

STATE OF NEW YORK
DIVISION OF TAX APPEALS

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| In the Matter of the Petition | : | |
| of | : | |
| VICTOR SPADARO | : | DETERMINATION |
| for Revision of a Determination or for Refund of Sales | : | DTA NO. 831388 |
| and Use Taxes under Articles 28 and 29 of the Tax | : | |
| Law for the Period March 1, 2020 through November | : | |
| 30, 2022. | : | |

Petitioner, Victor Spadaro, 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 March 1, 2020 through November 30, 2022.

The Division of Taxation, by its representative, Amanda Hiller, Esq. (Patrick F. Giordano, Esq., of counsel) brought a motion on October 23, 2025, seeking summary determination in the above-referenced matter pursuant to sections 3000.5 and 3000.9 of the Rules of Practice and Procedure of the Tax Appeals Tribunal. Petitioner appeared pro se. Petitioner did not file a response to the motion by the due date of November 24, 2025, which date commenced the 90-day period for the issuance of this determination.

Based upon the motion papers and all pleadings and documents submitted in connection with this matter, Alejandro G. Taylor, Administrative Law Judge, renders the following determination.

ISSUE

Whether the Division of Tax Appeals has jurisdiction to address the merits of the petition filed in this matter.

FINDINGS OF FACT

1. On August 11, 2023, petitioner, Victor Spadaro, filed a petition with the Division of Tax Appeals in protest of a notice of determination (assessment ID L-058099484) issued by the Division of Taxation (Division) dated May 16, 2023 (notice). The notice asserts \$109,593.65 in sales and use taxes, \$27,850.27 in interest and \$26,927.74 in penalty for a total balance due of \$164,371.66.

2. Included with the petition was a completed request for conciliation conference filed with the Division's Bureau of Conciliation and Mediation Services (BCMS), signed by petitioner and dated August 1, 2023. No subsequent conciliation order was included with the petition.

3. On October 23, 2025, the Division filed a motion for summary determination or for other relief, stating that petitioner had executed a consent issued to him by BCMS and, thus, waived his rights to any further review of the notice before the Division of Tax Appeals.

4. In support, the Division attached several documents to its motion, including a letter to petitioner's representative, dated April 30, 2024, from Kathleen Loos, a Tax Conference Conciliator with BCMS, proposing a modification of the notice after reviewing the evidence. The letter instructed petitioner to sign and return one copy of the included consent form to BCMS if petitioner agreed with the proposed modification.

5. Also attached to the Division's motion is a BCMS consent (CMS number 000354562), signed by petitioner and dated May 16, 2024. The consent relates to a notice, dated May 16, 2023, and references assessment number L-058099484. The consent proposed a final disposition

of the notice by adjusting the amounts contained in the notice to \$87,674.91 of tax due, \$26,155.96 in interest and cancelling the penalty in its entirety. If agreed to, the consent required petitioner to waive any right to a hearing in the Division of Tax Appeals concerning the notice.

6. Petitioner did not respond to the Division's motion for summary determination.

CONCLUSIONS OF LAW

A. The Division submitted a motion for summary determination in this matter seeking a determination in its favor or for other relief due to petitioner's waiver of a right to a hearing before the Division of Tax Appeals pursuant to his execution of the BCMS consent. Thus, as the Division is effectively arguing that this forum lacks jurisdiction over the subject matter of the petition, a motion to dismiss, rather than a motion for summary determination, is the proper procedural vehicle (*see Matter of Liaquat Ali, Inc.*, Tax Appeals Tribunal, January 22, 2015; Tax Law § 2006 [5] [ii]; 20 NYCRR 3000.9 [a] [1] [ii]).

B. Section 3000.9 (c) of the Rules of Practice and Procedure of the Tax Appeals Tribunal (Rules) provides that a motion for summary determination is subject to the same provisions as a motion for summary judgment pursuant to Civil Practice Law and Rules (CPLR) 3212 and that a motion to dismiss is subject to the same provisions as motions filed pursuant to CPLR 3211. A party may move for dismissal if the Division of Tax Appeals lacks jurisdiction of the subject matter of the petition (20 NYCRR 3000.9 [a] [1] [ii]). The standard of review for both such motions is the same (*see Matter of Nwankpa*, Tax Appeals Tribunal, October 27, 2016). "The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case" (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985], citing *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). "If material facts are in dispute, or

if contrary inferences may be drawn reasonably from undisputed facts, the issue is for the fact finders to decide on trial, and not for determination by a judge on motion” (*Gerard v Inglese*, 11 AD2d 381, 382 [2d Dept 1960]). “To defeat a motion for summary judgment, the opponent must . . . produce ‘evidentiary proof in admissible form sufficient to require a trial of material questions of fact on which he rests his claim’” (*Whelan v GTE Sylvania*, 182 AD2d 446, 449 [1st Dept 1992], citing *Zuckerman v City of New York*, 49 NY2d at 562).

C. The documents attached to the Division’s motion indicate that petitioner requested and participated in a conciliation conference before BCMS and ultimately executed a consent. BCMS is tasked with providing conferences to taxpayers who request them and has been delegated the authority to modify notices under protest (*see* Tax Law § 170 [3-a] [c], [e]). Under the Division’s regulations pertaining to BCMS conferences, after reviewing the testimony, evidence and comments, the conciliation conferee will serve on the requester a proposed resolution in the form of a consent (*see* 20 NYCRR 4000.5 [c] [3] [i]). If the requestor agrees with the proposed consent, the requestor may only accept the modification of the amounts contained in the notice subject to a waiver of any right to petition for a hearing in the Division of Tax Appeals concerning the notice (*see* 20 NYCRR 4000.5 [c] [3] [ii]).

D. The Division of Tax Appeals is authorized to “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]). As the Division of Tax Appeals is an adjudicatory body of limited jurisdiction, its powers are confined to those expressly conferred in its authorizing statute (*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]). This

forum cannot extend its authority to disputes to which its jurisdiction does not extend (*see Matter of Hooper*, Tax Appeals Tribunal, July 1, 2010).

E. As set forth in the findings of fact, petitioner did not respond to the Division's motion. Therefore, it is deemed that petitioner has conceded the facts alleged in the motion (*see Kuehne & Nagel v Baiden*, 36 NY2d 539, 544 [1975]; *John William Costello Assoc. v Standard Metals Corp.*, 99 AD2d 227, 229 [1st Dept 1984], *appeal dismissed* 62 NY2d 942 [1984]). As such, it is concluded that petitioner agreed to the consent issued by BCMS, thereby rendering the modified notice fixed and final and waiving any hearing rights in the Division of Tax Appeals provided by the notice. As a result, the Division of Tax Appeals lacks jurisdiction to consider the merits of petitioner's protest.

F. The petition of Victor Spadaro is dismissed.

DATED: Albany, New York
February 19, 2026

/s/ Alejandro G. Taylor
ADMINISTRATIVE LAW JUDGE