

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
PEMBROKE HOSPITALITY, INC. : DETERMINATION
DTA NO. 831406
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 February 28, 2023. :

Petitioner, Pembroke Hospitality, 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, 2020 through February 28, 2023.

On November 28, 2025, the Division of Tax Appeals issued a notice of intent to dismiss petition to petitioner pursuant to 20 NYCRR 3000.9 (a) (4). The Division of Taxation, appearing by Amanda Hiller, Esq. (Nidhi Ayengar, Esq., of counsel), submitted a letter in support of the dismissal. Petitioner, appearing by Roberts Accounting, CPAs, P.C. (Patrick Roberts, CPA), did not submit a response by December 29, 2025, 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. On August 29, 2023, petitioner, Pembroke Hospitality, Inc., filed a petition with the Division of Tax Appeals. The petition indicated that a conciliation conference with the Bureau

of Conciliation and Mediation Services of the Division of Taxation (Division) was requested and that a conciliation order was issued on August 18, 2023. However, a conciliation order was not attached to the petition.

2. The petition did not include a statutory notice.

3. On September 25, 2023, the Division of Tax Appeals made a written request to petitioner for a copy of the statutory notice or a copy of the conciliation order. Additionally, the Division of Tax Appeals notified petitioner that the person who signed the petition needed to obtain special permission from the Secretary of the Tax Appeals Tribunal to represent petitioner in this proceeding.

4. On September 29, 2023, petitioner submitted 30 pages of documentation. Specifically, petitioner corrected its petition by having its current representative sign it. Petitioner also submitted a cover letter, dated July 12, 2023, from the Division that included a copy of a statement of proposed audit change (statement) issued to petitioner, along with schedules of calculations used by the Division in its computation of additional sales and use taxes that were asserted in the statement. Petitioner did not submit a statutory notice or a conciliation order.

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

6. On December 9, 2025, in response to the notice of intent to dismiss petition, the 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.”

7. Petitioner 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 (*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 (*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 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 expressly gives a person a 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 statutory 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 statement of proposed audit change, such document does not give rise to hearing rights at the Division of Tax Appeals (*see Matter of Etienne*, Tax Appeals Tribunal, July 7, 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 26, 2026

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