

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition :  
of :  
**SANJAY KUMAR** : DETERMINATION  
for Redetermination of a Deficiency or for Refund : DTA NO. 828729  
of New York State Personal Income Tax under :  
Article 22 of the Tax Law for the Years 2012 and :  
2013. :

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Petitioner, Sanjay Kumar, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under article 22 of the Tax Law for the years 2012 and 2013.

On October 17, 2018, the Division of Tax Appeals issued to petitioner a notice of intent to dismiss petition pursuant to 20 NYCRR 3000.9 (a) (4). The Division of Taxation, appearing by Amanda Hiller, Esq. (Christopher O'Brien, Esq., of counsel), submitted a letter in support of the dismissal. Petitioner, appearing pro se, did not submit a response by November 16, 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. Petitioner, Sanjay Kumar, filed a petition that was received by the Division of Tax Appeals on May 21, 2018. The envelope containing the petition bears a United States Postal Service (USPS) label dated May 19, 2018.

2. The petition lists Ms. Shruti Kumar as petitioner's representative. The petition identifies Ms. Kumar as the daughter of petitioner and Ms. Kumar signed the petition on behalf of her father. Petitioner did not sign the petition. There is no evidence that petitioner is an individual under disability or mentally or physically incapable of filing a petition or appearing on his own behalf. Further, Ms. Kumar is not otherwise authorized to represent petitioner under the Tax Appeals Tribunal Rules of Practice and Procedure. Moreover, an executed Division of Tax Appeals power of attorney did not accompany the petition.

3. The petition protests a consolidated statement of tax liabilities pertaining to assessment numbers L-047247579 and L-047247578, dated May 9, 2018. A copy of the underlying statutory notices for assessment numbers L-047247579 and L-047247578 did not accompany the petition.

4. On July 6, 2018, the Division of Tax Appeals sent a letter to petitioner informing him of the items missing from the petition and that failure to correct it within 30 days may result in a dismissal.

5. Petitioner did not cure the deficiencies in the petition, as requested.

6. On October 17, 2018, the Division of Tax Appeals issued a notice of intent to dismiss petition (notice of intent) to petitioner on the basis that the petition filed was not in proper form, and that a consolidated statement of tax liabilities is insufficient to confer jurisdiction upon the Division of Tax Appeals to address the merits of the petition.

7. In response to the notice of intent to dismiss petition, the Division of Taxation's (Division's) representative submitted a letter on October 24, 2018 stating:

“[t]he Division is in receipt of the Notice of Intent to Dismiss the petition in the

above referenced matter. As the petition submitted was not in proper form, as required by 20 NYCRR 3000.3, it was missing the statutory document specifically, the notice of deficiency or refund denial notice or a conciliation order, and a duly executed power of attorney did not accompany the Petition which was signed by the Petitioner's daughter who does not satisfy the requirements of a qualified representative under 20 NYCRR 3000.2, the Division is in agreement with the proposed dismissal."

8. Petitioner has not submitted a response to the notice of intent to dismiss petition.

### ***CONCLUSIONS OF LAW***

A. The Division of Tax Appeals is a forum of limited jurisdiction (Tax Law § 2008; *Matter of Scharff*, Tax Appeals Tribunal, October 4, 1990, *revd on other grounds sub nom New York State Dept. of Taxation and Fin. v Tax Appeals Trib.*, 151 Misc 2d 326 [Sup Ct, Albany County 1991, Keniry, J.]). Its power to adjudicate disputes is exclusively statutory (*id.*). The Division of Tax Appeals is authorized "[t]o provide a hearing as a matter of right, to any petitioner upon such petitioner's request . . . unless a right to such hearing is specifically provided for, modified or denied by another provision of this chapter" (Tax Law § 2006 [4]).

Tax Law § 2008 limits the jurisdiction of the Division of Tax Appeals to matters

"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 credit application, a cancellation, revocation or suspension of a license, permit or registration, a denial of an application for a license, permit or registration or any other notice which gives a person the right to a hearing in the division of tax appeals under this chapter or other law."

B. Pursuant to 20 NYCRR 3000.3 (b) (7), a petition shall contain "the signature of the petitioner or the petitioner's representative."

C. Pursuant to 20 NYCRR 3003.3 (b) (8), a petition shall contain, "for the sole purpose of establishing the timeliness of the petition, a legible copy of the order of the

conciliation conferee if issued; if no such order was previously issued, a legible copy of any other statutory notice being protested.”

D. Pursuant to 20 NYCRR 3000.3 (b) (9), a petition shall contain an original or a legible copy of the power of attorney.

E. Where, upon notice, the petitioner fails to correct the petition within the time prescribed, the supervising administrative law judge will issue a determination dismissing the petition (20 NYCRR 3000.3 [d]).

F. The petition in this matter was accompanied by a copy of a consolidated statement of tax liabilities, which is not a statutory notice. Furthermore, the petition was signed by petitioner’s daughter, without the requisite authority or a proper power of attorney attached. It was not signed by petitioner. The Supervising Administrative Law Judge granted petitioner an opportunity to correct the petition pursuant to 20 NYCRR 3000.3 (d); however, petitioner did not respond. As petitioner failed to correct the petition within the time period allowed, and the petition did not include a required statutory notice or conciliation order, the petition must be dismissed (*see* 20 NYCRR 3000.3 [d]; Tax Law § 2008).

G. IT IS ORDERED, on the supervising administrative law judge’s own motion, that the petition be, and it is hereby, dismissed with prejudice as of this date.

DATED: Albany, New York  
February 7, 2019

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