

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
EDWARDS AIR CONDITIONING & REFRIGERATION SERVICES CORP.	:	DETERMINATION DTA NO. 830795
for Revision of Determinations or for Refund of Sales and Use Taxes under Articles 28 and 29 of Tax Law for the Periods 2001 through 2019.	:	

Petitioner, Edwards Air Conditioning & Refrigeration Services Corp., filed a petition for revision of determinations of sales and use taxes under articles 28 and 29 of the Tax Law for the periods 2001 through 2019. 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. (Michael J. Hall), and petitioner, appearing by Keith S. Rinaldi, P.C. (Keith Rinaldi, Esq.) submitted letters in response to the proposed 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 has subject matter jurisdiction over the petition.

FINDINGS OF FACT

1. Petitioner, Edwards Air Conditioning & Refrigeration Services Corp., filed a petition that was received by the Division of Tax Appeals on September 9, 2021. The express mail

envelope containing the petition, bears a United States Postal Service (USPS) postmark indicating the petition was mailed on August 28, 2021.

2. The petition included notices of determination, all dated June 2, 2021, and bearing the following assessment numbers:

L-053501224, L-053501223, L-053501222, L-053501221, L-053501220, L-053501219, L-053501263, L-053501218, L-053501217, L-053501216, L-053501215, L-053501214, L-053501213, L-053501212, L-053501211, L-053501210, L-053501209, L-053501208, L-053501207, L-053501206, L-053501205, L-053501204, L-053501203, L-053501202, L-053501201, L-053501200, L-053501199, L-053501198, L-053501197, L-053501196, L-053501195, L-053501239, L-053501238, L-053501262, L-053501261, L-053501260, L-053501259, L-053501258, L-053501257, L-053501256, L-053501255, L-053501254, L-053501253, L-053501252, L-053501251, L-053501250, L-053501249, L-053501248, L-053501247, L-053501246, L-053501245, L-053501244, L-053501243, L-053501242, L-053501241, L-053501240.

3. The petition also included four tax warrants that were docketed in the Dutchess County Clerk's Office against petitioner on June 10, 2021, for the following:

1) warrant ID E-004905684-W009-8 for the periods February 28, 2006 through August 31, 2009 for assessment numbers L-051680749, L-051680750, L-051680751, L-051680752, L-051680753, L-051680754, L-051680755, L-051680756, L-051680757, L-051680758, L-051680759, L-051680760, L-051680761, L-051680762, L-051680763; 2) warrant ID E-004905684-W010-4 for the periods May 31, 2002 through November 30, 2005 for assessment numbers L-051680734, L-051680735, L-051680736, L-051680737, L-051680738, L-051680739, L-051680740, L-051680741, L-051680742, L-051680743, L-051680744, L-051680745, L-051680746, L-051680747, L-051680748; 3) warrant ID E-004905684-W011-8 for the periods February 28, 2002 through February 29, 2016 for assessment numbers L-051277711, L-051277712, L-051277713, L-051277714, L-051277715, L-051277716, L-051277717, L-051277718, L-051277719, L-051277720, L-051277721, L-051291335, L-051334760, L-051334761, L-051680733; and 4) warrant ID E-004905684-W012-3 for the periods May 31, 2013 through November 30, 2015 for assessment numbers L-051277700, L-051277701, L-051277702, L-051277703, L-051277704, L-051277705, L-051277706, L-051277707, L-051277708, L-051277709, L-051277710.

4. The petition was severed and assigned DTA numbers 830642 and 830795.
5. DTA number 830642 only addressed the notices listed in finding of fact 2.
6. The petition for the tax warrants referenced in finding of fact 3 was

given DTA number 830795 and is the instant matter.

7. The petition does not reference any other notice.

8. On August 26, 2022, Supervising Administrative Law Judge Herbert M. Friedman, Jr., of the Division of Tax Appeals issued a notice of intent to dismiss petition to petitioner. The notice of intent stated, in sum, that the Division of Tax Appeals was without jurisdiction to consider the merits of the petition as it challenged tax warrants.

9. In response to the notice of intent to dismiss petition, the Division of Taxation's (Division's) representative submitted a letter on September 23, 2022, 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 petition should be dismissed because the petition is not in proper form and the notices referenced in the petition are not statutory notices which would give the Division of Tax Appeals jurisdiction. Therefore, the Division of Tax Appeals lacks subject matter jurisdiction in the matter (Tax Law §§ 2000 & 2008; 20 NYCRR 300.1(k) & 3000.3; see also Matter of Vilma Bautista, Tax Appeals Tribunal, March 13, 2017), and the petition should be dismissed.”

10. On September 28, 2022, petitioner, through its representative, submitted a response to the notice of intent to dismiss petition. Petitioner stated that it agrees with dismissal of the instant 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 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 such 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. While the petition included copies of a tax warrants, Tax Law § 2000 does not provide jurisdiction to the Division of Tax Appeals for reviewing petitions or providing hearings for tax warrants.

E. The petition of Edwards Air Conditioning & Refrigeration Services Corp. is dismissed.

DATED: Albany, New York
December 22, 2022

/s/ Herbert M. Friedman
SUPERVISING ADMINISTRATIVE LAW JUDGE