

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
	:	
of	:	
	:	
KEVIN B. FLYNN	:	DETERMINATION
	:	DTA NO. 851832
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 September 1, 2023 through November 30, 2023.	:	

Petitioner, Kevin B. Flynn, 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 September 1, 2023 through November 30, 2023.

On June 27, 2025, 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. (Elizabeth Lyons, Esq., of counsel), submitted a letter in support of the dismissal. Petitioner, appearing pro se, did not submit a response by July 28, 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. Petitioner, Kevin B. Flynn, filed a petition with the Division of Tax Appeals on November 5, 2024.

2. The petition included a copy of a notice and demand for payment of tax due (notice and demand), bearing assessment number L-060340793, dated October 15, 2024, that was issued to petitioner by the Division of Taxation (Division).

3. The petition did not include any statutory notice.

4. On June 27, 2025, the Division of Tax Appeals issued to petitioner a notice of intent to dismiss petition. The notice of intent to dismiss petition stated that a notice and demand does not provide hearing rights to a taxpayer at the Division of Tax Appeals and, thus, it appeared that the Division of Tax Appeals did not have jurisdiction to consider the merits of the petition.

5. On July 15, 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 Petition for the above-referenced matter. The Division supports the dismissal of the petition as it fails to include a statutory notice upon which the Division of Tax Appeals has jurisdiction.”

6. 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 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 [3] [c]; *Matter of Alesi*, Tax Appeals Tribunal, June 9, 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
October 23, 2025

/s/ Donna M. Gardiner
SUPERVISING ADMINISTRATIVE LAW JUDGE