

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
APEX NYC INC : DETERMINATION
for Revision of a Determination or for Refund of Sales : DTA NO. 831399
and Use Taxes under Articles 28 and 29 of the Tax Law :
for the Period March 1, 2017 through November 30, 2019. :

Petitioner, APEX NYC INC, 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, 2017 through November 30, 2019.

On November 28, 2025, the Division of Tax Appeals issued a notice of intent to dismiss petition pursuant to 20 NYCRR 3000.9 (a) (4). The Division of Taxation, appearing by Amanda Hiller, Esq. (Travis Henry-Reid, Esq., of counsel), submitted a letter in support of the dismissal. Petitioner, appearing by Chaudri Associates (Sarwar Chaudri, CPA), did not submit a response by December 29, 2025, which date commenced 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, APEX NYC INC, filed a petition with the Division of Tax Appeals on

August 25, 2023.

2. The petition appears to protest assessment number L-053669320, but a statutory notice was not included with the petition.

3. On September 29, 2023, the Division of Tax Appeals made a written request to petitioner for a duly executed power of attorney form, which it provided.

4. On March 22, 2024, the Division of Tax Appeals made a written request to petitioner for a copy of the statutory notice.

5. A statutory notice was not provided.

6. On November 28, 2025, the Division of Tax Appeals issued a notice of intent to dismiss petition. The notice of intent to dismiss petition stated that it appeared that the Division of Tax Appeals lacked jurisdiction to review the merits of the petition because it was not in proper form.

7. On December 10, 2025, in response to the notice of intent to dismiss petition, the Division of Taxation (Division) submitted a letter 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[,] the Division is in agreement with the proposed dismissal.”

8. Petitioner did not respond 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 (*Matter of*

New York State Dept. of Taxation & Fin. v Tax Appeals Trib., 151 Misc 2d at 332). 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 . . . or any other notice which expressly 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.

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, therefore, 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).

C. While the petition included a printout of a consolidated statement of tax liabilities, this is not a statutory document that provides hearing rights at the Division of Tax Appeals (*see Matter of Mostovoi*, Tax Appeals Tribunal, May 23, 2019 [wherein the Tax Appeals Tribunal held that a consolidated statement of tax liabilities does not qualify as a statutory notice because such statement reports a taxpayer’s past-due tax liabilities]).

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 26, 2026

/s/ Donna M. Gardiner
Donna M. Gardiner
Supervising Administrative Law Judge