

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
TOP SHELF ELECTRIC CORP. : DETERMINATION
for Redetermination of a Deficiency or for Refund of New : DTA NO. 831354
York State Personal Income Tax under Article 22 of the :
Tax Law for the Year 2022. :

Petitioner, Top Shelf Electric Corp., filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under article 22 of the Tax Law for the year 2022.

On November 9, 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. (Amanda Alteri), submitted a letter in support of the dismissal.

Petitioner, appearing by Sax LLP (Frank Centrella, CPA), submitted a letter and supporting documentation in opposition of dismissal by December 11, 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, Top Shelf Electric Corp., filed a petition with the Division of Tax Appeals

on June 26, 2023.

2. A statutory notice or conciliation order was not attached to the petition.

3. A fully executed power of attorney form was not attached to the petition.

4. The petition is signed by Frank Centrella, who was not authorized to sign the petition without a fully executed power of attorney form on file.

5. On August 10, 2023, the Division of Tax Appeals made a written request to petitioner for a copy of the statutory notice and for a fully executed power of attorney form.

6. Petitioner did not provide any statutory notice or fully executed power of attorney form.

7. On November 9, 2023, 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 lacked jurisdiction to review the merits of the petition because it was not in proper form.

8. On November 21, 2023, petitioner responded to the notice of intent to dismiss petition by providing a fully executed power of attorney form. Additionally, petitioner provided a notice and demand, dated April 4, 2023, assessment number L-057852221, issued to it for the tax year 2022. Petitioner requests an abatement of all penalties, assessed by the notice and demand, on the basis of reasonable cause.

9. On November 28, 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 (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 August 10, 2023, the Division of Tax Appeals made a written request asking petitioner to supply a statutory notice. Petitioner failed to do so. 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 was issued on November 9, 2023.

While petitioner provided a fully executed power of attorney form, petitioner failed to

attach a notice that provides hearing rights pursuant to Tax Law § 2008. Instead, petitioner responded by including a copy of a notice and demand. This notice is insufficient to confer jurisdiction upon the Division of Tax Appeals to consider the merits of the petition (*see* Tax Law § 173-a [2]; *Matter of Alesi*, Tax Appeals Tribunal, June 9, 2022; *Matter of Mostovoi*, Tax Appeals Tribunal, May 23, 2019).

As petitioner failed to attach a notice contemplated by Tax Law § 2008, 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. 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
March 7, 2024

/s/ Donna M. Gardiner
SUPERVISING ADMINISTRATIVE LAW JUDGE