

STATE OF NEW YORK
TAX APPEALS TRIBUNAL

In the Matter of the Petition :
of :
WALTER DOUGLAS : DECISION
D/B/A SWEET & LOW WHOLESALERS :
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 June 1, 1984 through May 31, 1987. :

Petitioner Walter Douglas d/b/a Sweet & Low Wholesalers, 235-37 West 125th Street, New York, New York 10027, filed an exception to the determination of the Administrative Law Judge issued on February 8, 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 June 1, 1984 through May 31, 1987 (File No. 805971). Petitioner appeared pro se. The Division of Taxation appeared by William F. Collins, Esq. (Gary Palmer, Esq., of counsel).

Neither petitioner nor the Division of Taxation filed a brief. Oral argument, requested by petitioner, was denied by the Tax Appeals Tribunal.

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 conciliation conference as provided by Tax Law § 170(3-a).

FINDINGS OF FACT

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

Petitioner Walter Douglas, who resides at 49 St. Nicholas Terrace, New York City, operated a women's clothing business under the name of Sweet & Low Wholesalers at 215 West

125th Street, New York City. This business sold at both wholesale and retail. (The address on its letterhead was 215A West 125th Street, but the address petitioner used and the address on the Division of Taxation's records appears to have always been 215 West 125th Street.)

Sweet & Low Wholesalers was relocated from 215 West 125th Street to 235-37 West 125th Street sometime in 1988.

A Notice of Determination and Demand for Payment of Sales and Use Taxes Due was issued on March 16, 1988 for sales and use taxes due in the amount of \$42,840.51, plus penalty of \$10,976.33 and interest of \$11,876.33, for a total amount due of \$65,693.17. A second notice was issued on the same date for penalty under Tax Law § 1145 in the amount of \$3,175.82 for the period June 1, 1985 through May 31, 1987.

Those notices were issued timely pursuant to consents extending the limitation period. On November 12, 1987, petitioner signed a consent extending the period of limitation for the period June 1, 1984 through November 30, 1984 to March 20, 1988. On August 14, 1987, petitioner signed a consent extending the period of limitation for the period June 1, 1984 through August 31, 1984 to December 20, 1987.

The address on the consents extending the limitation period was 215 West 125th Street. The same address is shown on the power of attorney filed by Mr. Springsteen on July 3, 1987 and on both notices of determination.

The notices were also sent to petitioner's representative at the address shown on his power of attorney: 160 Fifth Avenue, New York, New York. The certified letter containing these notices was unclaimed.

A request for a conciliation conference was signed on June 16, 1988 and mailed by certified mail postmarked on June 18, 1988 and received by the Bureau of Conciliation and Mediation Services on June 24, 1988. This request showed the address of 215 West 125th Street.

This request was postmarked 94 days after the notice of determination was mailed.

The request for conference was denied on July 15, 1988.

A petition for a hearing was filed on August 17, 1988. This petition showed the address of 235-37 West 125th Street.

OPINION

In the determination below, the Administrative Law Judge determined that petitioner's request for a conciliation conference was not timely filed and, therefore, petitioner was not entitled to such conference.

On exception, petitioner alleges that the power of attorney prepared by Mr. David Springsteen, P.A. was submitted with the wrong address of the business and that as a result Mr. Springsteen and Mr. Douglas were not notified of the Notice of Determination¹ in a timely manner.

We affirm the determination of the Administrative Law Judge.

Under Tax Law § 1138(a)(1), a petition for a hearing must be filed with the Division of Tax Appeals within 90 days of the date of a notice of determination or such determination shall finally and irrevocably fix the tax. Tax Law § 170(3-a)(b) allows a petitioner to request a conciliation conference relating to a notice of determination, however, the same 90-day filing requirement is applicable (20 NYCRR 4000.3[c]).

In the determination below, the Administrative Law Judge found that notices of determination and demand for payment of sales and use taxes due were issued on March 16, 1988 (said notices having been issued timely pursuant to consents extending the limitation period). Petitioner has not challenged that finding. Further, the affidavits and documents submitted by the Division, which are not disputed by petitioner, confirm that the notices were, in fact, mailed to petitioner and petitioner's representative on March 16, 1988, at the addresses shown on the consents extending the limitation period and on the power of attorney.

¹In his exception, petitioner referred to the Notice of Deficiency rather than the Notice of Determination.

Petitioner has not presented any evidence disputing or challenging the Administrative Law Judge's finding with regard to the mailing date of the notices of determination.

Accordingly, because petitioner's request for a conciliation conference was not mailed until June 18, 1988 or 94 days after the notices of determination were issued, we find that the petition was not timely filed.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of petitioner Walter Douglas d/b/a Sweet & Low Wholesalers is denied;
2. The determination of the Administrative Law Judge is sustained; and
3. The petition of Walter Douglas d/b/a Sweet & Low Wholesalers is denied.

DATED: Troy, New York
February 22, 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