

STATE OF MINNESOTA

TAX COURT

COUNTY OF RAMSEY

REGULAR DIVISION

Eat Group Inc., (Trinh Nguyen)

**ORDER ON COMMISSIONER'S
MOTION TO DISMISS**

Appellant,

Docket No. 9210-R

vs.

Commissioner of Revenue,

Filed: February 8, 2019

Appellee.

This matter came before The Honorable Tamar Gronvall, Judge of the Minnesota Tax Court, on the Commissioner's motion to dismiss.

Appellant Trinh Nguyen is self-represented in these proceedings.

Wendy S. Tien, Assistant Minnesota Attorney General, represents appellee Commissioner of Revenue.

The court, upon all the files, records, and proceedings herein, now makes the following:

ORDER

The Commissioner of Revenue's motion to dismiss is granted.

IT IS SO ORDERED. THIS IS A FINAL ORDER. LET JUDGMENT BE ENTERED ACCORDINGLY.



BY THE COURT,

A handwritten signature in blue ink, reading "Tamar Gronvall".

Tamar Gronvall, Judge
MINNESOTA TAX COURT

DATED: February 8, 2019

MEMORANDUM

I. BACKGROUND

Eat Group Inc. operates a buffet restaurant.¹ Following a sales tax audit, the Commissioner of Revenue determined Eat Group failed to report retail sales occurring during 2015 and 2016 and also failed to collect and remit the requisite taxes on its unreported sales.² In an April 20, 2018 order, the Commissioner assessed Eat Group \$12,142.88 in tax, well as a penalty of \$326.82 and \$988.17 of interest.³ The Commissioner order was addressed as follows: “ATTN: TRINH NGUYEN, EAT GROUP INC.,”⁴

On June 25, 2018, Ms. Nguyen filed a Notice of Appeal purporting to appeal the April 20, 2018 order to this court.⁵ Ms. Nguyen alleges that she is “not the owner, principal, [or] managing

¹ Appeal, at Attch. (Explanation of Adjustments, at 1) (filed June 25, 2017).

² Appeal, at Attch. (Explanation of Adjustments, at 1, 3).

³ Appeal, at Attch. (Minnesota Department of Revenue Tax Order (Notice date April 20, 2018)).

⁴ Appeal, at Attch. (Minnesota Department of Revenue Tax Order).

⁵ Appeal.

partner” of Eat Group Inc., and that she has no “association with the business.”⁶ On August 8, 2018, the Commissioner filed a motion to dismiss Ms. Nguyen’s appeal⁷ pursuant to Minn. R. Civ. P. 12.02(a) and (e).⁸ Ms. Nguyen did not file a written response to the Commissioner’s motion. A hearing on this matter was held on November 13, 2018, at which Ms. Nguyen appeared.

II. SUBJECT MATTER JURISDICTION

The Commissioner asserts that “this court lacks jurisdiction over this appeal because the Commissioner’s order does not concern Ms. Nguyen.”⁹ Minnesota Rule of Civil Procedure 12.02 allows for the following defense to be made by motion: “(a) lack of jurisdiction over the subject matter, ...” Subject matter jurisdiction is a court’s “statutory or constitutional *power* to adjudicate the case.” *Giersdorf v. A & M Const., Inc.*, 820 N.W.2d 16, 20 (Minn. 2012) (quoting *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 89 (1998)). Minnesota Statutes § 271.06, subd. 1 (2018), provides in pertinent part: “an appeal to the Tax Court may be taken ... by any person directly or indirectly interested therein or affected” by an official order of the Commissioner of Revenue.

The Commissioner’s order assesses sales and use tax liability against the entity Eat Group Inc. It does not assess personal liability against Ms. Nguyen under Minn. Stat. § 270C.56, subd. 1 (2018).¹⁰ Ms. Nguyen fails to qualify as a “person directly

⁶ Appeal. In her appeal, Ms. Nguyen also claims that she “[n]ever had in the past or present dealing with the buffet. The actual owner use[d] my name and social.” Appeal.

⁷ Notice Mot. & Mot. Dismiss Pursuant Minn. R. Civ. P. 12.02(a) & (e) (filed Aug. 8, 2018).

⁸ Comm’r Mem. Supp. Mot. Dismiss 1 (filed Aug. 8, 2018).

⁹ Comm’r Mem. Supp. Mot. Dismiss 3 (filed Aug. 8, 2018).

¹⁰ Appeal, at Attch. (Minnesota Department of Revenue Tax Order).

interested ... or affected” by the order, particularly in light of her allegations that she has never been associated with Eat Group, Inc.¹¹

Given that Ms. Nguyen was not personally assessed and is neither directly interested nor affected by the Order, she does not qualify as a person who can appeal the order under Minn. Stat. § 271.06, subd. 1. Therefore, we grant the Commissioner’s motion.

T.G.

¹¹ Appeal.