

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition  
of  
**THE DUMPLING COVE, LLC.**

DETERMINATION  
DTA NO. 829759

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 June 1, 2014 through August 31, 2017.

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Petitioner, The Dumpling Cove, LLC., 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 periods June 1, 2014 through August 31, 2017.

On May 11, 2020, the Division of Tax Appeals issued to petitioner a notice of intent to dismiss petition pursuant to 20 NYCRR 3000.9 (a) (4), on the grounds that the petition was insufficient and that the Division of Tax Appeals lacks jurisdiction over this matter. The Division of Taxation, appearing by Amanda Hiller, Esq. (Karry L. Culihan, of counsel), submitted a letter in support of the dismissal along with a copy of a consent form signed by petitioner waiving the right to a hearing at the Division of Tax Appeals. Petitioner, appearing by Kereith Mair, its principal, did not submit a response by June 11, 2020, 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. On January 16, 2018, petitioner, The Dumpling Cove, LLC. by its owner Kereith Mair, signed a consent to a statement of proposed audit change for sales and use taxes for the period June 1, 2014 through August 31, 2017. The consent specifically waived the right to a hearing to contest the validity and amount of the tax, interest and penalty consented to for that period.

2. A warrant ID E-040934848-W001-3, for the period ending August 31, 2017, was docketed against petitioner in the Bronx County Clerk's Office on July 19, 2018.

3. Petitioner filed a petition that was received by the Division of Tax Appeals on December 4, 2019. The envelope containing the petition bears a United States Postal Service postmark dated November 27, 2019.

4. The petition challenges warrant ID E-040934848-W001-3. Petitioner asserts that the assessment of sales tax owed for the periods between 2014 and 2017 was not based on a reasonable interpretation of the gross taxable sales for the said periods. It does not challenge any other notice.

***CONCLUSIONS OF LAW***

A. The Division of Tax Appeals is a forum of limited jurisdiction (Tax Law § 2008; *Matter of Scharff*, Tax Appeals Tribunal, October 4, 1990, *revd on other grounds sub nom New York State Department of Taxation and Fin. v Tax Appeals Tribunal*, 151 Misc 2d 326 [Sup Ct, Albany County 1991, Keniry, J.]). Its power to adjudicate disputes is exclusively statutory (*id.* at 332). The Division of Tax Appeals is authorized “[t]o provide a hearing as a matter of right, to any petitioner upon such petitioner’s request . . . unless a right to such hearing is

specifically provided for, modified or denied by another provision of this chapter” (Tax Law § 2006 [4]).

B. Pursuant to subdivision eighteenth of section 171 of the Tax Law, the Commissioner of Taxation and Finance shall:

“Have authority to enter into a written agreement with any person, relating to the liability of such person (or of the person for whom he acts) in respect of any tax or fee imposed by the tax law or by a law enacted pursuant to the authority of the tax law or article two-E of the general city law, *which agreement shall be final and conclusive*, and except upon a showing of fraud, malfeasance, or misrepresentation of a material fact: (a) the case shall not be reopened as to the matters agreed upon or the agreement modified, by any officer, employee, or agent of this state, and (b) in any suit, action, or proceeding, such agreement, or any determination, assessment, collection, payment, cancellation, abatement, refund or credit made in accordance therewith, shall not be annulled, modified, set aside or disregarded . . . “ (emphasis added).

The consent at issue was an agreement entered into by the Division and petitioner pursuant to the authority of subdivision eighteenth of section 171 of the Tax Law. Moreover, petitioner has not alleged fraud, malfeasance, or misrepresentation of a material fact that might set aside the consent. Thus, petitioner is precluded from challenging the agreement (*see Matter of Javed*, Tax Appeals Tribunal, October 6, 2011; *Matter of BAP Appliance Corp.*, Tax Appeals Tribunal, May 28, 1992).

C. Tax Law § 2008 (1) provides:

“All proceedings in the division of tax appeals shall be commenced by the filing of a petition with the division of tax appeals 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 credit application . . . or any other notice which gives a person the right to a hearing in the division of tax appeals under this chapter or other law.”

D. The petition in this matter solely disputes the warrant referred to in finding of fact 4. The warrant is not a document giving petitioner a right to a hearing in this forum (*see Tax Law*

§§ 1141; 2008). As a result, the Division of Tax Appeals is without jurisdiction to hear the merits of this matter.

E. 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 3, 2020

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