

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
SIR JAMES CABINETRY, INC.	:	DECISION
		DTA NO. 823958
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 March 1, 2007 through February 28, 2009.	:	

Petitioner, Sir James Cabinetry, Inc., filed an exception to the order of the Administrative Law Judge issued on May 12, 2011. Petitioner appeared by the Offices of K.A. Francis (Kenneth A. Francis, EA). The Division of Taxation appeared by Mark Volk, Esq. (John Matthews, Esq., of counsel).

Petitioner filed a brief in support of its exception. The Division of Taxation did not file a brief in opposition. Petitioner's request for oral argument 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 lacks jurisdiction over the subject matter of the petition filed in this matter.

FINDINGS OF FACT

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

Petitioner, Sir James Cabinetry, Inc., filed a petition with the Division of Tax Appeals on November 2, 2010, protesting Notice of Determination L-033477590-5.¹ In its petition, petitioner asserted that the Notice of Determination was in error because petitioner had timely filed all of its sales and use tax returns for the period in issue, March 1, 2007 through February 28, 2009; that the Division of Taxation had made the determination of tax without examining or auditing petitioner's books and records; and that petitioner had agreed to the erroneous Determination because of bad advice.

Petitioner did not request a conciliation conference in the Bureau of Conciliation and Mediation Services (BCMS).

On January 4, 2011, the Division of Tax Appeals issued to petitioner a Notice of Intent to Dismiss the petition. The Notice of Intent explained this action as follows:

Pursuant to § 2006.4 of the Tax Law, a petition must be filed within ninety days from the date a statutory notice is issued.

The Notice of Determination appears to have been issued on April 5, 2010, but the petition was not filed until November 2, 2010 or two hundred eleven days later.

The Notice protested by petitioner was number L-033477590-5, issued to Abdool Mandal. The identity of the taxpayer to whom the protested Notice was issued was not readily discernible from the single page of the Notice attached to the petition. However, the Division's submission of the entire notice in its response to the Notice of Intent to Dismiss clearly indicates that the Notice protested by petitioner was issued to Abdool Mandal at an address different from the address listed by petitioner on its petition.

¹ Petitioner provided the notice number on the front page of the petition, but did not attach a full copy of the notice to its petition, even though it did not request a conference.

THE ORDER OF THE ADMINISTRATIVE LAW JUDGE

The Administrative Law Judge determined that petitioner protested a Notice of Determination that was not issued to it and that asserted additional sales and use tax due from another taxpayer. The Administrative Law Judge concluded that the Notice of Determination (issued to Abdool Mandal) did not confer a right to a hearing on petitioner. Accordingly, the Administrative Law Judge dismissed the petition.

ARGUMENTS ON EXCEPTION

On exception, petitioner argues that the Notices of Determination issued to it and to Abdool Mandal are not distinctly separate. Petitioner also argues that the petition should not be dismissed.

The Division argues that the Administrative Law Judge correctly decided the relevant issues and, thus, the Order should be affirmed.

OPINION

The Division of Tax Appeals (DTA) is a forum of limited jurisdiction (*see* Tax Law § 2008; *Matter of Scharff*, Tax Appeals Tribunal, October 4, 1990, *revd on other grounds sub nom New York State Dept. of Taxation and Fin. v. Tax Appeals Trib.*, 151 Misc 2d 326 [1991]). Its power to adjudicate disputes is exclusively statutory (*id*). Therefore, absent legislative action, DTA cannot extend its authority to areas not specifically delegated to it.

As the Administrative Law Judge pointed out, petitioner protested a Notice of Determination that was not issued to it and that asserted additional sales and use tax due from another, distinctly separate, taxpayer. The Notice issued to Abdool Mandal (L-033477590-5) was attached to petitioner's petition. It is clear that the Notice issued to Abdool Mandal was not the Notice that was issued to petitioner (a corporation) (*see* Tax Law § 2008[1]). Accordingly,

the Notice of Determination issued to Abdool Mandal (L-033477590-5) did not confer a right to a hearing on petitioner.

We find that the Administrative Law Judge completely and adequately addressed the issues presented to him and correctly applied the relevant law to the facts of this case. Petitioner has offered no evidence below and no argument on exception that demonstrates that the Administrative Law Judge's analysis is incorrect. As a result, we affirm the Order of the Administrative Law Judge.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Sir James Cabinetry, Inc. is denied;
2. The Order of the Administrative Law Judge is affirmed; and
3. The petition of Sir James Cabinetry, Inc. is dismissed.

DATED: Troy, New York
December 22, 2011

/s/ James H. Tully, Jr.
James H. Tully, Jr.
President

/s/ Charles H. Nesbitt
Charles H. Nesbitt
Commissioner