

STATE OF NEW YORK
TAX APPEALS TRIBUNAL

In the Matter of the Petition :

of :

LARRY SAVINO : DECISION

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, 1981 through November 30, 1981. :

Petitioner Larry Savino, 792 North Bedford Road, Mt. Kisco, New York 10549, filed an exception to the determination of the Administrative Law Judge issued on August 2, 1990 with respect to his 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, 1981 through November 30, 1981 (File No. 804914). Petitioner appeared pro se. The Division of Taxation appeared by William F. Collins, Esq. (Peter J. Martinelli, Esq., of counsel).

Both parties submitted letters in lieu of a brief. Oral argument was not requested.

After reviewing the entire record in this matter, the Tax Appeals Tribunal renders the following decision.

ISSUE

Whether petitioner timely filed a request for a hearing before the Division of Tax Appeals.

FINDINGS OF FACT

We find the facts as determined by the Administrative Law Judge. These facts are set forth below.

On April 9, 1987, the Division of Taxation ("Division") issued to petitioner, Larry Savino, a Notice of Determination and Demand for Payment of Sales and Uses Taxes Due for the quarter ended November 30, 1981, assessing tax due of \$747.50 plus penalty and interest.

The statutory notice was mailed to petitioner by certified mail on April 9, 1987. The Tax Compliance Division issued to petitioner an accounts receivable statement showing a balance due, including tax, penalty and interest, of \$1,542.97. The statement was dated July 15, 1987. Petitioner returned this statement to the Tax Compliance Division, stating: "I am appealing your request for taxes since I have already paid the taxes." This statement was received by the Tax Compliance Division on August 4, 1987. The envelope in which it was received was postmarked July 30, 1987.

The Bureau of Conciliation and Mediation Services issued an order to petitioner denying a conciliation conference on the ground that the request for conference was late filed. The order is dated October 2, 1987.

Petitioner filed a petition with the Division of Tax Appeals dated December 11, 1987 and received on December 16, 1987.

Petitioner concedes that he failed to file a petition requesting a hearing within 90 days after the mailing of the notice of determination. He explained that when he received the notice his fiance's mother was quite ill and that he was planning his marriage which occurred in October 1987. Because of these circumstances, he forgot to attend to the tax assessment until after the statute of limitation had expired.

OPINION

The Administrative Law Judge issued a determination dismissing petitioner's petition.

We affirm the determination of the Administrative Law Judge.

Tax Law § 1138(a)(1) reads, in pertinent part, as follows:

"Notice of such determination shall be given to the person liable for the collection or payment of the tax. Such determination shall finally and irrevocably fix the tax unless the person against whom it is assessed, within ninety days after giving of notice of such determination, shall apply to the division of tax appeals for a hearing"

On exception, petitioner asserts that since he paid sales tax to Vermont, he should not be taxed again by New York State. Petitioner also asks us to grant him a hearing due to certain

extenuating circumstances. The crux of the matter, however, is that petitioner has not timely filed a request for a hearing or conciliation conference. The envelope containing the accounts receivable statement which was returned to the Tax Compliance Bureau was postmarked July 30, 1987 which is more than 90 days after the notice of determination was issued. Furthermore, petitioner has conceded that he did not timely request a hearing. This Tribunal is not empowered to waive the 90 day statutory time limit for the reasons petitioner has set forth and, therefore, is without jurisdiction over this matter (Tax Law § 2006[4]).

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Larry Savino is denied;
2. The determination of the Administrative Law Judge is affirmed; and
3. The petition of Larry Savino is dismissed with prejudice.

DATED: Troy, New York
December 28, 1990

/s/John P. Dugan
John P. Dugan
President

/s/Francis R. Koenig
Francis R. Koenig
Commissioner

/s/Maria T. Jones
Maria T. Jones
Commissioner