

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition	:	
of	:	
<b>MIDLAND FARMS, INC.</b>	:	<b>DETERMINATION</b>
		<b>DTA NO. 831157</b>
for Revisions of Determinations or for Refunds of Motor Fuel Tax under Article 12-A of the Tax Law and Highway Use Tax under Article 21 of the Tax Law for the Periods April 1, 2021 through June 30, 2021 and October 1, 2021 through December 31, 2022.	:	

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Petitioner, Midland Farms, Inc., filed a petition for revisions of determinations or for refunds of motor fuel tax under article 12-A of the Tax Law and highway use tax under article 21 of the Tax Law for the periods April 1, 2021 through June 30, 2021 and October 1, 2021 through December 31, 2022.

On October 31, 2023, 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. (Aliza J. Chase, Esq., of counsel), submitted a letter in support of the dismissal. Petitioner, appearing by Demetrios Haseotes, President, submitted a response by November 30, 2023, which date began the 90-day period for the issuance of this determination. After due consideration of the documents submitted, Donna M. Gardiner, Supervising Administrative Law Judge, renders the following determination.

***ISSUE***

Whether the Division of Tax Appeals has jurisdiction over the petition.

***FINDINGS OF FACT***

1. Petitioner, Midland Farms, Inc., filed a petition with the Division of Tax Appeals on November 7, 2022.
2. A statutory notice or conciliation order was not attached to the petition.
3. The petition was signed by Chris Brooks, Sr., who is identified as an employee, not a corporate officer.
4. A fully executed power of attorney was not attached to the petition.
5. On January 17, 2023, the Division of Tax Appeals made a written request to petitioner requesting a copy of the statutory notice being protested and a fully executed power of attorney form.
6. Petitioner did not provide any statutory notice or power of attorney form.
7. On October 31, 2023, the Division of Tax Appeals issued to petitioner a notice of intent to dismiss petition. The notice stated, in sum, that the petition was not in proper form and the Division of Tax Appeals lacked jurisdiction to review the merits of it.
8. On November 13, 2023, in response to the notice of intent to dismiss petition, petitioner provided a revised copy of the petition, signed by its president. Attached to the revised petition was a copy of a consolidated statement of tax liabilities, dated November 21, 2022.
9. On November 21, 2023, the Division of Taxation (Division) submitted a letter in response to the notice of intent to dismiss petition that stated:

“[t]he Division is in receipt of the Notice of Intent to Dismiss the petition in the above referenced matter. As the petition submitted was not in proper form, as required by 20 NYCRR 3000.3 and Tax Law § 2008 because the petitioner neglected to include a copy of the statutory notice or conciliation order issued to petitioner, and the power of attorney was not submitted pursuant to 20 NYCRR 3000.2[,] the Division is in agreement with the proposed dismissal.”

### **CONCLUSIONS OF LAW**

A. The Division of Tax Appeals is a forum of limited jurisdiction (*see* Tax Law § 2008; *Matter of Scharff*, Tax Appeals Tribunal, October 4, 1990, *revd on other grounds sub nom Matter of New York State Dept. of Taxation & Fin. v Tax Appeals Trib.*, 151 Misc 2d 326 [Sup Ct, Albany County 1991]). 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 a hearing is specifically provided for, modified or denied by another provision of this chapter” (Tax Law § 2006 [4]).

All proceedings in the Division of Tax Appeals “shall be commenced by the filing of 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 credit application . . . or any other notice which gives a person the right to a hearing” (Tax Law § 2008 [1]).

B. Pursuant to 20 NYCRR 3000.3 (b) (8), a petition shall contain, “for the sole purpose of establishing the timeliness of the 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.” In this case, no statutory notice was attached.

C. On January 17, 2023, a written request was made to petitioner for a copy of the statutory notice. Petitioner failed to provide it. Where petitioner fails to correct the petition within the time prescribed, the supervising administrative law judge will issue a notice of intent to dismiss petition (*see* 20 NYCRR 3000.3 [d] [2]). Such notice of intent to dismiss petition was issued on October 31, 2023. Although petitioner submitted a revised petition signed by an

authorized signatory, it failed to include a statutory notice.

As petitioner failed to attach a notice contemplated by Tax Law § 2008 (1), the Division of Tax Appeals lacks jurisdiction over the subject matter of the petition and, thus, dismissal is warranted (*see* 20 NYCRR 3000.3 [d] [2]; 3000.9 [a] [4] [i]; *see also Matter of Richardson*, Tax Appeals Tribunal, November 17, 2022).

D. While the revised petition included a copy of a consolidated statement of tax liabilities, this is not a statutory notice that offers hearing rights at the Division of Tax Appeals.

As decided in *Matter of Mostovoi* (Tax Appeals Tribunal, May 23, 2019), a consolidated statement of tax liabilities does not qualify as a statutory notice because such statement reports a taxpayer's past-due tax liabilities, and it does not confer jurisdiction to consider the substantive merits of a taxpayer's protest.

E. It is ORDERED, on the motion of the supervising administrative law judge, that the petition is dismissed with prejudice as of this date.

DATED: Albany, New York  
February 22, 2024

/s/ Donna M. Gardiner  
SUPERVISING ADMINISTRATIVE LAW JUDGE