

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
BRONX CITY SERVICE AUTO REPAIR, INC. : DETERMINATION
for Revision of a Determination or for Refund of Sales : DTA NO. 829032
and Use Taxes under Articles 28 and 29 of the :
Tax Law for the Period December 1, 2013 through :
November 30, 2017. :
_____ :

Petitioner, Bronx City Service Auto Repair, 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 December 1, 2013 through November 30, 2017.

On April 19, 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 until May 20, 2019 to respond. The Division of Taxation, appearing by Amanda Hiller, Esq. (Howard S. Beyer, Esq., of counsel), submitted a letter in support of the dismissal. Petitioner, appearing pro se, did not submit a response by May 20, 2019, which date triggered the 90-day deadline for issuance of this determination. After due consideration of the documents submitted, Nicholas A. Behuniak, Administrative Law Judge, renders the following determination.

ISSUE

Whether the petition should be dismissed pursuant to 20 NYCRR 3000.3 (d).

FINDINGS OF FACT

1. Petitioner, Bronx City Service Auto Repair, Inc., 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) label dated December 21, 2018.

2. The petition is signed by an individual, Julian Estrella. Mr. Estrella signed the petition in his individual capacity and failed to identify that he was acting as a representative of the corporate petitioner by including the official title or capacity that he was signing with and binding the corporation under (e.g., corporate officer, employee, etc.).

3. Section V of the petition fails to identify what specific notice or assessment is being challenged. The petition also fails to provide a copy of the notice being challenged.

4. Section VIII of the petition fails to assert facts or allege errors made by the Commissioner of Taxation and Finance, as required.

5. The petition fails to include a copy of the Bureau of Conciliation and Mediation Services (BCMS) conciliation order that the petition indicated was issued to petitioner.

6. On January 18, 2019, the Division of Tax Appeals sent a letter to the attention of petitioner and Julian Estrella, advising them, in part, that the petition was not complete in that: (i) the petition was in the name of the corporation and if the intent was to petition a notice in the name of the individual a separate petition should be filed in the name of the individual; (ii) the relevant notice/assessment number was not identified or provided; (iii) the petition failed to allege any errors by the Commissioner of Taxation and Finance or assert any facts as required; (iv) the BCMS conciliation order referenced in the petition was not attached to the petition as required; and (v) the individual signing the petition did not provide their corporate title. The letter explained that the missing information should be forwarded to the Division of Tax Appeals.

7. Petitioner did not respond or cure the deficiencies in the petition, as requested.

8. On April 19, 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 petitioner neglected to: include a notice/assessment number in section V of the petition; assert facts or allege errors made by the Commissioner of Taxation and Finance in section VIII of the petition; include a copy of a conciliation order issued to petitioner; and, include the title of the individual that signed the petition. The notice of intent provided the parties 30 days in which to submit responses.

9. In response to the notice of intent, the Division of Taxation (Division) submitted a letter dated May 9, 2019 stating:

“[t]he Division is in receipt of the Notice of Intent to Dismiss the petition in the above referenced matter. The Division agrees that the petition submitted was not in proper form, as required by 20 NYCRR 3000.3 and Tax Law § 2008. This includes the failure to include a notice/assessment number in the Petition; the failure to assert facts or allege errors made by the Commissioner of Taxation and Finance; the failure to include a copy of a notice or order issued to the Petitioner with the Petition; and the failure to indicate a proper signatory. Also, the petition appears to seek equitable relief (i.e., a payment agreement), which the Division of Tax Appeals lacks jurisdiction to award. See, e.g., *Matter of Michael A. Goldstein and Janice I. Goldstein*, Tax Appeals Tribunal, September 22, 2011. The Division, therefore, agrees with the proposed dismissal.”

10. Petitioner never submitted a response to the notice of intent.

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 3000.3 (b) (7), a petition shall contain “the signature of the petitioner or the petitioner’s representative.”

C. Where a petition is filed by a corporation, it may act through one of its officers or employees (*see* 20 NYCRR 3000.2 [a]).

D. The petition shall contain separately numbered paragraphs stating, in clear and concise terms, each and every error which the petitioner alleges has been made by the Division together with a statement of facts upon which the petitioner relies to establish each error (20 NYCRR 3000.3 [b] [5]).

E. The petition shall contain a copy of the BCMS conciliation order if issued and a copy of any other statutory notice being protested (20 NYCRR 3000.3 [b] [8]).

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 an individual who did not indicate that his signature was on behalf of, and thus binding upon, the corporate petitioner; the relevant notice/assessment number challenged was not provided; the petition failed to allege any errors by

the Commissioner of Taxation and Finance or assert any facts as required; and, the BCMS conciliation order referenced by petitioner was not attached to the petition.¹

I. 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]).

J. The petition of Bronx City Service Auto Repair, Inc. is dismissed.

DATED: Albany, New York
August 15, 2019

/s/ Nicholas A. Behuniak
ADMINISTRATIVE LAW JUDGE

¹ In its response to the notice of intent the Division asserts that petitioner also seeks a remedy, a payment agreement, which is not the jurisdiction of the Division of Tax Appeals. It is not entirely clear from the petition that petitioner is in fact only seeking a payment plan and not challenging all, or part of, of the underlying asserted liability. Accordingly, that reason is not included as a justification for the dismissal of the petition. However, it is noted that payment plan negotiations are administered by the Division's Offer and Compromise Program Unit (*see* Publication 220 [Offer and Compromise Program]).