

New York City Tax Appeals Tribunal

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In the Matter of	:	
KATZ & KERN, LLP	:	DECISION
	:	
	:	TAT (E) 19-20 (UB)
Petitioner.	:	
	:	
	-----X	

The Appeals Division of the New York City Tax Appeals Tribunal (Tribunal) received an Exception filed by Katz & Kern, LLP (Petitioner), dated August 10, 2021. The Exception appeals the Determination of the Chief Administrative Law Judge (CALJ) dated July 30, 2021, which dismissed this matter before the Administrative Law Judge Division (ALJ Division) for lack of jurisdiction. The Exception specifies a single ground for review of the Determination: “Due to unforeseeable and uncontrollable circumstance (Covid Pandemic), we were unable to file a timely written objection to the Proposed Dismissal. We wish to appeal the Determination and pray the Court would permit us the opportunity to submit our Response.”

On August 5, 2019, Petitioner filed a Petition with the ALJ Division protesting a “Financial Statement of Account” dated July 19, 2019, sent to Petitioner showing outstanding balances of New York City unincorporated business tax (UBT) for the tax years 2008 and 2014. On September 5, 2019, the CALJ sent to Petitioner a Notice of Intent to Dismiss, stating that the Financial Statement of Account “appears to be a collection notice which is not reviewable by the Tax Appeals Tribunal” and that “[t]he parties were informed that unless written objection was received by September 15, 2020, the matter would be dismissed for lack of jurisdiction.” No objections were received from Petitioner by the CALJ during that designated period, or afterward.

Section 168.a of the New York City Charter provides that:

“The tribunal shall have jurisdiction to hear and determine cases initiated by the filing of petitions protesting notices issued by the commissioner of finance, *which give a person the right to a hearing*, including but not limited to any notice of determination of tax due, of a tax deficiency, or a denial of a refund or credit application ...” (Emphasis added.)

The Financial Statement of Account protested by Petitioner is a demand for the outstanding balances of taxes previously assessed, a collection notice, which does not “give a person the right to a hearing”. The Tribunal, therefore, has no jurisdiction over such a notice.

ACCORDINGLY, IT IS ORDERED THAT the Exception is dismissed, with prejudice, for lack of jurisdiction.¹

Dated: January 10, 2022

New York, New York

/s/

Frances J. Henn
President and Commissioner

/s/

Robert J. Firestone
Commissioner

/s/

Neil Schaier
Commissioner

¹ In dismissing Petitioner’s Exception we note that the CALJ provided the requisite notice and opportunity to Petitioner to object to the CALJ’s intent to dismiss this matter, and provide additional facts supporting Petitioner’s objection. Rules of the City of New York, 20 NYCRR §1-05(c) (Tribunal Rules). Petitioner had ample time to object and provide any information relevant to the jurisdictional question before the CALJ but failed to do so. In dismissing this matter on jurisdictional grounds “The tribunal commissioners shall review the record and shall, to the extent necessary or desirable, exercise all the powers which they could have exercised if they had made the determination.” Tribunal Rules §1-13(f)(1). Because we find there are no new facts bearing on the Tribunal’s jurisdiction besides those already considered by the CALJ, we dismiss the Exception based upon the record below.