

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition	:	
of	:	
<b>JOHAN GRATE BEY</b>	:	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.	:	

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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 seeking an order requiring the Division of Taxation to comply with a demand for a bill of particulars and a motion seeking summary determination in the above-referenced matter pursuant to section 3000.9 (b) of the Rules of Practice and Procedure of the Tax Appeals Tribunal. On March 30, 2020, the Division of Taxation, by Amanda Hiller, Esq. (Adam Roberts, Esq., of counsel) submitted a letter in opposition to the motion for summary determination. Petitioner filed a reply to the Division of Taxation's response on May 1, 2020, which date began the 90-day period for issuance of this order. 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.

## ***ISSUES***

I. Whether the Division of Taxation is required to comply with petitioner's demands for bills of particulars.

II. Whether there are questions of fact in issue such that petitioner's motion for summary determination must be denied.

## ***FINDINGS OF FACT***

1. On May 7, 2018, Johan Grate Bey (petitioner) filed a petition with the Division of Tax Appeals contesting two notices of determination, notice 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. On September 8, 2019, petitioner sent a letter to the undersigned Administrative Law Judge requesting a copy of the Tax Appeals Tribunal's Rules of Practice and Procedure (Rules) as well as the following:

“-The original contract (attach forms and conditions) with Johan grate bey [sic] signature.

-The accounting records/statements and true bill starting at zero balance to verify total.”

4. By letter dated September 23, 2019, the undersigned Administrative Law Judge sent petitioner a copy of the Rules and advised petitioner that his request for documentation regarding the notices of determination should be directed to the Division's representative. The letter also informed petitioner that the Administrative Law Judge had no prior knowledge of the facts and/or background of his case other than what is contained in the petition and the Division's answer to the petition.

5. By letter dated October 17, 2019, petitioner requested the following documents from the Division:

“-The original contract (attach forms and conditions) with Johan grate bey signature.

-The accounting records/statements and true bill starting at zero balance to verify total.”

6. The Division did not respond to petitioner’s October 17, 2019 request for documents.

7. By letter dated November 11, 2019, petitioner requested documents from the Division which he denominated a bill of particulars. Specifically, petitioner requested:

“-The original contract (attach forms and conditions) with Johan grate bey signature.

-The accounting records/statements and true bill starting at zero balance to verify total.”

8. The Division did not respond to petitioner’s November 11, 2019 demand for a bill of particulars.

9. On February 29, 2020, petitioner filed a motion for summary determination. Included with his motion papers were various documents he sent to the Division after the putative notices were issued. No affidavit was submitted by petitioner with the motion. The sum and substance of these documents is that petitioner identifies himself as a Moorish American and, as such, is exempt from taxation. Petitioner also included an amended “petition and counterclaim” wherein he seeks damages of \$5,000.00 from the Division for violating the fair debt collection practices act.

10. On March 3, 2020, petitioner filed a motion seeking an order compelling the Division to respond to his demand for a bill of particulars. In the March 3, 2020 motion, petitioner requested the following:

“1. Please properly declare the alleged issues for the record.

2. The CUSIP number of any and all bonds, commission on uniform securities identification process numbers.

3. NYS TAX APPEALS TRIBUNAL DIVISION copy of the 1099OID filings [IF ANY].

4. The complete audit trail, vouchers, back end copies, omad and omid.
  5. The name of the damaged party.
  6. The name of the issuer.
  7. Declare in writing Who is the real party in interest.
  8. Declare in writing Who is the holder of the account.
  9. Declare in writing Who signed the forms generating the bonds that is attorney in fact and copy of your authorization for all transactions.”
11. The Division did not respond to the March 3, 2020 motion.
12. On March 26, 2020, petitioner filed yet another motion demanding the following:
- “1. Please properly declare the alleged issues for the record.
  2. DEMAND ALL APPLICABLE DOCUMENTATION AVAILABLE (BUT NOT LIMITED TO) BE PROVIDED TO THIS ACCOUNT.
  3. The CUSIP number of any and all bonds, commission on uniform securities identification process numbers.
  4. NYS TAX APPEALS TRIBUNAL DIVISION copy of the 1099OID filings [IF ANY].
  5. The complete audit trail, vouchers, back end copies, omad and omid.
  6. The name of the damaged party.
  7. The name of the issuer.
  8. Who is the real party in interest.
  9. Who is the holder of the account.
  10. Who signed the forms generating the bonds that is attorney in fact?
  11. Copy of your authorization for all transactions.”
13. The Division’s representative did not file a response to the March 26, 2020 motion.

14. On March 30, 2020, the Division submitted a letter which stated that based upon the Division's review of the petition and answer there are issues of fact in dispute and therefore petitioner's motion for summary determination should be denied. The Division's letter did not set forth which facts were in dispute nor did it mention petitioner's other "motions."

15. On May 1, 2020, petitioner filed a reply to the Division's March 30, 2020 letter stating that the evidence was undisputed and further pointed out that the Division never responded to his demands for bills of particulars.

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

#### ***CONCLUSIONS OF LAW***

A. First, addressing petitioner's motion to compel the Division to serve a response to his request for a bill of particulars, the Rules provide that a party may serve a demand for a bill of particulars upon an adverse party in order "to prevent surprise at the hearing and to limit the scope of the proof" (20 NYCRR 3000.6 [a] [1]). The Rules permit a party to "serve written notice on the adverse party demanding a bill of particulars within 30 days of the date on which the last pleading was served" (*id.*). A party unwilling to give such particulars may move to vacate or modify the demand within 20 days after receipt of the demand (20 NYCRR 3000.6 [a] [2]). "If no such motion is made, the bill of particulars shall be served within 30 days after the demand, unless the administrative law judge designated by the tribunal shall direct otherwise" (*id.*). If a party fails to furnish the bill of particulars, the party may, upon notice, be precluded by the administrative law judge from giving evidence at the hearing "of items of which particulars have not been delivered" (20 NYCRR 3000.6 [a] [3]).

B. In this case, the last pleading, the Division's answer, was served July 18, 2018. Petitioner had thirty days from that date to demand a bill of particulars from the Division. Since petitioner's first demand on the Division was served on November 11, 2019, his demands were untimely. On March 26, 2020, petitioner filed a second motion seeking an order compelling the Division to comply with his demands. Although untimely, it will be addressed for purposes of a complete record.

C. "It is generally stated that a bill of particulars amplifies a pleading by setting forth in greater detail the nature of the allegations and what the party making them intends to prove" (*Northway Eng'g v Felix Indus.*, 77 NY2d 332, 336 [1991]). The Rules permit the use of a bill of particulars in proceedings in the Division of Tax Appeals to prevent surprise at the hearing and to limit the scope of proof (*see* 20 NYCRR 3000.6 [a] [1]). Moreover, an administrative law judge is guided but not bound by the provisions of the New York Civil Practice Law and Rules (CPLR) (*see* 20 NYCRR 3000.5 [a]). Generally, under the CPLR, a party need particularize only those matters upon which it has the burden of proof (*see Holland v St. Paul Fire & Marine Ins. Co.*, 101 AD2d 625 [3d Dept 1984]). In proceedings in the Division of Tax Appeals, a presumption of correctness attaches to statutory notices and petitioner bears the burden of overcoming that presumption (*see Matter of Tavolacci v State Tax Commn.*, 77 AD2d 759, 760 [3d Dept 1980]; *Matter of Leogrande*, Tax Appeals Tribunal, July 18, 1991; *confirmed* 187 AD2d 768 [3d Dept 1992], *lv denied* 81 NY2d 704 [1993]). Thus, since the Division does not bear the burden of proof in this matter, petitioner's demand is improper.

D. Because the Division did not respond to petitioner's original demand, petitioner filed the subject motion seeking an order compelling the Division to respond. First, no such remedy exists. Rather, the remedy for failure to serve a bill of particulars or for service of an inadequate

bill of particulars is an order precluding the party from giving evidence at the hearing regarding items of which particulars have not been delivered (*see* 20 NYCRR 3000.6 [a] [3]), or a conditional order of preclusion that becomes effective unless a proper bill is served within a specified time frame (*see* 20 NYCRR 3000.6 [a] [5]). “The appropriate sanction for failure to provide a bill should . . . also be limited to preventing the harm which would otherwise be caused by failure to furnish the particulars” (*Northway Eng’g*, 77 NY2d at 336).

E. Where a party fails to move against a demand for a bill of particulars, that party is deemed to have waived all objections unless the request is “palpably improper” (*see State v General Elec. Co.*, 173 AD2d 939, 941 [3d Dept 1991]). Demands seeking material which is evidentiary in nature are palpably improper (*see id.*). It is well-settled that items of a demand for a bill of particulars that call for evidentiary material are not proper demands (*see Rockefeller v Hwang*, 106 AD2d 817, 818 [3d Dept 1984]). In this case, in addition to being untimely requested, petitioner’s demands seek evidentiary material, and are therefore improper.<sup>1</sup> Based on the foregoing, petitioner’s motions seeking an order compelling the Division to comply with his demands for bills of particulars are denied.

F. Turning next to petitioner’s motion for summary determination, such a motion “shall be granted if, upon all the papers and proof submitted, the administrative law judge finds that it has been established sufficiently that no material and triable issue of fact is presented” (20 NYCRR 3000.9 [b] [1]). Section 3000.9 (c) of the Rules provides that a motion for summary determination is subject to the same provisions as a motion for summary judgment pursuant to CPLR 3212. “The proponent of a summary judgment motion must make a prima facie showing

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<sup>1</sup> It is observed that the relevance of the material sought is, at a minimum, questionable. The putative notices were allegedly issued based on petitioner’s refusal to pay sales tax when registering his truck and refusing to pay sales tax when purchasing his trailer. It is not readily apparent if the “evidence” petitioner is seeking exists or has any relevance whatsoever to the tax asserted due by the Division in this matter.



of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case” (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985], citing *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). As summary judgment is the procedural equivalent of a trial, it should be denied if there is any doubt as to the existence of a triable issue or where the material issue of fact is “arguable” (*Glick & Dolleck, Inc. v Tri-Pac Export Corp.*, 22 NY2d 439, 441 [1968]; *Museums at Stony Brook v Vil. of Patchogue Fire Dept.*, 146 AD2d 572 [2d Dept 1989]). “To defeat a motion for summary judgment, the opponent must . . . produce ‘evidentiary proof in admissible form sufficient to require a trial of material questions of fact on which he rests his claim’” (*Whelan v GTE Sylvania*, 182 AD2d 446, 449 [1st Dept 1992], citing *Zuckerman*).

G. In his motion, petitioner claims that summary determination should be granted in his favor because there are no facts in dispute. First, petitioner’s motion for summary determination is technically defective because it is not supported by an affidavit or a copy of the pleadings (*see* 20 NYCRR 3000.9 [b] [1]; *see also* Tax Law § 2006 [6]). Second, there is no evidence in admissible form that establishes the basis for the notices nor are the notices in the record. Furthermore, to the extent that petitioner argues that his status as a “Moorish American” exempts him from taxation, this assertion is rejected. The claim that petitioner is exempt from taxation based on being a Moorish American is a position rejected by the courts in similar matters. Petitioner’s status as a Moorish American does not relieve him of his obligation to pay taxes (*see Bey v City of New York Dept. of Corrections*, 1997 WL 576090, at \*2 [S.D.N.Y. Sept 17, 1997], *aff’d* 164 F3d 617 [2d Cir1998], *cert denied* 528 US 860 [1999]; *Bey v State*, 847 F3d 559 [7th Cir, 2017]). Thus, petitioner’s motion for summary determination claiming he is exempt from tax as a Moorish American is denied and judgment is granted to the Division on this issue.

H. In addition, petitioner's counterclaim seeking damages for alleged violations of the fair debt collection practices act is dismissed. 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). Its jurisdiction does not extend to awarding damages for alleged violations of the fair debt collection practices act. Absent legislative action, this forum cannot extend its authority to disputes that have not been specifically delegated to it (*Matter of Hooper*, Tax Appeals Tribunal, July 1, 2010).

I. Based upon the foregoing, petitioner's motion seeking an order compelling the Division of Taxation to file a response to his demands for bills of particulars is denied, and petitioner's motion for summary determination is denied. A hearing in this matter will be scheduled in due course.

DATED: Albany, New York  
July 30, 2020

/s/ Kevin R. Law  
ADMINISTRATIVE LAW JUDGE