

STATE OF NEW YORK
TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
ABRAHAM MOHEBAN AND ROM MOHEBAN	:	
D/B/A ABRAHAM MOHEBAN &	:	DECISION
SON ORIENTAL RUGS	:	
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, Abraham Moheban and Rom Moheban d/b/a Abraham Moheban & Son Oriental Rugs, 601 West 54th Street, New York, New York 10019 filed an exception to the order of the Administrative Law Judge issued on October 27, 1988 with respect to their petition for redetermination of a deficiency or for revision of a determination of sales and use taxes under Articles 28 and 29 of the Tax Law for the period December 1, 1982 through November 30, 1985 (File No. 806147). Petitioners appeared by Ira Ganzfried, C.P.A. The Division of Taxation appeared by William F. Collins, Esq. (Mark F. Volk, Esq., of counsel).

Neither of the parties filed a brief on exception or requested oral argument.

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

ISSUE

Whether petitioners timely filed their petition for redetermination of a deficiency or for revision of a determination of sales and use tax.

FINDINGS OF FACT

The Notice of Determination and Demand for Payment of Sales and Use Taxes Due mailed to petitioners indicates that 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 § 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 notfiled within 90 days after July 15, 1988 as required by Tax Law section 170.3-a(e).

OPINION

On exception the petitioners argue that due to the amount of tax deficiency asserted by the Division, the Administrative Law Judge's order should be reversed and petitioners be given the opportunity to present evidence in support of their assertion that the deficiency is overstated.

We sustain the order of the Administrative Law Judge.

Petitioners have failed to comply with the time requirements prescribed by law for filing a petition for hearing. The result is a lack of jurisdiction by the Division of Tax Appeals and, on exception, by the Tribunal to entertain petitioners' request.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Abraham Moheban and Rom Moheban d/b/a Abraham Moheban & Son Oriental Rugs is denied;
2. The order of the Administrative Law Judge is affirmed; and

3. The petition of Abraham Moheban and Rom Moheban d/b/a Abraham Moheban & Son Oriental Rugs is dismissed.

Dated: Albany, New York
April 20, 1989

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

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