

STATE OF NEW YORK
TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
BOUNTY RESTAURANT INC.	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Sales and Use Taxes under Articles	:	
28 and 29 of the Tax Law for the Period	:	
March 1, 1982 - February 28, 1989.	:	

Petitioner Bounty Restaurant Inc., 91 Hill Street, Southampton, New York 11968, filed an exception to the order of the Administrative Law Judge issued on February 1, 1990 with respect to its petition for redetermination of a deficiency or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period March 1, 1982 - February 28, 1989 (File No. 807484). Petitioner appeared by Lawrence Cole, C.P.A. The Division of Taxation appeared by William F. Collins, Esq. (Mark F. Volk, Esq., of counsel).

Petitioner and the Division of Taxation both submitted letters in lieu of briefs. Petitioner's request for oral argument was denied.

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

ISSUE

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

FINDINGS OF FACT

We find the following facts.

The notices of determination were mailed to petitioner on May 19, 1989, at petitioner's last known address at 91 Hill Street, Southampton, New York 11968.

The petition was required to be filed with the Division of Tax Appeals within 90 days after May 19, 1989.

Said petition was mailed on September 29, 1989 or 133 days later.

OPINION

The Administrative Law Judge dismissed the petition herein based upon his finding that the notices of determination were mailed to petitioner on May 19, 1989 at petitioner's last known address and the petition was not mailed until September 29, 1989 which was not within 90 days after the mailing of the determination as required by Tax Law § 1138(a)(1).

On exception, petitioner asserts that it timely filed a petition on July 8, 1989, within the 90 day period, and that the petition mailed on September 29, 1989, was just a copy of the petition that was filed on July 8, 1989. Furthermore, petitioner contends that its timely petition was sent to the Tax Appeals Bureau at its previous address, Albany, New York 12227, because the petition itself indicated that it should be mailed to the Albany, New York 12227 address.

In response, the Division argues that the dismissal of the petition was proper since petitioner failed to prove that the petition was received within the 90 day period.

We affirm the order of the Administrative Law Judge. Petitioner offered no proof (e.g., a receipt of timely mailing by certified or registered mail) that the petition was filed within 90 days after May 19, 1989 as prescribed by Tax Law § 1138(a)(1) (see, Matter of Sundown Meat, Fish & Liquor Co., Tax Appeals Tribunal, November 3, 1988; Matter of Sipam Corp., Tax Appeals Tribunal, March 10, 1988; Matter of Harron's Electric Serv., Tax Appeals Tribunal, February 19, 1988). Thus, the petition was not timely filed.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of petitioner Bounty Restaurant Inc. is denied;
2. The order of the Administrative Law Judge is affirmed; and

3. The petition of Bounty Restaurant Inc. is denied and the notices of determination and demand for payment of sales and use taxes due issued on May 19, 1989 are sustained.

DATED: Troy, New York
December 20, 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