

STATE OF NEW YORK
TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
ALL CORPS	:	DECISION
for Redetermination of a Deficiency or for	:	DTA No. 809351
Refund of Corporation Tax under Article 9 of	:	
the Tax Law for the Years 1981 through 1987.	:	

Petitioner All Corps, 838 Hutchison Street, Vista, California 92084 filed an exception to the order of the Administrative Law Judge issued on July 3, 1991 granting the motion by the Division of Taxation to dismiss the petition of petitioner for failure to state a cause for relief. Petitioner appeared by its president Wayne E. Faulkner. The Division of Taxation appeared by William F. Collins, Esq. (Vera R. Johnson, Esq., of counsel).

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

ISSUE

Whether petitioner's petition should be dismissed for failure to state a cause for relief.

OPINION

The Administrative Law Judge granted the Division of Taxation's (hereinafter the "Division") motion to dismiss petitioner's petition pursuant to 20 NYCRR 3000.3(b)(1)(vi), on the basis that the petition did not state a cause for relief. The petition indicated that petitioner sought to appeal an interest payment of corporation tax. As noted by the Administrative Law Judge, the only error alleged by this petition with respect to this interest was as follows: "[f]ailure of New York State Department of Taxation and Finance to notify petitioner of any corporate tax requirement for the period 1981 through 1987." The Administrative Law Judge stated that the question presented by the motion was whether relief could be granted under any

facts alleged in the petition. The Administrative Law Judge found that there is no provision to allow the waiver of interest imposed for the late payment of corporation franchise tax for any reason. Further, the Administrative Law Judge concluded that the Division is not under any duty to notify taxpayers of an obligation to file and pay tax for activities having some connection to New York. For these reasons, the Administrative Law Judge concluded that petitioner did not state a cause of action upon which relief could be granted and dismissed the petition.

On exception, petitioner asserts that he did not receive page 3 of the Division's affirmation in support of the motion to dismiss the petition and that the document he did receive told him "exactly nothing" (petitioner's exception). Further, petitioner states that the notice of motion indicated that the motion would be considered on May 20, 1991, and "[i]f that was the hearing date neither our representative in New York State or [sic] myself were made aware of it" (petitioner's exception). Finally, petitioner states that:

"I disagree with the finding of the court in that the court admittedly did not have all the facts in this matter. My intent was to keep all correspondence brief and to present an oral argument at the hearing. The oral argument was to be presented by our representative in New York State. However, I now understand that he was disqualified because he is neither a lawyer nor an accountant. I fail to see why this should make any difference as our appeal is not based on any legal or accounting questions. Accordingly, I will be in the Tri-City area and available to the court during the period 20-25 September 1991" (petitioner's exception).

In response, the Division asserts that the Division's notice of motion clearly indicated that petitioner was required to respond to the motion no later than 10 days prior to the return date. Further, the Division argues that petitioner's failure to respond stemmed from ignorance of the law relative to motion practice and did not constitute a sufficient basis to challenge the Administrative Law Judge's order. The Division also contends that its challenge to the petition was based on the fact that the petition was facially defective as a matter of law and that the Administrative Law Judge's order should be sustained.

We begin by addressing the procedural points raised by petitioner. First, we see no prejudice to petitioner caused by his failure to receive page 3 of the affirmation in support of the motion. This was the last page of the affirmation and contained only 5 lines of text in which the Division requested twenty days to respond to the petition if the motion was not granted and concluded by requesting that the motion be granted. The substance of the affirmation in support was set forth on the pages that petitioner did receive. Further, petitioner apparently did become aware of the existence of page 3 at some point, but has not explained how long it took him to acquire this information nor has he explained how his ability to respond was impaired by any delay that did occur.

Next, we see no harm to petitioner caused by his misunderstanding that a hearing would be held on the motion. Since no hearing was held, petitioner did not miss it.

Finally, and most importantly, we see no way in which petitioner's unfamiliarity with motion practice affects the question addressed by the Administrative Law Judge, i.e., whether the petition states a claim for relief. The petition form filed by petitioner has the following printed on it: "[t]he petitioner alleges that the Commissioner of Taxation and Finance made the following errors and asserts the following facts:" The only statement made by petitioner in response to this heading was, as stated above, the "[f]ailure of New York State Department of Taxation and Finance to notify petitioner of any corporate tax requirement for the period 1981 through 1987." Throughout the process of considering this petition, including the instant exception, petitioner has offered nothing to suggest that the Administrative Law Judge misconstrued or misunderstood the statement on the petition. Instead, petitioner, on exception, acknowledges that his appeal is not based on any legal or accounting question (petitioner's exception). Accordingly, we agree with the Administrative Law Judge, and for the reasons stated in her order sustain the dismissal of the petition.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of All Corps is denied;
2. The order of the Administrative Law Judge is sustained; and

3. The petition of All Corps is dismissed.

DATED: Troy, New York
January 16, 1992

/s/John P. Dugan

John P. Dugan
President

/s/Francis R. Koenig

Francis R. Koenig
Commissioner

/s/Maria T. Jones

Maria T. Jones
Commissioner