

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition	:	
of	:	
<b>REYNALDO RAYSIDE</b>	:	<b>DETERMINATION</b> <b>DTA NO. 829874</b>
for Revision of a Determination of Corporation Tax under Article 9-A of the Tax Law for the Years 2005 through 2020.	:	

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Petitioner, Reynaldo Rayside, filed a petition for revision of a determination of corporation tax under article 9-A of the Tax Law for the years 2005 through 2020. On December 14, 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 ground that the Division of Tax Appeals lacks jurisdiction over the petition. The Division of Taxation, appearing by Amanda Hiller, Esq. (Mary Hurteau, Esq., of counsel), submitted a letter dated January 8, 2021, in support of dismissal. Petitioner, appearing pro-se, did not submit a response by January 13, 2021, 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.

***ISSUE***

Whether the Division of Tax Appeals has subject matter jurisdiction over the petition.

***FINDINGS OF FACT***

1. Petitioner, Reynaldo Rayside, filed a petition with the Division of Tax Appeals on February 20, 2020.
2. The petition did not identify or include a statutory notice or an assessment identification number.
3. Petitioner did not attach a copy of a conciliation order.
4. On March 12, 2020, the Division of Tax Appeals sent a letter to petitioner detailing the items missing from the petition and that failure to correct it within 30 days may result in a dismissal. An additional request for a copy of the notice at issue or its assessment number was made by the Division of Tax Appeals to petitioner, to no avail. A similar written request was made on June 4, 2020.
5. Petitioner did not cure the deficiencies in the petition.
6. On December 14, 2020, Supervising Administrative Law Judge Herbert M. Friedman, Jr., of the Division of Tax Appeals issued a notice of intent to dismiss petition (notice of intent) to petitioner. The notice of intent stated, in sum, that the petition did not identify or include a statutory notice and the Division of Tax Appeals was without jurisdiction to consider the merits of the petition.
7. In response to the notice of intent to dismiss petition, the Division of Taxation's (Division's) representative submitted a letter on January 8, 2021 stating:

“[t]he Division is in receipt of the Notice of Intent to Dismiss the petition in the above referenced matter. As the petition submitted was not in proper form, as required by 20 NYCRR 3000.3 and Tax Law § 2008, the petitioner neglected to include a copy of the statutory notice or conciliation order issued to petitioner, the Division is in agreement with the proposed dismissal.”

8. Petitioner, appearing pro-se did not submit a response.

***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 Trib.*, 151 Misc 2d 326 [Sup Ct, Albany County 1991, Keniry, J.]). Its power to adjudicate disputes is exclusively statutory (*id.*). 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]).

Tax Law § 2008 limits the jurisdiction of the Division of Tax Appeals to matters

“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, a cancellation, revocation or suspension of a license, permit or registration, a denial of an application for a license, permit or registration 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.”

B. Pursuant to 20 NYCRR 3000.3 (b) (8), a petition shall contain, “for the sole purpose of establishing the timeliness of a 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.”

C. The petition in this case did not include a required statutory notice or conciliation order and, therefore, fails to present a notice for which the Division of Tax Appeals has jurisdiction (*see* Tax Law § 2008. As petitioner failed to identify or attach a notice, the Division of Tax Appeals lacks jurisdiction of the subject matter of the petition and the dismissal is warranted (*see* 20 NYCRR 3000.9 [a] [4] [i]).

D. The petition of Reynaldo Rayside is dismissed.

DATED: Albany, New York  
April 8, 2021

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