

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
WEAVER MATERIEL SERVICE, INC.	:	DETERMINATION
for Redetermination of a Deficiency or for Refund of	:	DTA NO. 851948
Corporation Franchise Tax under Article 9-A of the	:	
Tax Law for the Year 2022.	:	

Petitioner, Weaver Materiel Service, Inc., filed a petition for redetermination of a deficiency or for refund of corporation franchise tax under article 9-A of the Tax Law for the year 2022.

On February 27, 2026, 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. (Daniel Oliko, Esq., of counsel), submitted a letter in support of the dismissal. Petitioner, appearing by Buffamante Whipple Buttafaro, P.C. (Thomas E. Buffamante, CPA), submitted a response by March 30, 2026, 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, Weaver Materiel Service, Inc., filed a petition with the Division of Tax

Appeals on June 24, 2025.

2. The petition appears to protest assessment number L-059433634, but a statutory notice was not included with the petition.

3. On February 27, 2026, the Division of Tax Appeals issued a notice of intent to dismiss petition. The notice of intent to dismiss petition stated that it appeared the Division of Tax Appeals lacked jurisdiction to review the merits of the petition because it was not in proper form.

4. On March 16, 2026, 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 petitioner included a copy of a warrant with their petition and failed to provide a statutory notice or conciliation order, the petition submitted was not in proper form, as required by 20 NYCRR 3000.3 and Tax Law § 2008. The Division is therefore in agreement with the proposed dismissal.”

5. On March 23, 2026, petitioner filed its response to the notice of intent to dismiss the petition. In its response, petitioner acknowledged that it failed to attach a statutory notice and provided a notice and demand for payment of tax due, dated February 8, 2024 (notice and demand), to correct the error. However, petitioner acknowledged that the notice and demand was not a statutory notice that provided hearing rights at the Division of Tax Appeals.

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 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. Although petitioner provided a tax warrant, docketed date May 21, 2025, such document does not provide hearing rights at the Division of Tax Appeals as set forth in Tax Law § 2008 (1) (*see Matter of Pavlak*, Tax Appeals Tribunal, February 12, 1998 [wherein the Tax Appeals Tribunal held that the Division of Tax Appeals is without authority to review activities undertaken by the Division to collect outstanding assessments after they become fixed and final]).

While the petition also included a copy of a consolidated statement of tax liabilities, dated August 1, 2024, this is not a statutory document that provides hearing rights at the Division of Tax Appeals as set forth in Tax Law § 2008 (1) (*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. Additionally, petitioner's response to the notice of intent to dismiss petition included a copy of a notice and demand, dated February 8, 2024. As expressly set forth in Tax Law § 173-a (2), a notice and demand is not a statutory notice that provides a taxpayer with hearing rights at the Division of Tax Appeals (*see Matter of Alesi*, Tax Appeals Tribunal, June 9, 2022).

E. 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
June 25, 2026

/s/ Donna M. Gardiner
SUPERVISING ADMINISTRATIVE LAW JUDGE