

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
JOHAN GRATE BEY	:	ORDER
	:	DTA NO. 828698
for Revision of Determinations or for Refund of New York	:	
State Sales and Use Taxes Under Articles 28 and 29 of the Tax	:	
Law for the Periods January 24, 2017 and February 20, 2017.	:	

Petitioner, Johan Grate Bey, filed a petition for revision of determinations or for refund of New York State sales and use taxes under articles 28 and 29 of the Tax Law for the periods January 24, 2017 and February 20, 2017.

Petitioner, appearing pro se, brought a motion on August 28, 2020, seeking an order dismissing the statutory notices based upon a lack of personal jurisdiction over petitioner and lack of subject matter jurisdiction. On September 11, 2020, the Division of Taxation, by Amanda Hiller, Esq. (Adam Roberts, Esq., of counsel) submitted a letter in opposition to the motion. Based upon the motion papers and documents submitted therewith, and all pleadings and documents submitted in connection with this matter, Kevin R. Law, Administrative Law Judge, renders the following order.

ISSUE

Whether the statutory notices at issue should be dismissed for lack of subject matter jurisdiction and/or lack of personal jurisdiction over the petitioner.

FINDINGS OF FACT

1. On May 7, 2018, petitioner, Johan Grate Bey, filed a petition with the Division of Tax Appeals contesting two notices of determination, notices number L-046514683 and L-046514682. Attached to the petition was a conciliation order dated April 20, 2018 sustaining the notices. In Section VIII of the petition, petitioner alleges as follows:

“I am willing and ready to fulfill my contractual obligation to pay condition upon me able to verify/validate the original contract with my signature on it, as well as verify the accounting in regards to the penalties and interest add on is calculated [sic].

Before I waive or dismiss my right to a hearing in the division of tax appeals, I would like to make sure no errors have been made. If your office is unable to provide the requests [sic] documentation than it would be my intention to invoke my right for an appeal.”

2. On July 11, 2018, the Division of Taxation (Division) filed its answer to the petition. In its answer, the Division denied the allegations of fact and error alleged by petitioner, and the Division made the following allegations summarized as follows:

- i) on or about January 24, 2017, petitioner purchased a Ford F-350 pickup truck (truck) from a dealership in Texarkana, Texas, for a purchase price of \$26,200.69;
- ii) upon registering the truck with the New York State Department of Motor Vehicles (DMV), petitioner claimed to be a Moorish-American exempt from tax;
- iii) DMV contacted the Division for assistance; at that point the Division agreed to bill petitioner for the tax due upon registration;
- iv) the Division issued notice of determination L-046514682 on May 31, 2017 asserting the amount of tax due for registration of the truck (\$2,096.02) plus penalties and interest;
- v) on or about February 20, 2017 petitioner, purchased a Jay Flight trailer (trailer) from RV ONE Superstore, Inc., in Albany, New York, for a purchase price of \$37,895.00, and refused to pay sales tax on the purchase claiming to be exempt as a Moorish-American;

vi) on May 31, 2017 the Division issued notice of determination L-046514683 representing the tax due on the purchase of the trailer (\$3,024.40) plus penalties and interest; and

vii) during the periods in issue, petitioner was a resident of New York.

3. The record does not contain any copies of the notices of determination or any evidence that sets forth the basis of the subject notices.

4. Petitioner previously filed a motion for summary determination and a motion to compel the Division to respond to a bill of particulars. In addition, through those motions, petitioner alleged that the Division had violated the fair debt collection practices act and demanded damages in the amount of \$5,000.00. By order dated July 30, 2020, the undersigned administrative law judge denied petitioner's motion seeking an order compelling the Division to file a response to his demands for bills of particulars and denied petitioner's motion for summary determination. In addition, petitioner's claim that he was exempt from taxation based upon his status as a Moorish-American was denied and judgment granted to the Division on this issue. The findings of fact and conclusions of law from the July 30, 2020 order are incorporated herein by reference.

5. Petitioner's latest motion challenges the subject matter jurisdiction of the Division of Tax Appeals and also argues that it lacks personal jurisdiction over him. Petitioner offers no evidence in support of these claims. Petitioner also contends that the Division's failure to provide responses to his various demands and correspondence indicates there is a conspiracy against him. Finally, petitioner contends that the burden of proof in this matter lies on the Division.

CONCLUSIONS OF LAW

A. First, petitioner's claim that the Division lacks subject matter jurisdiction in this matter is rejected. As noted in the first order in this matter, 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 New York State Department of Taxation and Fin. v Tax Appeals Tribunal*, 151 Misc 2d 326 [Sup Ct, Albany County 1991, Keniry, J.]). Its power to adjudicate disputes is exclusively statutory (*id.* at 332). The Division of Tax Appeals has the power to provide a hearing as a matter of right to any petitioner pursuant to such rules and regulations as may be provided by the Tax Appeals Tribunal, unless a right to a hearing is specifically provided for, modified or denied by another provision of law (*see* Tax Law § 2006 [4]). A proceeding in the Division of Tax Appeals is commenced by filing 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 any other notice which gives a person the right to a hearing" (Tax Law § 2008 [1]). Clearly the Division of Tax Appeals has subject matter jurisdiction in this matter as petitioner is protesting notices of determination that assert sales tax due.¹ To the extent that petitioner is alleging that the matter should be dismissed because the Division of Tax Appeals lacks jurisdiction on his "counter-claim" wherein he seeks damages for alleged violations of the fair debt collection practices act, petitioner's reasoning is circular and nonsensical. Stated simply, if petitioner wishes to protest the validity of the putative notices, he

¹ The Division's failure to introduce the challenged notices of determination in its responses to the instant motion and to the first motion is puzzling as petitioner has affirmatively alleged there are no material facts in dispute throughout this proceeding. But for their absence from the record and evidence of the basis for such issuance, a determination on the validity of these notices could be made. Other than its answer to the petition, the Division's failure to offer any meaningful responses to petitioner's demands and motions only fuels petitioner's claims that the Division is conspiring against him which, in turn, generate more correspondence from petitioner that the undersigned Administrative Law Judge is forced to respond to. In that same vein, the Division's directive to DMV to allow petitioner to register his truck without first paying use tax has only emboldened petitioner to keep advancing these meritless claims.

filed his petition in the right place; to the extent that he seeks to raise other causes of action against the Division, then petitioner is free to do so, but not in the Division of Tax Appeals.

B. Likewise, petitioner's claim that the Division of Tax Appeals lacks personal jurisdiction over him is utterly baseless. Petitioner affirmatively filed the petition in this matter and has thus consented to the Division of Tax Appeals' jurisdiction. In addition, petitioner should be reminded that the alleged basis of the putative notices is his act of registering a truck and a trailer with the New York State Department of Motor Vehicles, acts which give rise to personal jurisdiction (*see generally* CPLR 302).

C. Based upon the foregoing, petitioner's motion seeking dismissal of the notices is denied. The matter shall proceed to a hearing on the merits of the petition in due course.

DATED: Albany, New York
December 23, 2020

/s/ Kevin R. Law
ADMINISTRATIVE LAW JUDGE