STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
MAZI NIGHTCLUB INC.	:	ORDER DTA NO. 850999
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, 2015 through May 31, 2019.	:	

Petitioner, Mazi Nightclub Inc., 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, 2015 through May 31, 2019.

The Division of Taxation, appearing by its representative, Amanda Hiller, Esq. (Nidhi Ayengar, Esq., of counsel), filed a motion on July 20, 2026, seeking an order dismissing the petition or, in the alternative, for summary determination in the above-referenced matter pursuant to sections 3000.5 and 3000.9 (a) and (b) of the Rules of Practice and Procedure of the Tax Appeals Tribunal. Petitioner, appearing pro se, did not respond by August 19, 2026, which date began the 90-day period for the issuance of this order.

Based upon the motion papers, the affirmation and exhibits submitted therewith and all pleadings and documents submitted in connection with this matter, Barbara J. Russo, Administrative Law Judge, renders the following order.

ISSUE

Whether a valid petition conferring jurisdiction on the Division of Tax Appeals was filed in this matter.

FINDINGS OF FACT

1. On June 21, 2024, a petition in this matter was filed by Hutton Solomon & Blane P.C., Roger S. Blane, Esq., of counsel.[1] The petition listed Mazi Nightclub Inc. (Mazi) as petitioner. The petition listed Mazi's address as "c/o Hutton Solomon & Blane PC, New York, NY 10018." The petition was signed by Mr. Blane underneath the statement "[t]he statements in this petition are made with the knowledge that a willfully false representation is a misdemeanor punishable under section 201.45 of the Penal Law." Attached to the petition was a power of attorney form, dated December 27, 2019, authorizing Mr. Blane to represent Mazi. The power of attorney form listed Mazi's address as 130-35 91st Street, Richmond Hill, New York, 11418. In part 5 of the power of attorney form, for taxpayer signature, the name Louis Migliaccio is printed in the box under the heading "Print or type name (and title if applicable)" and a signature purporting to be that of Louis Migliaccio appears in the box for taxpayer signature. Also attached to the petition was a notice of determination, assessment identification number L-054171334 (notice), dated August 17, 2021, issued to Mazi and an order from the Bureau of Conciliation and Mediation Services (BCMS), CMS number 000333494, dated March 29, 2024, sustaining the notice. The BCMS order states that Mazi was represented by Mr. Blane.

2. On June 25, 2024, an employee from the petition intake unit of the Division of Tax Appeals sent an email correspondence to Mr. Blane regarding the petition filed for Mazi, stating, in part, "We received a petition for the above-mentioned petitioner. The petition cannot be processed further until we receive the ti[t]le of the signatory, Louis, on the POA-1." On June

[1] The petition was filed together with a petition for another petitioner who is not the subject of the current motion. This matter was assigned DTA number 850999 and the other petition was assigned DTA number 851000. The matters were initially associated for proceedings with the Division of Tax Appeals.

27, 2024, Mr. Blane responded to the inquiry from Division of Tax Appeals regarding the signatory on the power of attorney form and confirmed that Mr. Migliaccio's title was president of Mazi. The petition was thereafter acknowledged by the Division of Tax Appeals on July 3, 2024.

3. On August 21, 2024, the Division of Taxation (Division) filed its answer to the petition.

4. On September 10, 2024, Mr. Blane filed a reply on behalf of Mazi to the Division's answer.

5. A prehearing conference call was subsequently held with Mr. Blane, counsel for the Division and the undersigned administrative law judge and the matters for both DTA numbers 850999 and 851000 were scheduled for a consolidated hearing.

6. Prior to the scheduled hearing, Mr. Blane sent a letter, dated June 5, 2026, to the Division of Tax Appeals, with a copy to the Division, which stated, in part, as follows:

> "I have been informed by Mr. Louis Migliaccio that the Power of Attorney form that was provided to me to represent Mazi Nightclub, Inc., was not signed by him, despite the fact that the form bears his name as President and a signature of his name (see attached Power of Attorney).
>
> During the beginning of the audit process, I did not have any interaction with Mr. Migliaccio. I worked exclusively with Sharon Fredrick. She provided me with the signed Power of Attorney form, audit workpapers, company records, etc., and paid my firm's invoices. Without a valid Power of Attorney form, I believe I am not authorized to represent Mazi Nightclub Inc. in this matter."

The letter stated that Mr. Blane would continue to represent the other petitioner in DTA number 851000.

7. A conference call was held, on June 20, 2026, with Mr. Blane, counsel for the Division and the undersigned administrative law judge to discuss Mr. Blane's June 5, 2026, letter. Mr. Blane was asked if he intended to submit a corrected power of attorney form for

Mazi. He reiterated that he did not have authority to represent Mazi and would not file a corrected power of attorney form. The undersigned administrative law judge informed the parties that DTA numbers 850999 and 851000 would be severed and each will proceed separately.

8. A prehearing conference call was scheduled for July 7, 2026, for DTA number 850999 and notice of the call was sent to Mazi at the address listed for it on the notice and power of attorney form.

9. Petitioner did not participate in the scheduled conference call.

10. The Division subsequently filed the subject motion on July 20, 2026. Petitioner did not respond to the Division's motion.

CONCLUSIONS OF LAW

A. The Division brings a motion to dismiss the petition under section 3000.9 (a) of the Rules of Practice and Procedure of the Tax Appeals Tribunal (Rules) or, in the alternative, a motion for summary determination under section 3000.9 (b). A motion to dismiss the petition may be granted, as pertinent herein, if the Division of Tax Appeals lacks jurisdiction over the subject matter of the petition (***see*** 20 NYCRR 3000.9 [a] [1] [ii]).

B. The Division of Tax Appeals acquires jurisdiction over a given matter by the filing of a petition (***see*** Tax Law § 2008 [1]; 20 NYCRR 3000.3; ***Matter of Levin***, Tax Appeals Tribunal, April 16, 1998). The petition in the present matter was filed by a corporation. A corporation may appear before the Division of Tax Appeals by an officer or an employee of the corporation (***see*** 20 NYCRR 3000.2 [a] [1]). An employee appearing on behalf of a corporation must file a power of attorney form pursuant to 20 NYCRR 3000.2 (c) (***id.***). As relevant here, a corporation may also be represented by an attorney licensed to practice in New York State (***see*** 20 NYCRR

3000.2 [a] [2] [i]). When a corporation acts through a representative, a power of attorney form is required and "[a]n individual will not be recognized as the representative of a taxpayer until a power of attorney in proper form is filed with the division of tax appeals" (20 NYCRR 3000.2 [c] [1]). Other than the aforementioned representations, no other personal appearance by a corporation is allowed (***see*** 20 NYCRR 3000.2 [d]).

C. The petition in this matter was signed by Mr. Blane as the attorney for Mazi. Attached to the petition was a power of attorney form purportedly authorizing Mr. Blane to represent Mazi. The power or attorney form was purportedly signed by Louis Migliaccio as an officer of petitioner. Thus, at the time the petition was filed, it appeared to be in proper form and was acknowledged by the Division of Tax Appeals.

On June 5, 2026, almost two years after the filing of the petition and on the verge of a scheduled hearing, Mr. Blane notified the Division of Tax Appeals that the power of attorney form he attached to the petition was invalid and stated that he did not have authority to represent Mazi, despite having signed the petition on its behalf and representing Mazi during BCMS proceedings.[2] Since Mr. Blane was neither an officer nor an employee of the corporation and, apparently, did not have a valid power of attorney form to represent Mazi, he was not a person authorized to appear for petitioner and therefore did not have the authority to sign the petition (***see*** 20 NYCRR 3000.2 [d]).

D. The Rules governing proceedings before the Division of Tax Appeals require that a petition *shall* contain, among other items, "the signature of the petitioner or the petitioner's representative beneath a statement that the petition is made with knowledge that a willfully false

[2] The potential implications of New York Rules of Professional Conduct § 3.3 (a) (1), which provides that a lawyer shall not knowingly make a false statement to a tribunal or fail to correct a false statement of material fact or law previously made to a tribunal by the lawyer, will not be discussed herein.

representation is a misdemeanor punishable under section 210.45 of the Penal Law" (20 NYCRR 3000.3 [b] [7]). As noted above, in the case of a personal appearance by a corporate petitioner, that signature must be provided by an officer or employee of the petitioner, or a duly authorized representative with a power of attorney in proper form (***see*** 20 NYCRR 3000.3 [b]; 3000.2 [a] [2], [c] [1]). In this case, the only signature that appeared on the petition was that of Mr. Blane. Because Mr. Blane was not an officer or employee of Mazi and was not a duly authorized representative with a valid power of attorney form, he lacked the authority to sign the petition and, as such, the petition was not in proper form (***see Matter of Grotto D'Oro Bay Corp.***, Tax Appeals Tribunal, June 29, 2000).

Where a petition is not in proper form, the Rules provide that the supervising administrative law judge shall return it to petitioner together with a statement indicating the requirements with which the petition does not comply and extend to petitioner 30 days within which to file a corrected petition (***see*** 20 NYCRR 3000.3 [d] [1]). Where petitioner fails to serve a corrected petition within the prescribed time, the supervising administrative law judge will issue a determination dismissing the petition (***see*** 20 NYCRR 3000.3 [d] [2]).

In this case, at the time the petition was filed with the Division of Tax Appeals, it appeared to be in proper form, in that a power of attorney form was attached thereto, purporting to grant Mr. Blane the authority to execute the petition on Mazi's behalf. Because the petition appeared to be in proper form, it was acknowledged by the Division of Tax Appeals. It was not until later in the proceedings, after a hearing was scheduled for the matter, that Mr. Blane notified the Division of Tax Appeals that he did not have authority to represent Mazi or sign the petition on its behalf. As such, despite the initial acknowledgment of the petition, it is now determined that it was not in proper form and the procedures set forth in 20 NYCRR 3000.3 (d)

(1) must now be followed (***see Matter of BuyRite Motors, Inc.***, Tax Appeals Tribunal, February 18, 1993; ***Matter of Grotto D'Oro Bay Corp.***).

E. A determination on the Division's motion to dismiss is stayed pending the issuance of a 30-day letter to correct the petition to petitioner. If petitioner fails to correct the petition within the time prescribed, a determination dismissing the petition will be issued pursuant to 20 NYCRR 3000.3 (d) (2).

DATED: Albany, New York
October 29, 2026

/s/ Barbara J. Russo
ADMINISTRATIVE LAW JUDGE