

STATE OF NEW YORK  
TAX APPEALS TRIBUNAL

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In the Matter of the Petition	:	
of	:	
<b>A.M. COMMUNICATIONS, INC.</b>	:	DECISION
<b>F/K/A A.M. CABLE T.V. INDUSTRIES, INC.</b>	:	DTA No. 808314
for Redetermination of a Deficiency or for	:	
Refund of Corporation Franchise Tax under	:	
Article 9-A of the Tax Law for the Fiscal Years	:	
Ended March 31, 1983 and March 31, 1985	:	

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Petitioner A.M. Communications, Inc. f/k/a A.M. Cable T.V. Industries, Inc., One A.M. Drive, Quakertown, Pennsylvania 18951 filed an exception to the determination of the Administrative Law Judge issued on April 11, 1991 with respect to its petition for redetermination of a deficiency or for refund of corporation franchise tax under Article 9-A of the Tax Law for the fiscal years ended March 31, 1983 and March 31, 1985. Petitioner appeared by Robert A. Mann, C.P.A. The Division of Taxation appeared by William F. Collins, Esq. (Vera R. Johnson, Esq., of counsel).

Neither petitioner nor the Division of Taxation filed briefs on exception. Oral argument, requested by petitioner, was denied.

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

***ISSUE***

Whether the Division of Tax Appeals has subject matter jurisdiction to hear petitioner's challenge to two notices of deficiency, although petitioner did not request a conciliation conference or file a petition until approximately three years after the mailing of the notices of deficiency.

***FINDINGS OF FACT***

We find the facts as determined by the Administrative Law Judge. These facts are set forth below.

Petitioner, A.M. Communications, Inc., formerly known as A.M. Cable T.V. Industries, Inc., and the Division of Taxation (hereinafter the "Division") entered into a stipulation of facts which has been substantially incorporated into the following findings of fact.

As a result of a corporation franchise tax field audit of petitioner's books and records, the Division issued to petitioner two notices of deficiency, each dated December 12, 1986. One notice, assessment number C861212100F, asserted a tax deficiency for the fiscal year ended March 31, 1983 in the amount of \$41,202.00 plus interest. The second notice, C861212101S, asserted a tax deficiency for the fiscal year ended March 31, 1983 of \$7,332.00 plus interest. The petition filed with the Division of Tax Appeals makes reference to a third notice of deficiency, but that notice was not placed in the record or referred to in the stipulation of the parties. The third notice may explain petitioner's reference in its petition to the period ended March 31, 1985, but it is not the subject of this determination.

The Division placed in the record the affidavit of Peter Pasternak, the Tax Audit Administrator of the District Office Audit Bureau, corporation tax section, who supervises the corporation tax section and is familiar with the mailing procedures of the Division's Processing Division. He described in detail the routine office procedure for preparing and mailing notices of deficiency emanating from the corporation tax section. Attached to Mr. Pasternak's affidavit were photocopies of the notices of deficiency in issue and a copy of the Certified Mailing Record (CMR), listing petitioner's name and address. Original copies of the notices of deficiency in issue bear certified mail control number 26584. The CMR shows the mailing of envelopes with control number 26584 to petitioner on December 12, 1986. The Division also offered the affidavit of Daniel D. LaFar, a principal clerk in charge of supervising the delivery of outgoing mail to branch offices of the United States Postal Service. The affidavit describes

the specific procedures followed by that staff. The affidavit states that a clerk in the District Office Audit Bureau proofreads each notice of deficiency, assigns and affixes a certified mail control number to the envelope containing the notice, records the control number on a CMR, and places the envelope and CMR in an outgoing mail basket where it is collected by the staff of the Processing Division. A mail room clerk personally delivers the envelopes and the CMR to a branch of the Postal Service with the proper postage affixed. Upon receipt, a post office employee inspects the envelopes and CMR and affixes a post office date stamp to the CMR. The CMR listing petitioner's name and address is initialed by the postmaster and bears a Postal Service date stamp of December 12, 1986. Petitioner's name and address as it appears on the notices of deficiency and the CMR is A.M. Cable TV Industries, Inc., Attn. John Strzelecki, 1 AM Drive, Quakertown, PA 18951. Petitioner and the Division stipulated to the following fact: "That petitioner during all times mentioned herein conducted business at One AM Drive, Quakertown, Pennsylvania".

On or about September 22, 1987, the Division mailed a letter to petitioner, requesting payment of unpaid taxes. The letter references assessment numbers C861212100F and C861212101S (those in issue here), and it states, in pertinent part: "The balance of your account, with accrued statutory charges, is shown above. Unless this balance is paid within 10 days from receipt of this notice, a tax warrant may be filed against you." A copy of that letter was placed in the record. A handwritten note was placed on the bottom of the letter indicating that on September 28, 1987, one of petitioner's employees contacted the Division and discussed the arrearages. He apparently spoke to a tax compliance agent identified as A. Mohammed. The note states, in part: "Called 9/28/87--Explained situation and will provide info necessary to clear up situation. Will make payment on small assessments and try to elim. The total of the large ones (approx. \$88K). Will await..." (The remainder is illegible).

By letter dated October 1, 1987, Mr. Strzelecki, responded to Mr. Mohammed on petitioner's behalf. Essentially, this letter states that petitioner had no New York State tax liability for the period assessed and intended to submit information proving that contention.

On December 16, 1989, petitioner filed a request for a conciliation conference, consisting of a letter dated December 11, 1989. According to the letter, petitioner first became aware of the outstanding assessments at issue here when it received the Division's letter of September 22, 1987. Petitioner's letter goes on to state:

Mr. John Strzelecki, the former controller of A.M. Communications, Inc., immediately responded to the notice on October 1, 1987, indicating that they were in disagreement with the notice. This constitutes a request to petition the New York State Department of Taxation and Finance for review of the assessment. The taxpayer feels this response is within the 90 day period and constitutes a timely response to the notice. The taxpayer responded immediately to the notice once they were aware of it.

There were no notices or letters at the taxpayers [sic] place of business which should indicate that the taxpayer was notified previous to September 22, 1987 by the New York State Department.

The Division issued a Conciliation Order, dated March 2, 1990, dismissing petitioner's request for a conference on the ground that the notices of deficiency contested were mailed on December 12, 1986, but the request for a conference was not mailed until December 16, 1989.

#### ***OPINION***

In the determination below, the Administrative Law Judge found that the evidence submitted by the Division was sufficient to establish that the Division mailed the notices of deficiency to petitioner at its last known address on December 12, 1986 and that the notices became final assessments of tax on March 12, 1987. The Administrative Law Judge found no merit in petitioner's contention that the Division's letter of September 22, 1987 acted as a notice of deficiency, holding that said letter was a request for payment of the taxes asserted by the notices of deficiency issued on December 12, 1986. The Administrative Law Judge held that, inasmuch as petitioner failed to file a petition with the former State Tax Commission within 90 days of the mailing of the notices of deficiency in question, neither the Bureau of Conciliation and Mediation Services nor the Division of Tax Appeals had the authority to examine petitioner's current challenge to those notices, and petitioner, therefore, no longer has a statutory right to seek review of the notices.

On exception, petitioner alleges the necessary documents were filed for a conciliation conference within the 90-day period and, further, petitioner alleges it should be allowed to provide the information which was always available but not reviewed by the Division. Finally, petitioner desires to produce the information which the auditor requested and to submit facts at a conciliation conference.

We find no basis in the record before us for modifying the Administrative Law Judge's determination in any respect. Therefore, we affirm the determination of the Administrative Law Judge for the reasons stated in said determination.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of petitioner A.M. Communications, Inc. f/k/a A.M. Cable T.V. Industries, Inc. is denied;
2. The determination of the Administrative Law Judge is affirmed; and
3. The petition of A.M. Communications, Inc. f/k/a A.M. Cable T.V. Industries, Inc. is dismissed.

DATED: Troy, New York  
March 5, 1992

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

/s/Maria T. Jones  
Maria T. Jones  
Commissioner