

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition :
of :
Z1 NEW YORK INC. : DECISION
for Revision of a Determination or for Refund of : DTA NO. 825184
New York State Sales and Use Tax under Articles 28 :
and 29 of the Tax Law for the Period March 1, 2008 :
through May 31, 2010. :

Petitioner, Z1 New York Inc., filed an exception to the order of the Administrative Law Judge dismissing the petition issued on February 6, 2013. Petitioner appeared by Anthony T. Conforti, Esq. The Division of Taxation appeared by Amanda Hiller, Esq. (John E. Matthews, Esq., of counsel).

Neither party filed a brief and 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 has subject matter jurisdiction to entertain the petition.

FINDINGS OF FACT

We find the following facts.

The petition in this matter was filed on August 13, 2012. It appears to challenge a Conciliation Order (CMS No. 246254), dated March 2, 2012, sustaining tax due in the amount of \$111,000.00 for the period March 1, 2008 through May 31, 2010.

On September 28, 2012, the Division of Tax Appeals issued to petitioner a Notice of Intent to Dismiss Petition on the ground that it lacks jurisdiction to consider the merits of a petition filed in excess of ninety days following the issuance of a Conciliation Order. Petitioner was given 30 days to submit written comments on the proposed dismissal. Petitioner did not respond.

On February 6, 2013, Administrative Law Judge Daniel J. Ranalli issued an Order Dismissing Petition for lack of jurisdiction. This exception followed.

OPINION

We affirm the order of the Administrative Law Judge.

The Tax Law provides with regard to sales and use tax that:

After ninety days from the mailing of a notice of determination, such notice shall be an assessment of the amount of tax specified in such notice, together with the interest, additions to tax and penalties stated in such notice, except only for any such tax or other amounts as to which the taxpayer has within such ninety day period applied to the division of tax appeals for a hearing . . . (Tax Law § 1138 [a] [1]).

In the alternative, a taxpayer may also, within the same 90 day period, file a request for a conciliation conference with the Bureau of Conciliation and Mediation Services (“BCMS”) (*see* Tax Law §§ 170 [3-a], 2006 [4]; 20 NYCRR 4000.3 [c]). If a taxpayer first elects to file a request for a conciliation conference with BCMS, the conciliation order is binding upon the Division of Taxation and the taxpayer, unless a petition is filed with the Division of Tax Appeals within 90 days after the conciliation order is issued (*see* Tax Law § 170 [3-a] [e], 20 NYCRR 4000.3 [c], 4000.6 [b]).

In this matter, petitioner’s petition was not filed until August 13, 2012, which is 164 days after issuance of the Conciliation Order. On exception, petitioner does not dispute that its petition was not timely filed. Rather, petitioner argues that it should be allowed an opportunity

to explain why its petition was not timely filed. Petitioner was allowed 30 days to submit comments regarding the proposed dismissal and did not respond. Accordingly, as the petition was not filed within 90 days of the issuance of the Conciliation Order, such petition was not timely filed and was properly dismissed.

Consequently, the Division of Tax Appeals is without jurisdiction to hear and determine this matter.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Z1 New York Inc. is denied;
2. The order of the Administrative Law Judge is sustained; and
3. The petition of Z1 New York Inc. is dismissed with prejudice.

DATED: Albany, New York
August 22, 2013

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

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

/s/ Roberta Moseley Nero
Roberta Moseley Nero
Commissioner