

STATE OF NEW YORK

DIVISION OF TAX APPEALS

---

In the Matter of the Petition :  
of :  
**RICHARD FIELDS** : DETERMINATION  
for Redetermination of a Deficiency or for Refund of : DTA NO. 828798  
New York State Personal Income Tax under Article 22 :  
of the Tax Law for the Years 2013 and 2014. :

---

Petitioner, Richard Fields, 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 2013 and 2014.

On March 22, 2019, the Division of Tax Appeals issued to petitioner a notice of intent to dismiss petition pursuant to 20 NYCRR 3000.9 (a) (4). The parties were given 30 days to respond. The Division of Taxation, appearing by Amanda Hiller, Esq. (Charles Fishbaum, Esq., of counsel), submitted a letter dated April 5, 2019, in support of the dismissal. Petitioner, appearing pro se, did not submit a response by April 22, 2019, 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, Richard Fields, filed a petition that was received by the Division of Tax Appeals on July 23, 2018. The envelope containing the petition bears a United States Postal Service (USPS) postmark dated July 18, 2018. The return address on the envelope is FFO, 135

West 50<sup>th</sup> Street, 19<sup>th</sup> Floor, New York, NY 10020.

2. The petition lists Joseph McNulty as petitioner's representative and identifies Mr. McNulty as a certified public accountant duly qualified to practice in New York State. Mr. McNulty signed the petition on behalf of petitioner. An executed Division of Tax Appeals power of attorney form did not accompany the petition, and as such, it is unclear if Mr. McNulty had the requisite authority to represent petitioner.

3. The petition protests a notice of deficiency bearing assessment number L-047911688, dated as issued to Joseph A. McNulty at FFO LLC on April 12, 2018.

4. The Division of Tax Appeals attempted to obtain a power of attorney form from Mr. McNulty by contacting him at the telephone number provided in the petition. Despite leaving several voice messages, the Division of Tax Appeals did not receive a return telephone call from Mr. McNulty.

5. On August 29, 2018, the Division of Tax Appeals sent a request for corrections letter (letter) to petitioner pursuant to 20 NYCRR 3000.3 at the address on the petition: 271 Madison Avenue, Suite 608, New York, New York, 10016. The letter advised petitioner that the petition was incomplete as the power of attorney form was not included to allow for the signature. The letter further explained that failure to correct it within 30 days may result in a dismissal.

6. The letter was returned to the Division of Tax Appeals on September 5, 2018 with "no person, return to sender" handwritten on the envelope.

7. The notice of deficiency identified another address for petitioner: 745 5<sup>th</sup> Avenue, New York, New York 10151. On November 8, 2018, the Division of Tax Appeals mailed a copy of the letter to the attention of Mr. Fields at that address.

8. The letter was returned to the Division of Tax Appeals as “return to sender, not deliverable as addressed, unable to forward” from the United States Postal Service (USPS) on November 21, 2018.

9. As such, petitioner has not cured the deficiency in the petition.

10. On March 22, 2019, Herbert M. Friedman, Jr., Supervising Administrative Law Judge of the Division of Tax Appeals, issued to petitioner a notice of intent to dismiss petition (notice of intent). The notice of intent stated, in sum, that the petition filed was not in proper form, as an executed power of attorney did not accompany the petition and an original signature was not provided.

11. In response to the notice of intent, the Division of Taxation (Division) submitted a letter dated April 5, 2019 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 and Tax Law § 2008, and a duly executed power of attorney did not accompany the Petition in accordance with 20 NYCRR 3000.2, the Division is in agreement with the proposed dismissal.”

12. The notice of intent issued to petitioner via certified mail to the address on his petition was returned to the Division of Tax Appeals from the USPS as “return to sender, attempted - not known, unable to forward” on April 9, 2019. The notice of intent was re-mailed to petitioner via regular mail to the same address on April 12, 2019.

13. The notice of intent issued to petitioner via regular mail was also returned to the Division of Tax Appeals with “return to sender” handwritten on the envelope.

14. The Division of Tax Appeals has not been informed of an address change for petitioner.

***CONCLUSIONS OF LAW***

- A. 20 NYCRR 3000.3 (b) describes the requirements to the form of a petition.
- B. Pursuant to 20 NYCRR 3000.3 (b) (1), a petition shall contain “the address and telephone number of the petitioner.”
- C. Pursuant to 20 NYCRR 3000.3 (b) (2), a petition shall contain the “address and telephone number of the petitioner’s representative, if any.”
- D. Pursuant to 20 NYCRR 3000.3 (b) (7), a petition shall contain “the signature of the petitioner or the petitioner’s representative.”
- E. Pursuant to 20 NYCRR 3000.3 (b) (9), a petition shall contain an original or a legible copy of the power of attorney.
- F. Where a filed petition is not in proper form, the supervising administrative law judge shall provide petitioner with a statement indicating the requirements with which the petition does not comply, and allow petitioner an additional 30 days to file a corrected petition with the supervising administrative law judge (20 NYCRR 3000.3 [d] [1]).
- G. 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] [2]).
- H. The petition in this matter was signed by Joseph McNulty CPA, and not the petitioner, without the requisite authority or a proper power of attorney attached. The petition was not signed by petitioner. The supervising administrative law judge attempted to grant petitioner an opportunity to correct the petition pursuant to 20 NYCRR 3000.3 (d); however, petitioner has failed to make the necessary corrections, including a proper signature or power of

attorney. As the petition was not filed in proper form, the petition must be dismissed (*see* Tax Law § 2008; 20 NYCRR 3000.3 [d]).

I. 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

July 18, 2019

/s/ Herbert M. Friedman, Jr.

SUPERVISING ADMINISTRATIVE LAW JUDGE