

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
ABRAHAM MOHEBAN AND ROM MOHEBAN	:	NOTICE TO
D/B/A ABRAHAM MOHEBAN & SON ORIENTAL RUGS	:	REOPEN
	:	
for Redetermination of a Deficiency/Revision	:	
of a Determination or for Refund of Sales	:	
and Use Tax under Article(s) 28 and 29 of the	:	
Tax Law for the Period 12/1/82-11/30/85.	:	

Petitioners instituted an Article 78 proceeding to review a decision of the Tribunal issued on April 20, 1989 affirming an order of the Administrative Law Judge which had dismissed petitioners' petition as untimely because it was not filed within the time required by law for the filing of a petition for hearing.

The facts available to the Tribunal were that the Notice of Determination and Demand for Payment of Sales and Use Taxes indicated it was issued on March 20, 1988 at petitioners' last known address at 601 West 54th Street, New York, New York 10019. A request for conciliation and mediation was not mailed to the Bureau of Conciliation and Mediation Services until June 23, 1988, or in excess of 90 days from March 20, 1988. A conciliation order was issued on July 15, 1988 dismissing the request as untimely because it was not filed within 90 days after the notice was issued (Tax Law section 170.3-a[a]). The petition for hearing was mailed on October 14, 1988, 91 days later. The Administrative Law Judge dismissed the petition as untimely since it was not filed within 90 days after July 15, 1988 as required by Tax Law section 170.3-a(e).

Based on these facts the Tribunal affirmed the determination of the Administrative Law Judge and dismissed the petition as untimely.

Tax Law section 2016 provides that a decision of the Tax Appeals Tribunal shall be reviewable in accordance with the provisions of Article 78 of the CPLR. The Tax Law directs the petitioner to designate the Tax Appeals Tribunal and the Commissioner of Taxation and Finance as respondents to the proceeding for judicial review but provides that the Tribunal shall not participate in proceedings for judicial review of its decisions.

The Commissioner of Taxation and Finance and the petitioners have entered into a stipulation wherein both request that the Tax Appeals Tribunal reopen the matter for the purpose of permitting the introduction of evidence before an Administrative Law Judge regarding the timeliness of petitioners' petition for administrative review of the sales tax assessment issued against petitioners for the period December 1, 1982 to November 30, 1985. A copy of such stipulation was received by the Tribunal on March 27, 1990.

After reviewing the limited record in this matter, and in due consideration to the request from the petitioners and the Commissioner, the Tribunal issues this notice to reopen the matter for the limited purpose of permitting the introduction of evidence before an Administrative Law Judge regarding the timeliness of petitioners' petition for administrative review of the sales tax assessment issued against petitioners for the period December 1, 1982 to November 30, 1985.

DATED: Troy, New York
April 12, 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