

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition	:	
of	:	
<b>LEAD ME HOME U.S.A., INC.</b>	:	DETERMINATION
	:	DTA NO. 829903
for Redetermination of a Deficiency or for	:	
Refund of Corporate Franchise Tax under	:	
Article 9-A of the Tax Law for the Years 2017	:	
and 2018.	:	

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Petitioner, Lead Me Home U.S.A., Inc., filed a petition for the redetermination of a deficiency or for refund of corporate franchise tax under article 9-A of the Tax Law for the years 2017 and 2018.

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). The Division of Taxation, by Amanda Hiller, Esq. (Colleen McMahon, Esq., of counsel), submitted a letter and documentation in support of the dismissal. Petitioners, appearing by Eric Schafer, its Chief Executive Officer, 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 jurisdiction to consider the subject matter of the petition.

***FINDINGS OF FACT***

1. Petitioner, Lead Me Home U.S.A., Inc., filed a petition that was received by the

Division of Tax Appeals on March 30, 2020. The envelope containing the petition bears a United States Postal Service postmark dated March 26, 2020.

2. The petition included a copy of a notice and demand for payment of tax due (notice and demand) bearing assessment number L-051189346, appears to have been issued by the Department of Taxation and Finance on January 29, 2020.

3. The petition also included a copy of a notice and demand for payment of tax due (notice and demand) bearing assessment number L-051197353, issued to petitioner on January 31, 2020.

4. The petition challenges the notices and demands.

5. On December 14, 2020, the Division of Tax Appeals issued to petitioner a notice of intent to dismiss petition. The notice stated, in sum, that as the petition had been filed in protest of two notices and demands, it appeared that the Division of Tax Appeals was without jurisdiction to consider the merits of the petition.

6. 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. Notices and Demand issued on or after December 1, 2004, do not provide for a right to a hearing prior to payment of the assessment. Therefore, the Division is in agreement with the proposed dismissal."

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

#### ***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.*). Accordingly, absent legislative action, this forum cannot extend its authority to disputes that have not been specifically delegated to it (*see Matter of Hooper*, Tax Appeals Tribunal, July 1, 2010).

B. 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]) unless such right is specifically modified or denied by another provision of this chapter (*see* Tax Law § 2006 [4]; 20 NYCRR 3000.9 [a]).

C. The notices and demands protested by petitioner here do not give rise to hearing rights (*see* Tax Law § 173-a [2]).

D. As the notices and demands are insufficient to confer jurisdiction upon the Division of Tax Appeals to consider the merits of the petition filed, dismissal is warranted.

E. The petition of Lead Me Home U.S.A., Inc., is dismissed.

DATED: Albany, New York  
April 8, 2021

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