

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
AFFINITY TOWERS, LLC : DETERMINATION
for Redetermination of a Deficiency or for Refund : DTA NO. 829027
of Corporate Franchise Tax under Article 9-A :
the Tax Law for the Period ending December 31, 2017. :

Petitioner, Affinity Towers, LLC, filed a petition for redetermination of a deficiency or for refund of New York State corporate franchise tax under article 9-A of the Tax Law for the period ending December 31, 2017.

On May 17, 2019, the Division of Tax Appeals issued to petitioner a notice of intent to dismiss petition pursuant to 20 NYCRR 3000.3 (d) and 3000.9 (a) (4). The parties were given 30 days to respond. The Division of Taxation, appearing by Amanda Hiller, Esq. (Robert Tompkins, Esq., of counsel), submitted a letter dated June 4, 2019, in support of the dismissal. Petitioner did not submit a response by June 17, 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, Affinity Towers, LLC, filed a petition that was received by the Division of Tax Appeals on December 24, 2018. The envelope containing the petition bears a United States Postal Service (USPS) postmark dated December 18, 2018.

2. Douglas Hall signed the petition on behalf of the petitioner, but did not provide his

title with his signature, as instructed on the form.

3. The petition identifies the tax in question as corporation tax, but fails to identify the notice being challenged.

4. On February 21, 2019, the Division of Tax Appeals sent a letter to petitioner pursuant to 20 NYCRR 3000.3 (d), that advised it that the petition was not complete and requested certain missing information. The missing information sought included a copy of the notice and identification of Mr. Hall's title.¹

5. Petitioner did not respond to the letter or submit any information or documentation to cure the deficiencies in the petition.

6. On May 17, 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 that the petition filed was not in proper form. Specifically, the amount of tax contested was not included in the petition. Additionally, neither the identity or a copy of the statutory notice, assessment, or conciliation order, was provided with the petition. The notice of intent also stated that because the petition did not include the required statutory notice or conciliation order, the petition did not appear to be timely filed and the Division of Tax Appeals lacked jurisdiction over the subject matter of the petition.

7. In response to the notice of intent, the Division of Taxation's (Division's) representative submitted a letter dated June 4, 2019, and postmarked June 6, 2019, in support of dismissal. The Division stated that the petition was not in proper form. The amount of tax

¹ Mr. Hall identified his title as "Pres." in the section provided for petitioner's information, rather than with his signature. As a result, the omission of Mr. Hall's title in the signature section ultimately did not serve as an additional basis for the proposed dismissal.

contested was not included, and a copy of the statutory notice or conciliation order issued to petitioner was not provided. Thus, the Division agreed with the proposed dismissal.

8. Petitioner did not submit a response to the notice of intent to dismiss petition.

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]). Section 3000.3 (b) of the Tax Appeals Tribunal Rules of Practice and Procedure sets forth the information that must be included in the petition.

B. Pursuant to 20 NYCRR 3000.3 (b) (3), a petition shall contain the date of the notice.

C. Pursuant to 20 NYCRR 3000.3 (b) (4), a petition shall contain the amount of tax in controversy.

D. Pursuant to 20 NYCRR 3000.3 (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.”

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

G. The petition in this matter was not filed in proper form. The petition failed to state the amount of tax in controversy and failed to include either a conciliation order or a legible copy of any statutory notice being protested. In fact, it did not even identify the challenged notice. 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] [2]).

H. Additionally, because the petition did not identify or include either a conciliation order or a statutory notice, the Division of Tax Appeals lacks subject matter jurisdiction over the petition.² The Division of Tax Appeals is an adjudicatory body of limited jurisdiction whose powers are confined to those expressly conferred in its authorizing statute (*see Matter of Scharff*, Tax Appeals Tribunal, October 4, 1990, *revd on other grounds sub nom Matter of New York State Dept. of Taxation & Fin. v Tax Appeals Trib.*, 151 Misc 2d 326 [1991]). In the absence of legislative action, this forum cannot extend its authority to disputes that have not been specifically delegated to it (*Matter of Hooper*, Tax Appeals Tribunal, July 1, 2010).

I. Here, where petitioner has not identified or included either a statutory notice or conciliation order, petitioner has failed to demonstrate facts and documentation necessary to establish that the Division of Tax Appeals has jurisdiction over the assessment being challenged.

² As the Division did not provide 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.

Accordingly, the Division of Tax Appeals lacks subject matter jurisdiction over the instant matter and the petition must be dismissed (*see* 20 NYCRR 3000.9 [a] [4]).

J. 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
September 12, 2019

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