

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition :  
of :  
**NEIGHBORHOOD MUSIC AND ARTS CORP.** : DETERMINATION  
for Redetermination of a Deficiency or for Refund under : DTA NO. 830730  
Article 22 of the Tax Law for the Periods 2006 through :  
2021. :  
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Petitioner, Neighborhood Music and Arts Corp., filed a petition for redetermination of a deficiency or for refund under Article 22 of the Tax Law for the periods 2006 through 2017. On August 26, 2022, 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, appearing by Amanda Hiller, Esq. (Daniel Schneider, Esq., of counsel), submitted a letter in support of the dismissal. Petitioner, appearing by Mark H. Palermo, Esq., submitted a response in opposition of the dismissal. Accordingly, the 90-day period for the issuance of this determination began on September 26, 2022. 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 lacks jurisdiction over the petition.

***FINDINGS OF FACT***

1. Petitioner, Neighborhood Music and Arts Corp., filed a petition that was received by the Division of Tax Appeals on November 4, 2021. The envelope containing the petition bears a USPS postal mark indicating the petition was mailed on November 1, 2021.

2. The petition included a copy of: i) a notice of failure to file return and demand for payment of penalty due bearing assessment number L-051885314, issued by the Department of Taxation and Finance on August 27, 2020 pursuant to Tax Law § 685 (v); ii) a notice of failure to file return and demand for payment of penalty due bearing assessment number L-053165731, issued by the Department of Taxation and Finance on April 20, 2021 pursuant to Tax Law § 685 (v); and iii) a notice of failure to file return and demand for payment of penalty due bearing assessment number L-054445381, issued by the Department of Taxation and Finance on October 15, 2021 pursuant to Tax Law § 685 (v).

3. The petition challenges the notices referenced in finding of fact 2.

4. On August 26, 2022, the Division of Tax Appeals issued to petitioner a notice of intent to dismiss petition. The notice stated, in sum, that the Division of Tax Appeals was without jurisdiction to consider the merits of the petition as challenges to the notices at issue are delegated to be heard by the New York State Department of Labor pursuant to Tax Law § 685 (v) (1).

5. In response to the notice of intent to dismiss petition, the Division of Taxation's (Division's) representative submitted a letter on September 6, 2022 stating:

“[t]he Division of Taxation is in receipt of the Notice of Intent to Dismiss the petition in the above referenced matter. Notices for failure to file return and demand for payment of penalty due in accordance with the Tax Law § 685(v)(1)(D) delegates the adjudication of disputes regarding the imposition of this penalty to the New York State Department of Labor. Therefore, the Division is in agreement with the proposed dismissal.”

6. Petitioner submitted a response to the notice of intent to dismiss petition stating in pertinent part that the company ceased doing business at the end of 2020, filed its final return in 2021, and the company is in the process of dissolution.

The response did not address the jurisdictional issue.

### ***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.*). 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. As noted, the notices referenced in findings of fact 2 impose a penalty pursuant to Tax Law § 685 (v) (1) for failure to file a complete Quarterly Combined Withholding, Wage Reporting and Unemployment Insurance Return (Form NYS-45). Tax Law § 685 (v) (1) (D) delegates the adjudication of all disputes regarding the imposition of this penalty to the New York State Department of Labor. Petitioner’s hearing rights with respect to penalties imposed under this section have thus been “specifically provided for, modified or denied” by Tax Law § 685 (v) (1) (D), and the Division of Tax Appeals is not authorized to provide petitioner with a hearing with respect to these notices (*see* Tax Law § 2006 [4]).

C. 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  
December 22, 2022

/s/ Herbert M. Friedman  
SUPERVISING ADMINISTRATIVE LAW JUDGE