot on May 5, 2017. The consolidated statement of tax liabilities references assessment numbers L-042659169, L-043297338, L-043859091, L-043921096, L-044187621, L-045619279, L-044494144, L-044687253, L-044761271, L-045546824, and L-045980057.

4. On July 6, 2018, the Division of Tax Appeals issued to petitioners a notice of intent to dismiss petition (notice of intent), on the basis that the petition was untimely with regards to the notices issued to Beth Liaros, and that Theodore's Original Charcoal Broiled Hot is not a petitioner.

¹ Theodore Liaros filed a separate petition in his individual name (DTA No. 828659). The petition filed in DTA No. 828659 protests other notices issued to Theodore Liaros.

5. The petitioners did not submit a response to the notice of intent.

CONCLUSIONS OF LAW

A. In *Matter of Victory Bagel Time, Inc.* (Tax Appeals Tribunal, September 13, 2012), the Tax Appeals Tribunal held that the standard to employ for reviewing a notice of intent to dismiss petition is the same as that used for reviewing a motion for summary determination.

B. A motion for summary determination may be granted:

“if, upon all the papers and proof submitted, the administrative law judge finds that it has been established sufficiently that no material and triable issue of fact is presented and that the administrative law judge can, therefore, as a matter of law, issue a determination in favor of any party” (20 NYCRR 3000.9 [b] [1]).

C. Petitioner, Beth Liaros, filed a separate petition (DTA No. 828658) challenging the notices attached to this petition. Thus, that dispute will be addressed in that case.

D. In this matter, petitioners attached a copy of a consolidated statement of tax liabilities issued to Theodore’s Original Charcoal Broiled Hot, an entity that is not a petitioner in this matter. Petitioners did not attach a notice in either of their names that has not been separately addressed.

E. In sum, the petition in this matter is in an incorrect form as it fails to identify the correct petitioner, has not been corrected, and must be dismissed pursuant to 20 NYCRR 3000.3 (d) (2).

F. The petition of Theodore S. and Beth A. Liaros is dismissed.

DATED: Albany, New York
December 13, 2018

/s/ Herbert M. Friedman, Jr.
SUPERVISING ADMINISTRATIVE LAW JUDGE