

STATE OF NEW YORK  
TAX APPEALS TRIBUNAL

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In the Matter of the Petition	:	
of	:	
ARTHUR SCHULKIN	:	ORDER
D/B/A SCHULKIN'S NEWSSTAND	:	DTA No. 814744
for Review of the Revocation of his License as a Lottery	:	
Sales Agent under Article 34 of the Tax Law for the Year	:	
Year 1995.	:	

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Petitioner Arthur Schulkin d/b/a Schulkin's Newsstand, P.O. Box 668, Bowling Green Station, New York 10274, filed an exception to the order of the Chief Administrative Law Judge issued on June 27, 1996, which dismissed his petition for lack of subject matter jurisdiction.

On April 10, 1997, the Tax Appeals Tribunal issued a decision affirming the order of the Chief Administrative Law Judge on the basis that the Tribunal did not have subject matter jurisdiction to hear the matter.

On July 22, 1997, the Division of the Lottery filed a Notice of Motion for Reargument which sought to have the Tribunal issue an order reversing so much of its decision of April 10, 1997 that granted the Division of Tax Appeals the sole authority to conduct suspension and revocation hearings of lottery sales agents' licenses.

The Division of the Lottery appeared by William J. Murray, General Counsel. Arthur Schulkin d/b/a Schulkin's Newsstand did not appear on the Motion.

NOW, upon reading the Motion for Reargument, dated July 22, 1997, the Affirmation of William J. Murray, Esq. in support of the Motion, dated July 22, 1997, and the exhibits attached thereto, the Memorandum of Law in support of the Motion and all the other documents, pleadings and proceedings had herein, and due deliberation having been had thereon, the Tax Appeals Tribunal renders the following order. Commissioner Jenkins took no part in the consideration of this order.

### Findings of Fact

We find the following facts.

An order was issued in this matter by the Chief Administrative Law Judge on June 27, 1996, joining the Division of the Lottery as a necessary party, dismissing the Division of Taxation as a party and dismissing the petition for lack of subject matter jurisdiction.

By decision dated April 10, 1997, the Tax Appeals Tribunal sustained the dismissal of the petition based on our lack of subject matter jurisdiction. However, our reasons for finding a lack of jurisdiction were grounded in the failure of petitioner to timely file a petition for review of his license revocation with the Division of Tax Appeals, not on the ground that the Division of Tax Appeals had no authority to review lottery license revocation cases. We specifically found jurisdiction to hear such cases. Based upon our finding of jurisdiction in the Division of Tax Appeals to hear cases such as Mr. Schulkin's, the Division of the Lottery brought this Motion for Reargument.

### 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, lv denied 88 NY2d 809, 647 NYS2d 714; Matter of Jenkins Covington, N.Y. v. Tax Appeals Tribunal, 195 AD2d 625, 600 NYS2d 281, lv denied 82 NY2d 664, 610 NYS2d 151; see also, Evans v. Monaghan, 306 NY 312). However, although our authority to reconsider may be limited, it is not prohibited (see, 20 NYCRR 3000.16[c] [wherein motions for reargument and orders thereon are specifically authorized]). Instead, we believe any reconsideration must be undertaken with great care and vigilance, and only in cases where a valid basis for doing so has been raised by the movant.

In Foley v. Roche (68 AD2d 558, 418 NYS2d 588, 593, lv denied 56 NY2d 507, 453 NYS2d 1025), the Court stated:

“[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.”

We believe that the Division of the Lottery has raised a valid basis for the reconsideration of our decision in this matter and, consistent with the discussion below, reverse so much of our decision that held that the Division of Tax Appeals had jurisdiction to hear petitions involving the suspension or revocation of lottery sales agents' licenses.

In our decision, we did not consider the ramification of the intervening legislation which amended Tax Law § 1607 in 1994 (L 1995, ch 2, § 94-f). That section amended the opening paragraph of Tax Law § 1607 by substituting the language “after notice and an opportunity for a hearing pursuant to the state administrative procedure act” for “after notice and hearing.” The significance of this amendment is not only that the Legislature felt strongly enough to further define the hearing function within the Division of the Lottery, but that it was done with full knowledge of the jurisdiction of the Division of Tax Appeals, which it had created only eight years earlier (L 1987, ch 401, § 13). It is unlikely that the Legislature would have found it necessary to amend Tax Law § 1607 if it had already accorded petitioners/licensees hearing rights pursuant to Article 40. In fact, to argue such an interpretation requires an assumption that the Legislature was merely repeating itself with respect to the hearing rights of licensees in the Division of the Lottery. Where the Legislature enacts an amendment to a statute, it is deemed to have intended to materially change the law and courts must seek the new legislative purpose and construe the law so that it may be effectuated, for otherwise the amendment would be nugatory (McKinney's Cons Laws of NY, Book 1, Statutes § 193). Were we to ascribe no intended change to the amendment in 1995, the Legislature's amendment of section 1607 would be

tantamount to an “inoffensive folly” and such an interpretation is to be avoided (McKinney’s Cons Laws of NY, Book 1, Statutes § 193).

In our decision, we examined the logical progression from the creation of the Division of the Lottery to the creation of the Division of Tax Appeals and analyzed the hearing functions of both agencies. Barring legislative action which would otherwise have confirmed or denied the broad jurisdiction of the Division of Tax Appeals, our interpretation was sound. However, in light of the 1995 amendment, we are persuaded that the Legislature intended for the Division of the Lottery to conduct its own hearings, even if the precise reasons therefor were not enunciated.

This conclusion is consistent with two recent Appellate Division cases which, although predating the 1995 amendment, assumed the jurisdiction of the Division of the Lottery in reviewing license revocations where the Division of the Lottery provided hearings to licensees pursuant to Tax Law § 1607 (Matter of Barbulean v. Lynch, 203 AD2d 819, 611 NYS2d 366 [wherein a lottery licensee’s spouse brought an Article 78 proceeding to review a determination of the Director of the Lottery which denied her application for transfer of ownership of a lottery license]; Matter of Hilton Apothecary v. State of New York, 165 Misc 2d 697, 630 NYS2d 446 [wherein petitioner sought permission to file a late claim to object to the suspension of its license to sell lottery tickets, and the Court specifically found that the Division of the Lottery had not violated Tax Law § 1607 in suspending the license]).

For these reasons, we believe that reconsideration of our decision in Matter of Schulkin (Tax Appeals Tribunal, April 10, 1997) is proper and, given the discussion above, we reverse so much of that decision which confers jurisdiction on the Division of Tax Appeals to hear license revocation hearings pursuant to Tax Law § 1607. It is noted that our ultimate conclusion, that the petition must be dismissed for lack of subject matter jurisdiction, is unchanged.

Therefore, upon reading the Notice of Motion, together with the Affirmation and Memorandum of Law submitted by the Division of the Lottery, and due deliberation having been had thereon, it is

ORDERED that the Motion for Reargument of the Division of the Lottery is granted and the decision of the Tax Appeals Tribunal in Matter of Schulkin (supra) is modified consistent with the terms of this order.

DATED: Troy, New York  
November 20, 1997

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

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