

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	ORDER
NANCY E. SCHIFFERLE	:	DTA NO. 820606
for Revision of a Determination or for Refund of Sales and	:	
Use Taxes under Articles 28 and 29 of the Tax Law for the	:	
Period December 1, 2000 through August 31, 2003.	:	

Petitioner, Nancy E. Schifferle, filed an exception to the order of the Administrative Law Judge issued on November 22, 2006. Petitioner appeared by Hodgson Russ, LLP (Jack Trachtenberg, Esq., of counsel). The Division of Taxation appeared by Daniel Smirlock, Esq. (Robert A. Maslyn, Esq., of counsel).

Petitioner filed a brief in support of the exception and a reply brief. The Division of Taxation filed a brief in opposition. Oral argument, at petitioner's request, was heard on October 24, 2007 in Troy, New York.

NOW, it is hereby ordered that the parties file supplemental briefs addressing the question whether the Tax Appeals Tribunal has jurisdiction to hear this appeal in light of (A) the language in Tax Law § 3030(e)(2) stating, "A determination or decision granting or denying (in whole or in part) an award for reasonable administrative costs under subdivision (a) of this section by the division of tax appeals or the tax appeals tribunal shall be subject to exception or review in the same manner as the determination or decision." and (B) the language in Tax Law § 2012 stating, "The final determination of the presiding officer in the small claims unit shall be conclusive upon all parties and shall not be subject to review by any other unit in the division of tax appeals, by

the tax appeals tribunal or by any court of the state.” The parties should also address the following opinions of the Federal courts applying similar language in the Internal Revenue Code: *Stites v. United States*, 978 F2d 1091 (9th Cir 1992) and *Randazzo v. United States*, 751 F2d 145 (3d Cir 1984). The briefs, in the form of letters not to exceed five pages in length, are to be filed simultaneously with the Secretary of the Tax Appeals Tribunal pursuant to a briefing schedule to be established by the Secretary and served on opposing counsel.

DATED:Troy, New York
April 10, 2008

/s/ Charles H. Nesbitt
Charles H. Nesbitt
President

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

/s/ Robert J. McDermott
Robert J. McDermott
Commissioner