

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition
of
TROY CITY GARAGE, INC.
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 June 1, 2016 through November 30,
2018.

ORDER
DTA NO. 829484

Petitioner, Troy City Garage, Inc., filed a petition for a revision of a determination or for refund of sales and use taxes under articles 28 and 29 of the Tax Law for the period June 1, 2016 through November 30, 2018. The Division of Taxation, by its representative, Amanda Hiller, Esq. (Michael Hall), filed an answer dated October 9, 2019. On October 15, 2019, petitioner, appearing by Richard Sleicher, Esq., filed a motion seeking to compel an answer in proper form. The Division of Taxation filed its response in opposition to the petitioner’s motion on November 14, 2019, which date began the 90-day period for the issuance of this order. Based upon the motion papers and documents submitted therewith, and all pleadings and documents submitted in connection with this matter, Nicholas A. Behuniak, Administrative Law Judge, renders the following order.

ISSUE

Whether petitioner’s motion seeking to require the Division of Taxation to address each numbered paragraph in the petition by a separately numbered paragraph in the answer should be granted.

FINDINGS OF FACT

1. Petitioner, Troy City Garage, Inc., commenced this proceeding by filing a petition with the Division of Tax Appeals on July 12, 2019. The petition was filed in protest of notice of determination L-050141469, dated June 27, 2019, and notice of determination L-050141505, dated June 27, 2019. Both notices were for the period of June 1, 2016 through November 30, 2018.

2. The petition provided 71 separately numbered paragraphs which, in part, made statements related to how the audit was conducted, addressed specific sales transactions made by petitioner, and made certain assertions regarding the Division of Taxation's (Division's) findings.

3. The Division filed its answer to the petition on October 9, 2019. The answer provided 17 separately numbered paragraphs which included the denial of "each and every factual allegation of the petition except as otherwise set forth [in the answer]." In the answer, the Division affirmatively asserted that: petitioner was a vendor for sales tax purposes; the Division requested petitioner's books and records and petitioner failed to provide the Division all of the records requested; petitioner had been notified that if the requested records were not forthcoming, petitioner would be subject to penalties; due to petitioner's failure to provide certain books and records, the Division used a test period audit methodology to review reported sales; the Division also reviewed the capital records and expense purchases of petitioner; based on the audit results, the Division asserted additional sales and use taxes against petitioner; petitioner did not dispute the additional taxes assessed that related to the capital records or expense purchases portions of the audit; as a result of petitioner's failure to maintain or make available appropriate books and records during the audit, penalties were also asserted against petitioner; and, no reasonable cause

exists for the abatement of penalties. The answer also provided citations to legal authorities in support of the Division's positions.

4. On October 15, 2019, petitioner filed the instant motion seeking "to compel an answer in proper form." In the motion, petitioner cited to the Rules of Practice and Procedure of the Tax Appeals Tribunal (Rules) section 3000.4 (b) (2) as authority for the proposition that the answer must contain separately numbered paragraphs that correspond to the petition and contain the specific admission or denial of each statement contained in the petition. Petitioner demands that the answer have 71 separately numbered paragraphs each containing an admission or denial and each addressing a different paragraph contained in the petition.

5. The Division filed a response to the motion on November 14, 2019. Included in the Division's response was the affidavit of Michael J. Hall, the Division's representative, who claimed that the Division's assertions in the answer meet the requirements of the Rules and do not require amplification.

CONCLUSIONS OF LAW

A. Petitioner has brought a motion seeking "to compel an answer in proper form." On this issue, petitioner indicates that the Division's use of a general denial in its answer to the petition does not comply with the Rules in that the answer fails to set forth separately numbered paragraphs corresponding to the separately numbered paragraphs in the petition. Petitioner moves to have the Division of Tax Appeals require that the Division correct its answer so that it has at least 71 paragraphs; at least one separate paragraph for each separate paragraph contained in the petition.¹

¹ In general, motions before the Division of Tax Appeals will be guided but not bound by the Civil Practice Law and Rules (*see* 20 NYCRR 3000.5 [a]). Under the CPLR, a party may make a motion seeking to compel a pleader to separately state and number its paragraphs to match each factual allegation made in the moving party's pleading (*see* CPLR 3024). However, a motion to compel an amendment to a pleading under CPLR 3024 is available only to a

B. Petitioner's position is that the Division's answer does not comply with 20 NYCRR 3000.4 (b) (2). “The Rules require the Division to serve an answer to the petition that advises the petitioner and the Division of Tax Appeals of its defense (citation omitted)” (*see Matter of Emerald International Holdings, Ltd.*, Tax Appeals Tribunal, April 5, 2018). However, the Rules do not require the Division to admit or deny each allegation of the petition in separate distinct paragraphs corresponding to the separate and distinct paragraphs contained in the petition. In fact, the Tax Appeals Tribunal has ruled that a general denial addressing several of petitioner’s assertions in one paragraph may sufficiently comply with the Rules (*see id.*).

C. “All pleadings shall be liberally construed so as to do substantial justice” (20 NYCRR 3000.4 [a]). The Division's answer, including the denial of each and every factual allegation in the petition, combined with the additional 16 paragraphs that advise petitioner (and the Division of Tax Appeals) of the Division's position, is acceptable and in accordance with the requirements of 20 NYCRR 3000.4 (b), and in a manner consistent with the overall purpose of the pleadings, per 20 NYCRR 3000.4 (a).

D. Petitioner's motion for an order requiring the Division to clarify its answer is denied, and a hearing will be scheduled in due course.

DATED: Albany, New York
February 6, 2020

/s/ Nicholas A. Behuniak
ADMINISTRATIVE LAW JUDGE

party required to respond to the challenged pleading (*see* CPLR 3024; *Siegel and Connors*, NY Prac § 230 [6th Ed 2019]). Under the Rules, a party is permitted, but is not required, to file a reply to the Division’s answer (*see* 20 NYCRR 3000.4 [c]).