STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition of **TASTY SUB, LLC** for Revision of a Determination or for Refund of New York State Sales and Use Taxes Under Articles 28 and 29 of the Tax Law for the Period June 1, 2013 and May 31, 2016.	DETERMINATION DTA NO. 829008

Petitioner, Tasty Sub, LLC, filed a petition for revision of a determination or for refund of New York State sales and use taxes under articles 28 and 29 of the Tax Law for the period June 1, 2013 and May 31, 2016.

Petitioner, appearing by Buxbaum Sales Tax Consulting, LLC (Michael Buxbaum, CPA),[1] brought a motion on January 5, 2021, seeking summary determination in the above-referenced matter pursuant to section 3000.9 (b) of the Rules of Practice and Procedure of the Tax Appeals Tribunal. On March 8, 2021, the Division of Taxation, by Amanda Hiller, Esq. (Brandon Batch, Esq., of counsel) filed an affirmation and exhibits in response to the motion.

A videoconferencing hearing via CISCO Webex on the petition was scheduled before an administrative law judge with the Division of Tax Appeals on January 6, 2021, at 10:30 a.m. Notice of said hearing was given to petitioner. Petitioner did not appear, and a default has been duly noted.

[1] By letter dated January 21, 2021, Michael Buxbaum, CPA, withdrew as petitioner's representative. In its March 8, 2021 response to the instant motion, the Division of Taxation's representative, Brandon Batch, Esq., forwarded a power of attorney, dated February 16, 2021, that appointed Stuart Ratner, Esq., as petitioner's representative.

Based upon the motion papers, the affidavits and documents submitted therewith, and all pleadings and documents submitted in connection with this matter, and all proceedings had herein, Kevin R. Law, Administrative Law Judge, renders the following determination.

ISSUES

I. Whether petitioner's motion for summary determination should be granted in its favor.

II. Whether, if petitioner's motion for summary determination is denied, a default determination should be rendered against petitioner.

III. Whether a frivolous petition penalty should be imposed under the authority of Tax Law § 2018 and 20 NYCRR 3000.21.

FINDINGS OF FACT

1. On December 4, 2018, petitioner, Tasty Sub, LLC, filed a petition with the Division of Tax Appeals contesting a notice of determination, notice number L-046417786, dated May 12, 2017.

2. On January 5, 2021, the day before the scheduled hearing, petitioner electronically filed a motion for summary determination. Included with the notice of motion was an affidavit of petitioner's then representative, Michael Buxbaum, CPA. The complete affidavit states as follows:

> "I. I am a CPA duly licensed in the State of New York and I represent this small business taxpayer's Petition seeking a cancellation of the Notice of Determination tax assessment.
>
> II. There are NO material facts in dispute or contrary inferences that may be reasonably drawn from these undisputed facts and that this small business taxpayer's petition should be decided in favor of the Petitioner's Motion.
>
> III. The Notice of Determination states ' We have estimated the amount of tax under Section 1138 of the Tax Law.'

IV. The audit letter (exhibit A) dated July 07, 2017 states 'Sales - Detailed Review'.

V. In addition, the taxpayer was never offered and did not sign a Test Period Agreement; but yet, the taxpayer maintained and made available all of its detailed records including Sales register information and documentation and Expense bills upon numerous requests by the Audit Division.

VI. The Audit Division failed to make any meaningful effort to conduct a detailed audit of the taxpayer's complete and adequate records.

VII. The Sales tax assessment erroneously issued by the Audit Division was an estimation of the taxpayer's bank accounts in which numerous transfers occurred among different operating bank accounts.

VIII. The Audit Division failed to issue its Sales tax assessment based upon the taxpayer's actual and recorded and detailed sales records which were present and available upon request by the Audit Division and could have easily been confirmed by the Subway, Inc. franchisor.

IX. The Use tax [sic] assessment erroneously issued by the Audit Division was based upon the Audit Division failing to review and accept a third party confirmation letter (exhibit B) indicating that tax was previously paid by the franchisor on restaurant equipment that the taxpayer contributed to its small business.

X. The Audit Division did not follow the well established [sic] policy as outlined by the Tax Appeals Tribunal regarding the Division's overlapping audit policy.

XI. Since the taxpayer maintained complete and adequate records according to Tax Law 1135 - Records to be kept, and made these detailed records available for review, and since the Audit Division, failed to offer the taxpayer a Test Period Agreement (although the Audit Division clearly knew that the taxpayer maintained complete and adequate records), and since the assessment was clearly based upon an ESTIMATE, rather than a DETAILED review; THE ENTIRE ASSESSMENT including the BAD FAITH demonstrated by the Audit Division in assessing penalty should be CANCELLED" (emphasis in original).

3. Exhibit A attached to the Buxbaum affidavit is a copy of a letter addressed to petitioner from the Division of Taxation's (Division's) auditor signed as dated July 7, 2017, summarizing the results of its sales and use tax audit for the period. The letter states as follows:

"During out audit, we reviewed the following audit areas:

- Capital – Inadequate
- Expenses -Cursory review
- Sales – Detailed review

We have found you owe additional tax, the result of errors you made in the following areas:

- **Capital** – New York State Sales Tax must be paid or accrued on all purchases of equipment fixtures. If a vender does not charge you New York State Sales Tax than you must accrue use tax and remit under to column 'Purchases Subject to Tax' on your New York State Sales Tax Return. Also, Capital records were deemed inadequate since they were not provided for our review.

- **Sales** – All sales must be reported on your New York State Sales and Use Tax Returns. All New York State Sales Tax collected must also be reported and remitted to New York State."

4. Exhibit B attached to the Buxbaum affidavit is an unsworn letter, dated May 23, 2017, on the letterhead of Subway regarding store number #17481 addressed to the Division and signed by Heather Murray, Tax Specialist. The letter states as follows:

> "Doctor's Associates, Inc., New York tax ID#xx-xxxxxxx,[2] has remitted sales tax to the State of New York on behalf of Subway Store #17481 for the full amount of tax collected for the equipment purchased in 2015. The franchise uses preferred vendors to purchase equipment and these vendors bill Doctor's Associates Inc. We then bill the franchisee for the full amount of the equipment purchased including the sales tax and remit the sales tax to the state. Please feel free to contact us with any questions or concerns at the contact information below."

5. Included in the Division's papers in opposition was the affirmation of the Division's representative with exhibits attached, including the complete audit file. In its response, the Division claims the motion should be denied as it was not filed in accordance with section 3000.9 of the Rules of Practice and Procedure of the Tax Appeals Tribunal (Rules) as no

[2] The taxpayer identification number has been redacted to preserve confidentiality.

permission was given for petitioner to file the motion electronically, nor was it timely filed. In the alternative, the Division states that the motion should be denied as there are issues of fact.

6. A review of the audit report indicates petitioner is a Subway Restaurant franchise and that all sales are taxable with the exception of bags of potato chips, cookies and some juices containing more than 70% juice. During the audit, petitioner was represented by Kent Wahlberg, CPA. Mr. Wahlberg represented petitioner throughout the audit and throughout proceedings in the Division's Bureau of Conciliation and Mediation Services.

7. During the audit, revenue was reviewed in detail. Petitioner provided all franchise reports. Every sale entered into petitioner's point of sale system (POS) gets transmitted to the franchisor daily. The Division's auditor reviewed the franchise reports and determined that petitioner collected $46,195.06 more sales tax than was remitted to the Division and assessed tax accordingly. In addition, the auditor determined that, based upon her review of bank statements, petitioner also underreported its sales and assessed $80,936.16 in additional sales tax. With respect to capital purchases, the Division's auditor determined that petitioner acquired $158,502.98 of taxable capital purchases during the audit period resulting in additional tax due of $14,067.14. Contained in the audit file are receipts for the purchase of capital assets; these receipts do not indicate sales tax was charged.

8. This matter had originally been scheduled for hearing in New York City on May 13, 2020, but due to the COVID-19 public health emergency, and the New York State on PAUSE executive order (PAUSE Act), it was adjourned until hearings in the Division of Tax Appeals could safely resume and the PAUSE Act lifted.

9. After the PAUSE Act was lifted, a conference call was scheduled for August 25, 2020 at 2:30 p.m., the purpose of which was for the parties to select a hearing date.

10. On July 30, 2020, Mr. Buxbaum sent the following email to the Hearing Support Unit at the Division of Tax Appeals:

> "Kindly inform ALJ Law that I will not be participating in this specific conference call.
>
> The Division of Tax Appeals current policy for administrative tax hearings is not consistent with its long standing regulations.
>
> Policy –
>
> 1) Albany Hearing Attendance Instructions
> https://www.dta.ny.gov/pdf/covid19/ta-737-covid-19-albany-hearing-attendance-instructions-200716.pdf
>
> 2) COVID-19 Health Screening Report Hearings
> https://www.dta.ny.gov/pdf/covid19/ta736covid19healthscreeningreport.pdf
>
> Regulations –
>
> 3) Section 3000.15 Hearings before administrative law judges.
>
> d) Conduct of hearing. (1) At the hearing, the parties may call and examine witnesses, introduce exhibits, cross-examine opposing witnesses on any matter relevant to the issues even though the matter was not covered in direct examination, impeach any witness regardless of which party first called the witness to testify, and rebut the evidence against them. All witnesses shall testify under oath or by affirmation
>
> I do look forward to representing this small business taxpayer (in the future) at an administrative tax hearing and advocating for a reasonable resolution with the Division of Tax Appeals and the Audit Division in the future.
>
> Have a good summer."

11. On August 25, 2020, the aforementioned conference call took place. Neither Mr. Buxbaum, nor anyone else on behalf of petitioner participated. During that call, a hearing date of October 6, 2020, to be held in Albany, New York, was selected. A letter confirming the date and geographic location of the hearing was sent to the parties after the conference call.

12. On September 14, 2020, a notice of hearing was sent to the parties advising them of the specific time and location for the October 6, 2020 hearing.

13. On September 21, 2020, the administrative law judge received the following email from Mr. Buxbaum:

> "Hello ALJ Kevin Law:
>
> Kindly note that a Motion for Your Recusal will be filed subsequent to any fake administrative tax hearing. This Motion for Recusal will be based upon due process.
>
> This printed Determination and subsequent Tribunal Decision will amplify the facts as compared to your fake narrative and the Division of Tax Appeals misguided perspective in scheduling this hearing for this small business taxpayer.
>
> Kindly reconsider whether its reasonable to schedule a hearing on October 06, 2020 when the envelope for the administrative tax hearing notice is dated September 14, 2020.
>
> -Thanks for your thoughtful reconsideration and reflecting upon the Division's Regulation."

14. The October 6, 2020 hearing was adjourned based on petitioner's request.

15. On September 30, 2020, the administrative law judge and the parties participated in a conference call during which a January 6, 2021 hearing date in Albany, New York, was selected.

16. On November 24, 2020, the Supervising Administrative Law Judge sent the parties (and all parties scheduled to appear at all in-person hearings between the date of the letter and January 31, 2021) a letter that stated as follows:

> "Effective immediately, due to the resurgence of coronavirus in areas throughout the state, all in-person hearings before the Division of Tax Appeals through January 31, 2021 will be converted to virtual hearings to be held on the same date and time as scheduled. If any party has a concern with participating in a virtual hearing, they should inform the assigned administrative law judge in writing as soon as practicable.
>
> As conditions change, we will revisit the situation and resume in-person hearings when public health conditions allow.

17. On November 25, 2020, Mr. Buxbaum emailed the administrative law judge requesting that the matter be adjourned because petitioner would not be participating in a virtual hearing. This adjournment request was denied because petitioner did not provide a valid reason for not participating in a virtual hearing. Mr. Buxbaum responded as follows:

> "First, I will provide a valid reason after a common greeting of Happy Thanksgiving or Happy Holidays is offered to my email.
>
> In addition, you can select any reason that you want for creating your fake virtual reality hearing and asking me for an adjournment during the global pandemic
>
> Stop wasting my time with this nonsense.
>
> -thanks for your outstanding cooperation and consideration"

18. On December 1, 2020, the administrative law judge sent a Cisco Webex meeting invitation to the parties for the January 6, 2021 virtual hearing. Mr. Buxbaum responded via email stating: "I will NOT be joining your Web Ex."

19. On December 3, 2020, Supervising Administrative Law Judge Herbert M. Friedman, Jr., sent a letter to Mr. Buxbaum that stated as follows:

> "I have been made aware of correspondence to this agency in which you assert your groundless refusal to participate in the virtual hearing process in upcoming hearings.
>
> Please understand that the virtual hearing process at Tax Appeals comports with the requirements of the Tax Law and the Tax Appeals Tribunal's Rules of Practice and Procedure. The parties are afforded a full and fair opportunity to present witnesses, exhibits, argument, and to perform cross-examination. Indeed, all elements of due process are present. Moreover, this practice is consistent with that currently being implemented by the New York State court system.
>
> As a result of the health concerns arising from the coronavirus pandemic, all hearings before Tax Appeals scheduled through January 31, 2021 will be virtual hearings. If you or your clients have a legitimate reason for an inability to participate, that reason should be expressed, in writing, to the assigned administrative law judge in a timely manner. Please understand that simple refusal is not a valid reason. Otherwise, the hearings (as well as any related pre-hearing

> conference calls) will be held as scheduled. The consequences of your failure to participate will be your responsibility.
>
> Finally, based on the contents of your recent correspondence on this issue to several administrative law judges and administrative staff, I must remind you that all future correspondence with this agency should remain professional and respectful."

20. By email of that same date, Mr. Buxbaum responded to the Supervising Administrative Law Judge as follows:

> "Supervising Administrative Law Judge Herbert Friedman:
>
> REJECTED
>
> is your letter (with fake narratives and fiction and falsehoods) dated December 03, 2020.
>
> Furthermore, I remind YOU that when you write to me at this time of year the appropriate greeting is
>
> Happy Holidays."

21. On December 15, 2020, the administrative law judge emailed the parties a letter directing them to exchange exhibits prior to the hearing and to submit copies to the administrative law judge along with a copy of their hearing memorandum. Mr. Buxbaum responded via email on December 16, 2020 stating: "I will NOT be logging on to the WEBEX."

22. In response to Mr. Buxbaum's December 16, 2020 email, the administrative law judge cautioned him that the failure of a party to appear would result in the rendering of a default determination.

23. On January 5, 2021, petitioner filed the aforementioned motion for summary determination via email. Upon receipt, the administrative law judge mailed and emailed the following to Mr. Buxbaum:

> "I am in receipt of your email attaching a copy of an electronic copy of a motion for summary determination. Please note that pursuant section 3000.5 (e) of the

> Tax Appeals Tribunal's Rules of Practice and Procedure, '[the filing a motion does not constitute cause for the postponement of a hearing from the date set, unless such continuance is specifically ordered by the administrative law judge following receipt of such motion.' Since the hearing is scheduled for tomorrow January 6, 2021, no postponement will be granted. If you want the motion papers considered and made part of the record at tomorrow's virtual hearing, then you should request that at the hearing. As I previously indicated to you, failure to appear at the hearing will result in the issuance of a default determination."

24. On January 6, 2021, a virtual hearing in this matter was commenced. Appearing for the Division was Brandon Batch, Esq. Neither petitioner, nor anyone appearing on petitioner's behalf, logged into the virtual hearing. Accordingly, the Division of Taxation moved for a default determination in its favor.

CONCLUSIONS OF LAW

A. A motion for summary determination "shall 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 the moving party is entitled to a favorable determination as a matter of law (20 NYCRR 3000.9 [b] [1]). 20 NYCRR 3000.9 (c) provides that a motion for summary determination is subject to the same provisions as a motion for summary judgment pursuant to CPLR 3212. "The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case" (***Winegrad v New York Univ. Med. Ctr.***, 64 NY2d 851, 853 [1985], citing ***Zuckerman v City of New York***, 49 NY2d 557, 562 [1980]). As summary judgment is the procedural equivalent of a trial, it should be denied if there is any doubt as to the existence of a triable issue or where the material issue of fact is "arguable" (***Glick & Dolleck, Inc. v Tri-Pac Export Corp***., 22 NY2d 439, 441 [1968]; ***Museums at Stony Brook v Vil. of Patchogue Fire Dept***., 146 AD2d 572 [2d Dept 1989]). If material facts are in dispute, or if contrary inferences may be drawn reasonably from undisputed

facts, then a full trial is warranted and the case should not be decided on a motion (***Gerard v Inglese***, 11 AD2d 381, 382 [2d Dept 1960]). "To defeat a motion for summary judgment, the opponent must . . . produce 'evidentiary proof in admissible form sufficient to require a trial of material questions of fact on which he rests his claim'" (***Whelan v GTE Sylvan***ia, 182 AD2d 446, 449 [1st Dept 1992], citing ***Zuckerman***).

B. Before addressing the merits of petitioner's motion, the Division's arguments that the motion was not timely filed nor was the motion properly filed, are briefly addressed. First, the Division asserts that the motion was not properly filed because it was filed electronically, rather than filed by hand delivery, mail, or other acceptable delivery method in accordance with section 3000.22 of the Rules. The Division's argument is rejected because, during the COVID-19 public health emergency, the Tax Appeals Tribunal allowed for the electronic service and filing of documents other than documents which have statutory filing deadlines; i.e., petitions, exceptions, or requests for an extension of time to file an exception.

C. The Division also objects to the time in which the subject motion was filed citing to the 120-day rule of CPLR 3212 (a). CPLR 3212 (a) sets forth the statutory timeliness requirements for the filing of a summary judgment motion. This statute permits the court to "set a date after which no such motion may be made" (CPLR 3212 [a]). If the court sets no such date, a summary judgment motion must "be made no later than [120] days after the filing of the note of issue, except with leave of court on good cause shown" (***id.***). As the Division points out, 20 NYCRR 3000.9 (c) provides that a motion for summary determination is subject to the same provisions as a motion for summary judgment pursuant to CPLR 3212. Nonetheless, the 120-day rule has no application as the Rules do not provide for a note of issue be filed with the

administrative law judge for the case to be put on the hearing calendar.[3] The Rules do however provide that the filing of a motion for summary determination does not act to postpone a hearing, as will be later discussed (***see*** 20 NYCRR 3000.5). As a result, petitioner's motion was properly and timely filed.

D. Addressing the merits of petitioner's motion for summary determination, sales tax is imposed on retail sales of taxable tangible personal property and specified taxable services (Tax Law § 1105). Tax Law § 1105 (d) imposes a sales tax on the receipts from every sale of food or drink sold in or by restaurants or other establishments in New York State. Persons required to collect such tax, including the petitioner herein, must "keep records of every sale . . . in such form as the commissioner of taxation and finance may by regulation require" (Tax Law § 1135 [a] [1]). Among the sales records required to be maintained are copies of each "guest check . . . cash register tape and any other original sales document" (20 NYCRR 533.2 [b] [1]). These records must be sufficient to verify all transactions; kept in a manner suitable to determine the correct amount of tax due; and available for the Division's inspection upon request for a period of three years (Tax Law § 1135 [g]; 20 NYCRR 533.2 [a] [1], [2]). Taxpayers have the option to retain the required records in either hard-copy or electronic format (20 NYCRR 533.2 [a] [2], 20 NYCRR 2402.1 [a]). Tax Law § 1138 (a) (1) provides that if a sales tax return is not filed, "or if a return when filed is incorrect or insufficient, the amount of tax due shall be determined [by the Division of Taxation] from such information as may be available. If necessary, the tax may be estimated on the basis of external indices . . . ."

[3] A note of issue is a form that is filed in New York State civil courts and served on all parties confirming that the parties have completed necessary discovery proceedings and the case is trial ready (CPLR 3402 [a]).

E. First, without even examining the Division's papers in opposition, petitioner has not set forth a prima facie case that summary determination is warranted. Petitioner's motion papers consist solely of the affidavit of Michael Buxbaum with two exhibits attached. Mr. Buxbaum does not profess to have first-hand knowledge of the facts that he alleges in his affidavit, nor does he explain in his affidavit his basis for his knowledge of the statements contained therein other than by averring that "[he represents] this small business taxpayer's Petition{sic} seeking a cancellation of the Notice of Determination tax assessment." Other than the two exhibits attached, Mr. Buxbaum's affidavit has no evidentiary value (***Zuckerman***, at 720). Turning to those exhibits, Exhibit A indicates that sales records were reviewed in detail, and tax was asserted due, because the Division determined that sales were underreported on petitioner's sales tax filings. Exhibit A also indicates that the Division asserted use tax on capital asset purchases because no purchase records were provided. The questions of whether sales were underreported and whether tax had been paid on asset purchases raise issues of fact meaning summary determination in petitioner's favor is unwarranted. With respect to the unsworn letter attached to the Buxbaum affidavit as Exhibit B, there are a myriad of unanswered questions concerning such letter; i.e., who is Doctor's Associates, Inc., what is its relation to petitioner; did petitioner make capital purchases from Doctor's Associates, Inc.; did any purchases from Doctor's Associates, Inc., account for petitioner's total capital purchases during the audit period. Furthermore, contrary to the allegations in the Buxbaum affidavit, which, as discussed, has no evidentiary value, there is no indication in the two exhibits attached thereto that the Division used a test period to assert tax. For these reasons, petitioner's motion for summary determination is denied.

F. Putting aside the inadequacies of petitioner's evidence in support of its motion, and for the sake of a complete record, the Division's papers in opposition raise issues of fact which also

preclude the granting of a determination in petitioner's favor. Specifically, the audit report indicates that tax was assessed as a result of a detailed audit wherein the Division determined that: (i) petitioner collected more sales tax than was remitted based upon review of petitioner's franchise reports; (ii) petitioner had additional underreported sales based on an analysis of its bank statements; and (iii) there was no documentation provided which established that petitioner paid tax on its asset purchases.

G. The Division's analysis of petitioner's franchise reports to assert tax due on the amount of sales tax collected exceeding the amount reported and remitted, and its use of petitioner's bank deposits to estimate additional taxable sales when petitioner has not documented that the amounts deposited in excess of what was reported on its sales tax filing were from transactions other than sales, is justified. "[The Division is] not required to accept the total accuracy of the records that were produced by petitioner since they were self-serving and not subject to independent verification" (***Matter of Giordano v State Tax Commn***, 145 AD2d 726, 728 (3d Dept 1988), citing ***Matter of Meyer v State Tax Commn***, 61 AD2d 223, 225 (3rd Dept 1978), ***lv denied*** 44 NY2d 645 [1978]). Whether the amount of bank deposits exceeding reported taxable sales is the result of petitioner underreporting its tax liability is clearly an issue of fact. Accordingly, summary determination is clearly not warranted as there are triable issues of fact.

H. Normally, when a motion for summary determination is denied, a hearing on the merits would be scheduled. In this case, the aforementioned motion was filed January 5, 2021, the day before the already scheduled hearing, and over two years after the petition was filed. Unquestionably, based on its timing and substance, it was done as a dilatory tactic. Petitioner was advised that pursuant to section 3000.5 (e) of the Rules, "[t]he filing a motion does not

constitute cause for the postponement of a hearing from the date set, unless such continuance is specifically ordered by the administrative law judge following receipt of such motion." Petitioner was further advised that no postponement was granted and if it wanted the motion papers considered, then it should request that they be made part of the hearing record at the January 6, 2021 hearing. Petitioner was also again reminded that failure to appear at the hearing would result in the issuance of a default determination. Section 3000.15 (b) (2) of the Rules provides that "[i]n the event a party or the party's representative does not appear at a scheduled hearing and an adjournment has not been granted, the administrative law judge shall on his or her own motion or on the motion of the other party, render a default determination against the party failing to appear." Since petitioner nor anyone on behalf of petitioner appeared at the hearing, and there had been no adjournment, the Division moved for a default determination. Based on the foregoing, the Division's motion for a default determination is granted.

I. Tax Law § 2018 authorizes the Tax Appeals Tribunal to impose a penalty "if any petitioner commences or maintains a proceeding in the Division of Tax Appeals primarily for delay, or if the petitioner's position in such proceeding is frivolous." A penalty may be imposed on the Tribunal's own motion or on motion of the Division (see 20 NYCRR 3000.21). The maximum penalty allowable under this provision is $500.00 (***see*** Tax Law § 2018). Based upon petitioner's failure to appear, the baseless motion filed the day before the hearing and petitioner's conduct via Mr. Buxbaum throughout these proceedings and subsequent default, it is evident that this proceeding was commenced and/or maintained primarily for delay. Therefore, the maximum penalty provided for in Tax Law § 2018 is imposed on petitioner on motion of the administrative law judge in the sum of $500.00 (***see Matter of Hirschfeld***, Tax Appeals Tribunal, April 5, 2007).

J. Based upon the foregoing, petitioner's motion for summary determination is denied, the Division of Taxation's motion requesting a default determination against petitioner is granted, the notice of determination is sustained, the petition of Tasty Sub, LLC, is denied, and the maximum penalty pursuant to Tax Law § 2018 is imposed upon petitioner.

DATED: Albany, New York
June 03, 2021

/s/ Kevin R. Law
ADMINISTRATIVE LAW JUDGE