

STATE OF NEW YORK
TAX APPEALS TRIBUNAL

In the Matter of the Petition :
of :
GREENWICH AUCTION ROOM, LTD. : 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 March 1, 1982 through February 28, 1985. :

Petitioner Greenwich Auction Room, Ltd., 156 East 13th Street, New York, New York 10003, filed an exception to the determination of the Administrative Law Judge issued on October 18, 1990 with respect to its 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 March 1, 1982 through February 28, 1985 (File No. 805870). Petitioner appeared by Samuel Ward, Public Accountant. The Division of Taxation appeared by William F. Collins, Esq. (Angelo A. Scopellito, Esq., of counsel).

Petitioner did not file a brief on exception. The Division of Taxation filed a letter in lieu of a brief. Oral argument, requested by petitioner, was denied.

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

ISSUE

Whether petitioner established reasonable cause and not willful neglect for failure to pay sales tax so that penalty and interest can be abated pursuant to Tax Law § 1145(a)(1)(iii).

FINDINGS OF FACT

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

Petitioner Greenwich Auction Room, Ltd. operated an auction room on East 13th Street in Manhattan. Its sole stockholder and officer was Mr. Jesse Bienen or Jesse Bienenfeld. It employed a bookkeeper. Its sales tax returns were prepared by S. M. Ward Company.

A Notice of Determination and Demand for Payment of Sales and Use Taxes Due was issued to petitioner on November 20, 1986 for tax due of \$21,078.62, penalty under Tax Law § 1145(a) of \$5,261.69 and interest of \$10,461.63, for a total amount due of \$36,801.94.

The determination was based upon the disallowance of petitioner's claim that certain sales were sales for resale.

The determination under review was reduced to \$14,119.74 by a conciliation conferee when petitioner produced some resale certificates. Petitioner agreed to this. Penalty and interest, however, were not agreed to.

Petitioner claims that its principal officer, Mr. Bienenfeld, was an alcoholic from before 1982 until after 1985. Petitioner was given an opportunity to submit medical proof, but has failed to do so. Petitioner presented, after the hearing, Mr. Bienenfeld's own unsigned, unsworn written statement that he has been an alcoholic since 1980 and has participated in Alcoholics Anonymous since 1989. Petitioner also presented a note signed by a "Bob S." to corroborate Mr. Bienenfeld's participation in Alcoholics Anonymous.

OPINION

In his determination below, the Administrative Law Judge held that petitioner did not establish that its failure to pay sales tax was due to reasonable cause and not due to willful neglect. The Administrative Law Judge concluded that although grounds for reasonable cause include serious illness of the responsible officer or employee (see, 20 NYCRR 536.5[c][1]), the evidence produced by petitioner was insufficient to demonstrate that Mr. Bienenfeld was suffering from a serious illness.

In its exception, petitioner merely reasserts that Mr. Bienenfeld was an alcoholic both prior to, and subsequent to, the audit period. Therefore, petitioner argues that Mr. Bienenfeld was

suffering from a serious illness which is grounds for reasonable cause and not willful neglect for failure to pay sales tax.

In response, the Division of Taxation (hereinafter the "Division") contends that petitioner failed to produce sufficient evidence to establish reasonable cause as a basis for waiver of penalty and reduction of interest in this case. Therefore, the Division requests that the determination of the Administrative Law Judge be sustained.

We affirm the determination of the Administrative Law Judge.

Petitioner has not submitted any medical testimony or any credible evidence to substantiate that Mr. Bienenfeld's alcoholism resulted in petitioner's failure to pay sales tax.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Greenwich Auction Room, Ltd. is denied;
2. The determination of the Administrative Law Judge is sustained;
3. The petition of Greenwich Auction Room, Ltd. is denied; and
4. The Notice of Determination and Demand for Payment of Sales and Use Taxes Due, issued November 20, 1986, is sustained.

DATED: Troy, New York
June 13, 1991

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

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

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