

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition :  
of :  
**MOGU SUSHI, INC.** : DETERMINATION  
DTA NO. 830558

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 Ended November 30, 2015. :

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Petitioner, Mogu Sushi Inc., filed a petition for the revision of a determination or for refund of sales and use taxes under articles 28 and 29 of the Tax Law for the period ended November 30, 2015. On October 15, 2021, 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. (Patricia Heer, Esq., of counsel), submitted a letter in support of the dismissal. Petitioner, appearing by Lai Y. Leung, its shareholder, did not submit a response by November 15, 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, Mogu Sushi, Inc., filed a petition that was received by the Division of Tax Appeals on July 27, 2021. The envelope containing the petition does not bear a United States Postal Service postmark indicating when the petition was mailed.

2. The petition includes (i) a notice and demand for payment of tax due (notice and demand) bearing assessment number L-044402670, issued by the Department of Taxation and Finance on February 11, 2016; (ii) a notice of adjustment assessment number L-044402670, issued by the Department of Taxation and Finance on December 9, 2019; and (iii) a consolidated statement of tax liabilities issued by the Department of Taxation and Finance on August 5, 2019.

3. The petition does not reference any other notice.

4. On October 15, 2021, the Division of Tax Appeals issued to petitioner a notice of intent to dismiss petition. The notice stated, in sum, that it appeared that the Division of Tax Appeals was without jurisdiction to consider the merits of the petition.

5. In response to the notice of intent to dismiss petition, the Division of Taxation's (Division's) representative submitted a letter on November 3, 2021 stating:

“[t]he Division is in receipt of the Notice of Intent to Dismiss the petition in the above referenced matter and agrees that the Division of Tax Appeals lacks jurisdiction over the matter. None of the documents referenced or attached to the petition (Notice and demand for payment of tax due Assessment ID L-044402670-4, Notice of Adjustment Assessment ID L-04402670-4, and consolidated statement of tax liabilities) provide a right to a hearing before the Division of Tax Appeals. Tax Law §§ 173-a (3)(c); 2000; 2006; 2008.

Therefore, the Division is in agreement with the proposed dismissal.”

6. 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 notice and demand for payment of tax due assessment ID L-044402670, notice of adjustment assessment ID L-044402670, and consolidated statement of tax liabilities protested by petitioner here do not give rise to hearing rights (*see* Tax Law § 173-a [3]). Further, petitioner has failed to identify any other statutory notice giving rise to hearing rights.

D. As the notice and demand for payment of tax due, notice of adjustment, and consolidated statement of tax liabilities 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 Mogu Sushi, Inc., is dismissed.

DATED: Albany, New York  
February 10, 2022

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