

STATE OF NEW YORK  
TAX APPEALS TRIBUNAL

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In the Matter of the Petition	:	
of	:	
<b>SCOTT LOWELL</b>	:	<b>ORDER</b>
for Revision of Determinations or for Refund of Sales and	:	DTA NO. 819616
Use Taxes under Articles 28 and 29 of the Tax Law for the	:	
the Period September 1, 2000 through February 28, 2002.	:	

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Petitioner, Scott Lowell, 213 Steilen Avenue, Ridgewood, New Jersey 07450, filed a petition for revision of determinations or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period September 1, 2000 through February 28, 2002.

On November 25, 2003, the Division of Taxation filed a motion for an order dismissing the portion of the petition concerning Notice No. L021987152 and granting summary determination to the Division of Taxation on the ground that there are no material issues of fact and that the facts mandate a determination in favor of the Division of Taxation as to that notice. Petitioner's response was due by December 26, 2003, which commenced the 90-day period for issuing this order. The Division of Taxation appeared by Mark F. Volk, Esq. (Michael P. McKinley, Esq., of counsel). Petitioner appeared by Rivkin Radler LLP (Scott Eisenmesser, Esq.).

***ORDER***

Upon reading the Notice of Motion together with the affirmation in support of the motion and attached exhibits, including the petition and the answer,

NOW, upon the motion of the Division of Taxation, it is

ORDERED, that said motion be and the same is hereby denied.

***FINDINGS OF FACT***

1. Petitioner filed a petition in this matter with the Division of Tax Appeals on August 15, 2003, which was received on August 18, 2003. The petition, on its face, is a protest of Notice Nos. L-020534792 and L-020534793. Attached thereto is Notice and Demand for Payment of Tax Due for Assessment L-021987152-6, and a Consolidated Statement of Liabilities including the three notices previously listed and two others: Assessments L-021987151-7 and L-021987150-8.

2. The Division of Taxation (“Division”), by its Answer dated October 22, 2003, considered all five notices to be protested by petitioner in his petition.

3. On or about November 25, 2003, the Division brought a motion for summary determination pursuant to 20 NYCRR former 3000.5 and 3000.9(b) on the grounds that petitioner failed to file a request for conciliation conference with the Bureau of Conciliation and Mediation Services or file a petition for a hearing with the Division of Tax Appeals within 90 days of the issuance of the statutory notices. The Division seeks to show that petitioner’s protest of Notice L-021987152-6 should be dismissed, since petitioner failed to file a request for conference or a petition with the Division of Tax Appeals in a timely manner, leaving the Division of Tax Appeals without jurisdiction to hear the merits upon which the notice is based. There is no mention in the motion for summary determination of the other four notices that are the subject of the petition (*see*, Finding of Fact “1”).

4. Petitioner did not reply to the Division’s motion for summary determination.

***CONCLUSIONS OF LAW***

A. The Tax Appeals Tribunal Rules of Practice and Procedure provide, in pertinent part, as follows:

An order by an administrative law judge on any motion which does not finally determine all matters and issues contained in the petition, for purposes of review by the tribunal, shall not be deemed final and conclusive until the administrative law judge shall have rendered a determination on the remaining matters and issues (20 NYCRR 3000.5[f]).

This regulation reflects a policy of the Tax Appeals Tribunal to forego a review of a determination rendered by an Administrative Law Judge until a determination addressing all issues raised in the petition has been rendered. This rule "represents the policy decision that our system will work most efficiently under a general rule that cases stay at the Administrative Law Judge level until they are finally and completely resolved by the Administrative Law Judge and then move on for our review in one complete unit" (*Matter of Wachsman*, Tax Appeals Tribunal, December 16, 1993, *confirmed* 241 AD2d 708, 660 NYS2d 462). This policy insures that all matters before the Division of Tax Appeals will be handled as expeditiously as possible without delay from appeals of interlocutory orders. The regulation effectively would render a judgment on the motion for summary determination non-final and lacking purpose. Inasmuch as the Division has not shown why this one notice should be addressed in a motion for summary determination separate and apart from the other four notices, a deviation from the Tax Appeals Tribunal regulation, the motion is deemed premature and the Division will be entitled to address the matter at a hearing on the petition in its entirety, scheduled by the Division of Tax Appeals on April 27, 2004.

Accordingly, it is ORDERED, ADJUDGED and DECREED that the Division's motion for summary determination is denied.

DATED: Troy, New York  
March 25, 2004

/s/ Catherine M. Bennett  
ADMINISTRATIVE LAW JUDGE