

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
STEVEN AND MARY STAVRACOS : DETERMINATION
for Revision of a Determination or for Refund of Sales : DTA NO. 831159
and Use Taxes under Articles 28 and 29 of the Tax Law :
for the Period December 1, 2017 through May 31, 2020. :

Petitioners, Steven and Mary Stavracos, filed a petition 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 December 1, 2017 through May 31, 2020.

On October 31, 2023, the Division of Tax Appeals issued to petitioners a notice of intent to dismiss petition pursuant to 20 NYCRR 3000.9 (a) (4). The Division of Taxation, appearing by Amanda Hiller, Esq. (Brendan Roche, Esq., of counsel), submitted a letter in support of the dismissal. Petitioners, appearing pro se, did not submit a response by November 30, 2023, which date began the 90-day period for 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 lacks jurisdiction over the petition.

FINDINGS OF FACT

1. Petitioners, Steven and Mary Stavracos, filed a petition with the Division of Tax Appeals on November 5, 2022.

2. The petition failed to attach a statutory notice or conciliation order.
3. On January 17, 2023, a written request was made by the Division of Tax Appeals to petitioners requesting that they provide a copy of the statutory notices being protested.
4. Petitioners did not provide any statutory notice.
5. On October 31, 2023, the Division of Tax Appeals issued to petitioners a notice of intent to dismiss petition. The notice stated, in sum, that the Division of Tax Appeals lacked jurisdiction to review the merits of the petition because it was not in proper form.
6. On November 21, 2023, in response to the notice of intent to dismiss petition, the Division of Taxation (Division) submitted a letter stating:

“[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 [sic] neglected to include a copy of the statutory notice or conciliation order issued to petitioner [sic] the Division is in agreement with the proposed dismissal.”

7. Petitioners did not submit a response to the notice of intent to dismiss 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 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

