

STATE OF NEW YORK
DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
HASKELL EDELSTEIN : DETERMINATION
for Revision of a Determination or for Refund :
Sales and Use Tax under Articles 28 and 29 of :
the Tax Law for the Period September 1985. :

Petitioner, Haskell Edelstein, 340 East 69th Street, New York, New York 10021, filed a petition for also here refund of sales and use tax under Articles 28 and 29 of the Tax Law for the period September 1985 (File No. 803741).

A hearing was held before Joseph W. Pinto, Jr., Administrative Law Judge, at the offices of the Division of Tax Appeals, Two World Trade Center, New York, New York, on February 28, 1989 at 10:45 A.M. Petitioner appeared pro se. The Audit Division appeared by William F. Collins, Esq. (Andrew Zalewski, Esq., of counsel).

ISSUE

Whether the Division of Audit properly denied petitioner's application for credit or refund of the New York City additional sales tax on parking tax for the month of September 1985.

1. In response to legislation which became effective on September 1, 1985, whereby individual residents of New York County were exempted from the additional 8% parking tax for services rendered on or after September 1, 1985 on a monthly or longer term basis, petitioner,

Haskell Edelstein, applied for a certificate of exemption from the additional New York City 8% parking tax on August 30, 1985.

2. The New York City Department of Finance, Bureau of Tax Collection, mailed petitioner's certificate of exemption to him on September 17, 1985. The certificate, number 86008169, indicated that it was issued to petitioner and applied to his 1982 Dodge automobile, license plate number 6454AMH, and was effective from October 1, 1985 through August 31, 1986. It also stated the parking garage license number signed by the Department of Consumer Affairs, 368117.

3. On September 18, 1985, petitioner presented the certificate along with his garage parking fee for the month of September 1985. The garage owner refused to waive the New York City 8% parking tax because the effective date dated on the certificate was October 1, 1985.

4. Also on September 18, 1985, petitioner sent a letter to his parking garage, 301 East 69th Street Parking Corp., enclosing his September garage-rent payment of \$270.00, and the 6% New York City sales tax on parking fees. The letter also stated, in pertinent part, as follows:

"Also enclosed is the exemption certificate from the City of New York evidencing my eligibility, as of September 1, 1985, for exemption from the additional 8% tax on parking garage rentals. The application for the certificate was filed on August 30, 1985, even though the certificate states that it is only effective October 1, 1985."

Despite petitioner's convictions, he enclosed a second check in the amount of \$21.60, representing the amount of the 8% parking tax and indicated on the face of said check, "8%

SALES TAX ON SEPT. RENTAL, PAID UNDER PROTEST".

5. On November 6, 1985, petitioner filed an application for credit or refund of state and local sales or use tax for the period September 1985 claiming a refund of \$21.60, on the basis that petitioner should have been exempted from the 8% additional sales tax on parking fees since he satisfied all of the statutory requirements for application of the exemption beginning September 1, 1985.

6. On May 16, 1986, the Audit Division sent a letter to petitioner denying petitioner's refund claim in full. The salient portion of said letter states, as follows:

"Your certificate of exemption did not become effective until October 1, 1985. Since your payment of sales tax was due prior to this effective date, your claim for

refund must be denied."

STATEMENT OF PETITIONER'S POSITION

7. Petitioner takes issue with the regulations promulgated by the New York City Finance Administration, specifically, Article 3 subsection (b), which state that a certificate received by a taxpayer and presented to a vendor "after the beginning of a month" will become effective "on the first day of the following month". Petitioner claims there is no statutory basis for this rule and that it is inconsistent with Tax Law § 1212-A(a)(3), which provides for the possible use of exemption certificates to implement the exemption.

Petitioner contends that he has satisfied by all the statutory requirements for application for the exemption beginning September 1, 1985 since at the time of paying his garage rent in September of 1985 he had proof of his eligibility for the exemption embodied in the exemption certificate issued to him by New York City, notwithstanding the fact that its effective date was stated to be October 1, 1985.

CONCLUSIONS OF LAW

A. Tax Law § 1212-A(a)(1) states, in pertinent part, as follows:

"However, any such city is hereby authorized to adopt and amend local laws imposing in any county within such city with a population density in excess of 50,000 persons per square mile, in additional tax, at the rate of eight percentum, on receipts from every sale of such services, except receipts from the sale of such services to an individual resident of such county when such services are rendered on a monthly or longer-term basis at the principal location for the parking, garaging or storing of a motor vehicle owned by such individual resident."

The provision for an exemption from the 8% additional tax on receipts from the sale of parking on a monthly or longer term basis is further addressed in the same section of the Tax Law, subparagraph (a)(3), which states, in pertinent part, as follows:

"Notwithstanding any other provision of law to the contrary, for the purposes of implementing the exemption of individual residents from the additional tax authorized by paragraph one of this subdivision, the state tax commission shall, subject to such terms and conditions as it may consider necessary, delegate to the commissioner of finance of any city imposing such tax the power and authority to develop and administer reasonable and necessary procedures, including the use of exemption certificates for presentation to vendors, for determining entitlement to exemption from such tax, and to prescribe, subject to the approval of the tax commission, rules and regulations necessary and appropriate in carrying out such responsibilities."

It is noteworthy that Tax Law § 1212-A, subsections (a)(1) and (3), were added by L 1985, ch 330, section 1 and became effective on July 16, 1985. The City of New York Department of Finance, under the authority granted to it in Tax Law § 1212-A(a)(3), endeavored to promulgate regulations, solicit comments on said regulations and endeavored to have them take effect as of September 1, 1985. Written comments regarding the proposed regulations were to have been submitted to the Deputy Commissioner for Legal Affairs of the New York City Department of Finance by August 21, 1985. There is nothing on the record to indicate that petitioner voiced any opinion with regard to these regulations at that time.

B. There is no dispute with regard to the facts that petitioner applied for his certificate of exemption from the additional New York City 8% parking tax on August 30, 1985 and that he received said certificate on September 18, 1985. There is also no dispute that said certificate

stated that it was not effective until October 1, 1985, in accordance with Article 3 sub (b) of the regulations.

The burden upon petitioner in this proceeding is to prove that the New York City Department of Finance's procedures for the administration of the exemption of individual residents from the additional tax were unreasonable and unnecessary. or that the steps they chose to implement the exemption program were unnecessary or inappropriate in carrying out their authority as delegated by the State Tax Commission.

Petitioner has not submitted any evidence either in the form of legislative history, testimony or other documentation in support of his petition. It is conceded that he was eligible for the exemption prior to October 1, 1985, but clearly he was not granted the entitlement until said date.

C. Petitioner's claim that he satisfied all of the statutory requirements for application of the exemption beginning on September 1, 1985 is in error. The statute, Tax Law § 1212-A, provides that an exemption shall be available to individual residents with the actual administration and application process were delegated to the Commissioner of Finance. Therefore, it was intended that eligible individual residence would be granted an exemption from the sales of parking or garaging services provided they follow the reasonable and necessary procedures embodied in

rules and regulations promulgated by the Commissioner of Finance. The rule embodied in Article 3 sub (b) indicating that "a certificate received by an individual resident and presented to a vendor after the beginning of a month will become effective on the first day of the following month," is deemed to be a reasonable and necessary procedure.

D. The petition of Haskell Edelstein is denied and the Division of Audit's denial of petitioner's application for credit or refund is sustained.

DATED: Albany, New York

ADMINISTRATIVE LAW JUDGE

[Check citations for New York City Code - Add section 11-2051d, Add exemption language and check legislative manual]