

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition :  
of :  
**ENZO DIRENDE (DECEASED)** : DETERMINATION  
for Redetermination of a Deficiency or for Refund of New : DTA NO. 830029  
York State Personal Income Tax under Article 22 of Tax :  
Law for 2012. :

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A petition was filed on behalf of Enzo DiRende (Deceased) for redetermination of a deficiency or for refund of New York State personal income tax under article 22 of the Tax Law for the year 2012. On July 23, 2021, the Division of Tax Appeals issued a notice of intent to dismiss petition pursuant to 20 NYCRR 3000.3 (d) (2). The parties were given 30 days to respond. The Division of Taxation, appearing by Amanda Hiller, Esq. (Christopher O'Brien, Esq., of counsel), submitted a letter dated August 12, 2021, in support of the dismissal. A response was not submitted on behalf of petitioner by August 23, 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 petition should be dismissed for improper form where it lacks a valid signature.

***FINDINGS OF FACT***

1. A petition was filed in the name of Enzo DiRende that was received by the Division of Tax Appeals on September 3, 2020. The envelope containing the petition bears a United States Postal Service (USPS) postmark dated August 26, 2020.

2. Enzo DiRende died May 28, 2018.

3. The petition lists Kevin Kelly as petitioner's representative. Mr. Kelly is identified on the petition as petitioner's former accountant. He is not identified as a CPA or as any other qualifying representative.

4. Mr. Kelly signed the petition on behalf of petitioner. An executed Division of Tax Appeals power of attorney form did not accompany the petition.

5. Proof identifying the executor or executrix of petitioner's estate was not attached.

6. The petition protests a notice of deficiency issued by the Division of Taxation to Enzo DiRende, dated March 13, 2020, bearing assessment number L-051183042, for New York State personal income tax for the year 2012.

7. On September 30, 2020, the Division of Tax Appeals sent an email to Mr. Kelly requesting a power of attorney authorizing him to represent petitioner. On October 19, 2020, the Division of Tax Appeals sent a letter to Mr. Kelly requesting corrections to the petition pursuant to 20 NYCRR 3000.3. The letter advised that the petition was deficient as a power of attorney form was not attached to the petition.

8. On January 5, 2021, the Division of Tax Appeals received a power of attorney form, dated December 31, 2020, that bears the signature of the petitioner and petitioner's widow,

Maria DiRende.<sup>1</sup> The power of attorney listed Kevin Kelly as the taxpayer's representative, and identified his qualifications as "an employee." It did not list any other qualification for Mr. Kelly. The power of attorney also listed Maria DiRende as a representative, although the form failed to identify her qualifications.

9. On February 9, 2021, the Division of Tax Appeals sent a letter to Ms. DiRende informing her that Mr. Kelly did not qualify to represent petitioner before the Division of Tax Appeals and that without proof of the executor of Enzo DiRende's estate, the petition could not proceed.

10. The deficiency in the petition has not been cured.

11. On July 23, 2021, Herbert M. Friedman, Jr., Supervising Administrative Law Judge of the Division of Tax Appeals, issued 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 it was not signed by petitioner or an authorized representative, but by Mr. Kelly, who was not qualified to appear before the Division of Tax Appeals on petitioner's behalf.

12. In response to the notice of intent, the Division of Taxation (Division) submitted a letter dated August 12, 2021 agreeing with dismissal, stating:

“[t]he Division is in receipt of the Notice of Intent to Dismiss the petition in the above referenced matter. The petition was not in proper form, as required by 20 NYCRR 3000.2, 20 NYCRR 3000.3 because petitioner's representative did not request special permission to represent petitioner with the Tribunal and has not been signed by an authorized person, the Division is in agreement with the proposed dismissal.”

13. There was no response on behalf of petitioner to the notice of intent.

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<sup>1</sup> It was unexplained how the late Mr. DiRende's signature, dated December 31, 2020, appeared on the power of attorney form.

***CONCLUSIONS OF LAW***

A. Pursuant to 20 NYCRR 3000.3 (b) (7), a petition shall contain “the signature of the petitioner or the petitioner’s representative.”

B. Pursuant to 20 NYCRR 3000.2 (a) (2), a taxpayer may be represented by: (i) an attorney-at-law licensed to practice in New York State; (ii) a certified public accountant duly qualified to practice in New York State; (iii) an enrolled agent enrolled to practice before the Internal Revenue Service; or (iv) a public accountant enrolled with the New York State Education Department. An attorney, certified public accountant or licensed public accountant authorized or licensed to practice in any other jurisdiction may represent a petitioner after receiving written permission from the Secretary of the Tax Appeals Tribunal (*see* 20 NYCRR 3000.2 [a] [4]).

C. In the instant case, the petition was not signed by petitioner. Rather, it was signed by Mr. Kelly, who has been identified as former accountant and “employee.” Nowhere in the record is there evidence that Mr. Kelly was authorized to sign the petition on behalf of petitioner. Further, the power of attorney form that was received by the Division of Tax Appeals was signed by Ms. DiRende. However, proof that she was the executrix of petitioner’s estate was not received. Ms. DiRende’s failure to provide proof that she was the executrix meant she lacked the authority to sign the power of attorney, further rendering the petition in improper form.

D. 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 (*see* 20 NYCRR 3000.3 [d] [1]). 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]).

E. The supervising administrative law judge provided the required notice and opportunities to correct the petition pursuant to 20 NYCRR 3000.3 (d); however, the necessary corrections were not made. In sum, the petition was signed by someone who has failed to demonstrate the proper authority to do so. As the petition was not filed in proper form, it must be dismissed (*see* Tax Law § 2008; 20 NYCRR 3000.3 [d]).

F. IT IS ORDERED that the petition be, and it is hereby, dismissed with prejudice as of this date.

DATED: Albany, New York  
November 18, 2021

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