

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
SUPREME BLENDS HEALTHY EATERY INC.	:	DETERMINATION
	:	DTA NO. 828868
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 September 1, 2014	:	
through February 28, 2017.	:	

Petitioner, Supreme Blends Healthy Eatery Inc., 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, 2014 through February 28, 2017.

On March 8, 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 to said notice. Neither the Division of Taxation, appearing by Amanda Hiller, Esq. (Jessica DiFiore, Esq., of counsel), nor petitioner, appearing pro se, submitted a response by April 8, 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, Supreme Blends Healthy Eatery Inc., filed a petition that was received by the Division of Tax Appeals on August 27, 2018. The envelope containing the petition bears a United States Postal Service (USPS) postmark dated August 22, 2018.

2. The petition protests a notice of determination (notice) bearing assessment number L-048121309, dated as issued on May 23, 2018. It is unclear to which address the notice of determination was mailed, as a full copy of the notice was not included with the petition.

3. On September 26, 2018, the Division of Tax Appeals sent a letter to petitioner advising that the petition was not complete, in that the telephone number of petitioner was not provided; petitioner did not confirm if a conciliation conference was requested; a full copy of the notice was not provided; and the signatory's title was not provided. As petitioner appears to be a corporation, and the signatory's title was missing from the petition, it is not known if petitioner was required to submit a power of attorney form. The letter explained that failure to correct the petition within 30 days may result in dismissal.

4. Petitioner did not cure the deficiencies in the petition.

5. On March 8, 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 several items, namely, the telephone number of petitioner, a full copy of the appropriate notice or assessment, and the signatory's title were not included in the petition. Moreover, as the petition was filed in excess of 90 days after issuance of the notice of determination, the petition was apparently not timely filed.

6. The notice of intent issued to petitioner was returned to the Division of Tax Appeals from USPS as "return to sender, vacant, unable to forward" on April 1, 2019. The notice of intent was re-mailed to petitioner via regular mail on April 1, 2019. The latter mailing was also returned to the Division of Tax Appeals from USPS as "return to sender, vacant, unable to forward" on April 9, 2019.

7. Petitioner has not notified the Division of Tax Appeals of an address change.

CONCLUSIONS OF LAW

A. A proceeding in the Division of Tax Appeals is commenced by filing 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 gives a person the right to a hearing” (Tax Law § 2008 [1]), pursuant to such rules and regulations as may be provided by the Tax Appeals Tribunal (Tax Law § 2006 [4]).

B. Pursuant to 20 NYCRR 3003.3 (b) (1), a petition shall contain the telephone number of the petitioner.

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

D. Where a petition is filed by a corporation, it may act through one of its officers or employees. When a corporation acts through an employee, a power of attorney form must be filed (20 NYCRR 3000.2 [a]).

E. Where a 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]).

F. 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]).

G. The petition in this matter was not filed in proper form. Most significantly, the petition is signed by an unidentified individual. Hence, it is unclear whether or not the signatory

had the authority to represent 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, the petition must be dismissed (*see* Tax Law § 2008; 20 NYCRR 3000.3 [d]).¹

H. 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

June 27, 2019

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

¹ As the Division did not provide a timely response or any proof of mailing regarding the notice at issue, the issue of timeliness raised in the notice of intent will not be addressed in this determination.