

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition	:	
of	:	
<b>JESSICA BERRIOS</b>	:	DETERMINATION DTA NO. 828994
for Redetermination of a Deficiency or for Refund of New York State Personal Income Tax under Article 22 of the Tax Law for the Year 2016.	:	

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Petitioner, Jessica Berrios, 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 year 2016.

On June 21, 2019, the Division of Tax Appeals issued to petitioner a notice of intent to dismiss petition pursuant to 20 NYCRR 3000.3 (d) (2). The parties were given 30 days to respond. The Division of Taxation, appearing by Amanda Hiller, Esq. (Maria Matos, Esq., of counsel), submitted a letter dated July 3, 2019, in support of the dismissal. Petitioner did not submit a response by July 21, 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. A petition was filed in the name of Jessica Berrios that was received by the Division of Tax Appeals on November 21, 2018. The envelope containing the petition bears a United States Postal Service (USPS) postmark dated November 16, 2018.

2. The petition lists Alisa Mitchell, CPA, as petitioner's representative. Ms. Mitchell is identified as a certified public accountant licensed to practice in Florida. There is no indication

on the petition that Ms. Mitchell is licensed to practice in New York State. Furthermore, Ms. Mitchell is not identified as either petitioner's parent or child.

3. Ms. Mitchell signed the petition on behalf of petitioner. An executed Division of Tax Appeals power of attorney form did not accompany the petition.<sup>1</sup>

4. Petitioner did not sign the petition.

5. The petition protests a notice of deficiency bearing assessment number L-048701921.

6. On March 1, 2019, the Division of Tax Appeals sent a letter requesting corrections to petitioner pursuant to 20 NYCRR 3000.3 at the address on the petition. The letter advised petitioner that the petition was deficient as (i) the power of attorney form was incorrect; (ii) special permission from the Tax Appeals Tribunal (Tribunal) was required for representation by an out of state certified public accountant; and (iii) Ms. Mitchell was not permitted to represent petitioner under the current circumstances. The letter further advised that the petition was signed by an unqualified representative. Enclosed with the letter was a blank correct power of attorney form. Finally, the letter explained that failure to correct the concerns may result in dismissal of the petition.

7. On May 9, 2019, the Division of Tax Appeals sent another letter to petitioner informing her that Ms. Mitchell would need special permission from the Secretary of the Tribunal to undertake representation.

8. Petitioner has not cured the deficiency in the petition.

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<sup>1</sup> A Department of Taxation and Finance power of attorney form was provided to the Division of Tax Appeals subsequent to the filing of the petition. This power of attorney, however, did not identify Ms. Mitchell's qualifications to represent petitioner before the Division of Tax Appeals. Likewise, this power of attorney was not notarized or witnessed by two disinterested individuals as required by 20 NYCRR 2390 (f).

9. On June 21, 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 it was not signed by petitioner, but by Ms. Mitchell, who was not qualified to appear before the Division of Tax Appeals.

10. In response to the notice of intent, the Division of Taxation (Division) submitted a letter dated July 3, 2019 agreeing with dismissal, stating:

“[t]he Division is in receipt of the Notice of Intent to Dismiss the petition in the above referenced matter. The petition was not in proper form, as required by 20 NYCRR 3000.2, 20 NYCRR 3000.3 and Tax Law § 2008 in that petitioner’s representative did not request special permission to represent petitioner with the Tribunal since she is a licensed CPA in Florida, but not in New York and petitioner did not sign the petition.”

11. Petitioner did not respond to the notice of intent.

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

A. 20 NYCRR 3000.3 (b) describes the requirements to the form of a petition. Pursuant to 20 NYCRR 3000.3 (b) (1), a petition shall contain “the signature of the petitioner or the petitioner’s representative.”

B. Pursuant to 20 NYCRR 3000.2 (a) (2), a taxpayer may be represented by: (i) an attorney-at-law licensed to practice in New York State; (ii) a certified public accountant duly qualified to practice in New York State; (iii) an enrolled agent enrolled to practice before the Internal Revenue Service; or (iv) a public accountant enrolled with the New York State Education Department. An attorney, certified public accountant or licensed public accountant authorized or licensed to practice in any other jurisdiction may represent a petitioner after

receiving written permission from the Secretary of the Tax Appeals Tribunal (*see* 20 NYCRR 3000.2 [a] [4]).

C. In the instant case, the petition was not signed by petitioner. Rather, it was signed by Ms. Mitchell, a certified public accountant licensed in Florida. Ms. Mitchell was not licensed in New York State and, thus, was required to obtain permission of the Tribunal. Her failure to do so meant she lacked the authority to sign the petition on behalf of petitioner and rendered the petition in improper form.

D. 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 (*see* 20 NYCRR 3000.3 [d] [1]). 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 (*see* 20 NYCRR 3000.3 [d] [2]).

E. The supervising administrative law judge provided petitioner the required notice and opportunities to correct the petition pursuant to 20 NYCRR 3000.3 (d); however, petitioner failed to make the necessary corrections, specifically a proper signature. As the petition was not filed in proper form, it must be dismissed (*see* Tax Law § 2008; 20 NYCRR 3000.3 [d]).

F. IT IS ORDERED that the petition be, and it is hereby, dismissed with prejudice as of this date.

DATED: Albany, New York  
October 17, 2019

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