

STATE OF NEW YORK
TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
DENNIS DRISCOLL, OFFICER OF	:	
GREAT EASTERN PRINTING CO., INC.	:	DECISION
for Redetermination of a Deficiency/Revision of a	:	
Determination or for Refund of Sales and Use Taxes under	:	
Article(s) 28 and 29 of the Tax Law for the Period	:	
September 1, 1985 through May 31, 1988.	:	

Petitioner Dennis Driscoll, Officer of Great Eastern Printing Co., Inc., 4 Devereux Place, Garden City, New York 11530 filed an exception to the order of the Administration Law Judge issued on August 30, 1990 dismissing his petition for redetermination of a deficiency/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, 1985 through May 31, 1988 (File No. 807953). Petitioner appeared by Robert J. Bogardt, CPA. The Division of Taxation appeared by William F. Collins, Esq. (Mark F. Volk, Esq., of counsel).

Neither party filed a brief on exception. 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 the Tribunal has the authority to suspend collection activities against petitioner until the corporation's administrative review process is settled.

FINDINGS OF FACT

We find the following facts.

On September 1, 1989, a Notice of Determination and Demand for Payment of Sales and Use Taxes Due was issued to Dennis Driscoll as officer of Great Eastern Printing Co., Inc.

On December 5, 1989, petitioner mailed a petition to the Division of Tax Appeals which was received by the Division of Tax Appeals on December 7, 1989. As the petition was not filed within 90 days of the issuance of the Notice of Determination, a Notice of Intent to Dismiss the petition was issued by the Division of Tax Appeals on June 21, 1990. The parties were given 30 days to respond. The Division of Taxation responded with the mailing records in this matter which establish that the Notice of Determination was issued on September 1, 1989. Petitioner made no response. On August 30, 1990, an order dismissing the petition was issued.

On September 28, 1990, petitioner filed an exception with the Division of Tax Appeals.

OPINION

The Administrative Law Judge dismissed petitioner's petition as untimely because it was not filed within 90 days of the issuance of the notice of determination as prescribed by section 1138(a)(1) of the Tax Law.

Petitioner alleges in his exception that Great Eastern Printing Co., Inc. (hereinafter the "corporation") timely filed a petition protesting the Notice of Determination issued to it. Petitioner admits, however, that he did not timely file a petition protesting the Notice of Determination issued to him personally, as officer of the corporation. Petitioner asks that the Tribunal place a stop action on the Notice of Determination issued to him pending the resolution of the corporation's appeal.

The Division of Taxation in response to petitioner's exception states that the Administrative Law Judge properly dismissed the petition as untimely.

We affirm the order of the Administrative Law Judge.

This issue was recently addressed in Matter of Club Marakesh v. New York State Div. of Tax Appeals (Sup Ct, Albany County, Nov. 7, 1990, Keniry, J.). The petitioners in Club Marakesh sought, among other things, to enjoin the Division of Tax Appeals from collection

activities. The court found, after reviewing Article 40 of the Tax Law and the regulations of the Division of Tax Appeals, that the Division of Tax Appeals does not have any authority over the collection of past due sales taxes. It was further found that all collection responsibility rests with the Department of Taxation and Finance, Division of Taxation (Matter of Club Marakesh v. New York State Div. of Tax Appeals, supra).

In view of the above, this Tribunal has no authority to suspend collection activities against petitioner.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of petitioner Dennis Driscoll, Officer of Great Eastern Printing Co., Inc. is denied;
2. The order of the Administrative Law Judge is affirmed; and
3. The petition of Dennis Driscoll, Officer of Great Eastern Printing Co., Inc. is dismissed with prejudice.

DATED: Troy, New York
April 11, 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