

STATE OF NEW YORK
TAX APPEALS TRIBUNAL

In the Matter of the Petition :

of :

P-H FINE ARTS, LIMITED :

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 September 1, 1984 :
through August 31, 1987. :

In the Matter of the Petition :

of :

ROBERT C. GUCCIONE, :
OFFICER OF P-H FINE ARTS, LIMITED :

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 September 1, 1984 :
through August 31, 1987. :

In the Matter of the Petition :

of :

ANTHONY J. GUCCIONE, :
OFFICER OF P-H FINE ARTS, LIMITED :

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 September 1, 1984 :
through August 31, 1987. :

In the Matter of the Petition :

of :

DAVID J. MYERSON, :
OFFICER OF P-H FINE ARTS, LIMITED :

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 September 1, 1984 :
through August 31, 1987. :

ORDER AND OPINION
DTA NOS. 807866,
807862, 807860,
807864, 807867,
807863, 807861
AND 807865

In the Matter of the Petition :
of :
STEPPLONG CORPORATION :
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, 1984 :
through May 31, 1984. :

In the Matter of the Petition :
of :
ROBERT C. GUCCIONE, :
OFFICER OF STEPPLONG CORPORATION :
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, 1984 :
through May 31, 1984. :

In the Matter of the Petition :
of :
ANTHONY J. GUCCIONE, :
OFFICER OF STEPPLONG CORPORATION :
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, 1984 :
through May 31, 1984. :

In the Matter of the Petition :
of :
DAVID J. MYERSON, :
OFFICER OF STEPPLONG CORPORATION :
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, 1984 :

through May 31, 1984.

On December 6, 1993, Harmon Fine Arts, Inc. (David I. Goldblatt, Esq., of counsel) made a motion to this Tax Appeals Tribunal for leave to file an amicus curiae brief.

ORDER

Upon reading the "Motion for Leave to File Memorandum of Law Amicus Curiae" and proposed amicus curiae brief dated and submitted by Harmon Fine Arts, Inc. on December 3, 1993, and the letter submitted in response thereto by the Division of Taxation (James DellaPorta and Robert J. Jarvis, Esqs., of counsel) on January 5, 1994, and due deliberation having been had thereon,

NOW, upon the motion of David I. Goldblatt, attorney for Harmon Fine Arts, Inc., it is ORDERED that said motion be and hereby is granted.

OPINION

Harmon Fine Arts, Inc. seeks permission to file a brief amicus curiae in this matter based on its interest in this particular case (it finds itself in a similar situation with regard to the Division of Taxation), its interest in the general issue involved (it is "a dealer in works of fine art and objects of antiquity"), and on the assistance it can provide the Tax Appeals Tribunal because of its unique knowledge of the industry. The Division of Taxation does not oppose the filing of the brief provided it be allowed 30 days from the acceptance of the brief to respond to the arguments contained therein. Petitioners did not submit any comments regarding the proposed amicus brief.

As we stated in Matter of Consolidated Edison (Tax Appeals Tribunal, May 28, 1992):

"In Matter of Standard Mfg. Co. (Tax Appeals Tribunal, July 11, 1991), this Tribunal determined that the rules concerning amicus curiae relief, contained in 22 NYCRR 500.11(e) regarding the filing of such briefs before the Court of Appeals, are the most specific and informative of any New York State court rules concerning this issue. The Tribunal will, therefore, look to such rules for guidance in determining whether to grant amicus curiae relief. Such rules provide as follows:

"(e) Amicus Curiae Relief. (For appeals selected for sua sponte examination of the merits see section 500.4 of this Part). A brief may be filed only by leave of court granted on motion, or upon the court's own request.

"Motions for amicus curiae relief, when appropriately made on notice to all of the parties and sufficiently in advance of the argument of the appeal to allow adequate court review of the motion and the proposed brief, must include consideration of and satisfaction of the court of at least one of the following criteria:

"(1) a showing that the parties are not capable of a full and adequate presentation and that movants could remedy this deficiency;

"(2) that movants would invite the court's attention to law or arguments which might otherwise escape its consideration; or

"(3) that amicus curiae briefs would otherwise be of special assistance to the court."

The proposed amicus brief submitted meets the criteria set forth in Standard in that the unique position of Harmon Fine Arts, Inc. both from a business perspective and from the perspective of being in the same tax situation as petitioners herein, together with the complexity of the issues involved, lead us to conclude that the brief will be of assistance to this Tax Appeals Tribunal.

Accordingly, we grant Harmon Fine Arts, Inc.'s motion for leave to file an amicus curiae brief on exception.

Petitioners and the Division of Taxation have until February 22, 1994 to submit any response to the amicus brief. Both parties and Harmon Fine Arts, Inc. will then have until March 9, 1994 to submit any reply to these simultaneous submissions. This case will then proceed to oral argument.

DATED: Troy, New York
January 20, 1994

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

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