

STATE OF NEW YORK
TAX APPEALS TRIBUNAL

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| In the Matter of the Petition | : | |
| of | : | |
| DEAN WITTER REYNOLDS, INC. | : | ORDER |
| for Revision of a Determination or for Refund | : | DTA No. 812502 |
| of Sales and Use Taxes under Articles 28 and 29 | : | |
| of the Tax Law for the Period September 1, 1990 | : | |
| through August 31, 1991. | : | |

Petitioner Dean Witter Reynolds, Inc., Two World Trade Center, Corporate Taxes, 46th Floor, New York, New York 10048, filed an exception to the determination of the Administrative Law Judge issued on July 6, 1995.

On February 6, 1997, oral argument was heard before the Tax Appeals Tribunal (hereinafter the "Tribunal") at its offices in Troy, New York. At the close of oral argument, petitioner sought permission to file a brief in reply to certain case law raised by the Division of Taxation at oral argument that had not been raised previously in any of its papers. The Tribunal granted petitioner's request. Petitioner filed its reply with the Tribunal on March 20, 1997.

On September 10, 1997, petitioner filed a Notice of Motion with the Tribunal pursuant to regulation 20 NYCRR 3000.5 seeking leave to reargue this matter.

Petitioner appeared by Kirkland & Ellis (Yosef J. Riemer, Esq., of counsel) and Edward W. Larkin, Esq. The Division of Taxation appeared by Steven U. Teitelbaum, Esq. (Robert Tompkins, Esq., of counsel). The Division of Taxation did not respond to this motion.

NOW, upon reading the Notice of Motion and the Affirmation Supporting Motion to Reargue, and due deliberation having been had thereon, the Tax Appeals Tribunal renders the following order.

FINDINGS OF FACT

We find the following facts.

The determination in this matter was issued by the Administrative Law Judge on July 6, 1995. Petitioner filed an exception to the determination with the Tribunal on August 4, 1995. In its exception, petitioner requested time for oral argument and that request was granted. The Tribunal heard oral argument on February 6, 1997. To date, the Tribunal has not issued its decision in this matter.

On September 10, 1997, petitioner filed a Notice of Motion and Affirmation Supporting Motion to Reargue with the Tribunal pursuant to 20 NYCRR 3000.5 seeking an order granting it leave to reargue on the ground that this case involves important and difficult issues of public policy, many of which are matters of first impression for the Tribunal. For that reason, petitioner urges that both the parties and the Tribunal could only benefit by further and fuller argument on these issues.

ORDER

A motion to reargue is based on no new proof, seeking only to convince the court that it was wrong and ought to change its mind (Siegel, NY Prac § 254, at 383 [2d ed]). There is no statutory authority for this Tribunal to reconsider its decisions and, therefore, our authority to do so as a quasi-judicial body is limited (Matter of Trieu, Tax Appeals Tribunal, June 2, 1994, confirmed Matter of Trieu v. Tax Appeals Tribunal, 222 AD2d 743, 634 NYS2d 878, appeal dismissed 87 NY2d 1054, 644 NYS2d 146; Matter of Jenkins Covington, N.Y. v. Tax Appeals Tribunal, 195 AD2d 625, 600 NYS2d 281, lv denied 82 NY2d 664, 610 NYS2d 151).

A motion to reargue is intended to affect a prior order or decision.

"A motion for reargument, addressed to the discretion of the court, is designed to afford a party an opportunity to establish that the court overlooked or misapprehended the relevant facts, or misapplied any controlling principle of law. Its purpose is not to serve as a vehicle to permit the unsuccessful party to argue once again the very questions previously decided" (Foley v. Roche, 68 AD2d 558, 418 NYS2d 588, 593, lv denied 56 NY2d 507, 453 NYS2d 1025).

In this matter we have not yet rendered our decision on the merits, so petitioner's motion to reargue is premature. Even if the motion was not premature, petitioner has not stated a valid basis for its motion. Indeed, petitioner merely argues that it would like to argue the issues again "in detail" (Affirmation in Support, p. 3) because the issues presented are of interest to the Tribunal.

While the issues are of interest to the Tribunal, the parties have already had an opportunity to argue in detail. The transcript of oral argument is 50 pages long. Petitioner has raised no authority that would justify our granting its request for reargument.

Therefore, upon reading the Notice of Motion, together with the Affirmation Supporting Motion to Reargue, and due deliberation having been had thereon, it is

ORDERED that the motion for reargument of Dean Witter Reynolds, Inc. be, and the same hereby is, denied.

DATED: Troy, New York
December 31, 1997

/s/Donald C. DeWitt
Donald C. DeWitt
President

/s/Carroll R. Jenkins
Carroll R. Jenkins
Commissioner

/s/Joseph W. Pinto, Jr.
Joseph W. Pinto, Jr.
Commissioner