

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
SUSANNE CIPOLLA OLMOS : DETERMINATION
DTA NO. 825955
for Revision of Determinations or for Refund of Sales and :
Use Taxes under Articles 28 and 29 of the Tax Law for :
the Periods December 1, 1999 through August 31, 2001 :
and March 1, 2002 through August 31, 2002.¹ :

Petitioner, Susanne Cipolla Olmos,² 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 periods December 1, 1999 through August 31, 2001, and March 1, 2002 through August 31, 2002.

The Division of Taxation brought a motion for summary determination filed on July 18, 2014, which was granted by Order of the undersigned on October 23, 2014 with respect to 13 of the 14 notices under review. The motion was denied with respect to one other notice for which no mailing evidence was submitted. On September 9, 2015, the parties submitted a Stipulation for Discontinuance with respect to that other notice.

Based upon the Order issued on the motion for summary determination, the Stipulation for Discontinuance and all the pleadings and documents submitted herein, Winifred M. Maloney, Administrative Law Judge, renders the following determination.

¹ The petition lists the periods at issue as March 1, 1999 through August 31, 2001, and March 1, 2002 through August 31, 2002. However, the petition challenges 14 assessment numbers pertaining to the periods listed above. The caption has been modified, accordingly.

² Petitioner's name also appears as Susanne Cipolla on documents in the record.

ISSUE

Whether the Order issued in this matter on October 23, 2014, in conjunction with the Stipulation for Discontinuance filed on September 9, 2015, closes this matter in the Division of Tax Appeals such that this determination constitutes a final determination pursuant to Tax Law § 3030(c)(5)(C).

FINDINGS OF FACT

1. On behalf of petitioner, Susanne Cipolla Olmos, her former representative, Rosemary Hayden, Esq., filed a letter requesting a conciliation conference (request) with the Bureau of Conciliation and Mediation Services (BCMS) of the Division of Taxation (Division). The request was filed in protest of 14 statutory notices issued to Susanne Cipolla for sales and use taxes due as follows.

Notice Type	Assessment Number	Notice Dated	Responsible person / officer of
Estimated Determination	L-021963615	January 23, 2003	Petite Madame, Inc.
Estimated Determination	L-021963616	January 23, 2003	Petite Madame, Inc.
Estimated Determination	L-021963617	January 23, 2003	Petite Madame, Inc.
Estimated Determination	L-021963618	January 23, 2003	Petite Madame, Inc.
Estimated Determination	L-021963621	January 23, 2003	Petite Madame, Inc.
Determination	L-021963620	January 23, 2003	Petite Madame, Inc.
Estimated Determination	L-021963619	January 29, 2003	Petite Madame, Inc.
Estimated Determination	L-021963614	February 14, 2003	Petite Madame, Inc.
Estimated Determination	L-022035261	February 20, 2003	Mexloco Corporation
Estimated Determination	L-022035262	February 20, 2003	Mexloco Corporation
Estimated Determination	L-022035263	February 20, 2003	Mexloco Corporation

Estimated Determination	L-022035264	February 20, 2003	Mexloco Corporation
Determination	L-022035265	February 20, 2003	Mexloco Corporation
Determination	L-022035266	February 20, 2003	Mexloco Corporation

2. On September 6, 2013, BCMS issued a Conciliation Order Dismissing Request (Order) to petitioner. Referencing L-021963614, L-021963615, L-021963616, L-021963617, L-021963618, L-021963619, L-021963620, L-021963621, L-022035261, L-022035262, L-022035263, L-022035264, L-022035265, and L-022035266, the Order determined that petitioner's protest of the 14 notices of determination was untimely and stated, in part:

“The Tax Law requires that a request be filed within 90 days from the mailing date of the statutory notice. Since the notices were issued on January 23, 2003, February 14, 2003, and February 20, 2003, but the request was not received until August 20, 2013, or in excess of 90 days, the request is late filed.”

3. Petitioner timely challenged this dismissal by filing a petition with the Division of Tax Appeals on November 7, 2013.

4. The Division of Taxation brought a motion for summary determination, filed July 18, 2014, which was granted by Order of the undersigned on October 23, 2014 with respect to 13 of the 14 notices under review. Those notice numbers were as follows: notices of estimated determination numbers L-021963615, dated January 23, 2003, L-021963616, dated January 23, 2003, L-021963617, dated January 23, 2003, L-021963618, dated January 23, 2003, L-021963621, dated January 23, 2003, L-021963614, dated February 14, 2003, L-022035261, dated February 20, 2003, L-022035262, dated February 20, 2003, L-022035263, dated February 20, 2003, L-022035264, dated February 20, 2003; and notices of determination numbers L-021963620, dated January 23, 2003, L-022035265, dated February 20, 2003, and L-022035266,

dated February 20, 2003.³

5. The motion was denied with respect to one other Notice of Estimated Determination L-021963619, dated January 29, 2003, for which no mailing evidence was submitted. This matter was placed on the New York City hearing calendar for August 27, 2015 and August 28, 2015.

6. During an August 25, 2015 prehearing conference call, the Division of Taxation's representative advised that the Division was cancelling Notice of Estimated Determination L-021963619, and was preparing a Stipulation for Discontinuance, reflecting such cancellation. Subsequently, a Stipulation for Discontinuance was executed by both parties.

7. An executed Stipulation for Discontinuance, dated August 25, 2015 and September 8, 2015, was filed with the Division of Tax Appeals on September 9, 2015.

CONCLUSIONS OF LAW

A. The Order granting the Division's motion for summary determination, dated October 23, 2014, is now final and petitioner may take an exception within the time period permitted by statute (Tax Law § 2006[7]; 20 NYCRR 3000.17[a]). Any exception may be taken only with respect to notice numbers L-021963615, L-021963616, L-021963617, L-021963618, L-029163620, L-021963621, L-021963614, L-022035261, L-022035262, L-022035263, L-022035264, L-022035265 and L-022035266.

B. It is determined that the Order and the Stipulation for Discontinuance read together, constitute the final determination pursuant to Tax Law § 3030(c)(5)(C) with respect to the one remaining notice number L-021963619.

C. The parties' execution of the Stipulation for Discontinuance with respect to notice

³ The Order concluded that the five notices of estimated determination, dated January 23, 2003, and the Notice of Determination, dated January 23, 2003, were properly mailed to petitioner on February 7, 2003.

number L-021963619 was done with prejudice, rendering that notice fixed and final and discontinuing the matter before the Division of Tax Appeals (*see Matter of Felix Industries*, Tax Appeals Tribunal, July 22, 1993).

D. The petition of Susanne Cipolla Olmos is denied, and the ten notices of estimated determination and the three notices of determination are sustained. Any exception may be taken only with respect to notices of estimated determination L-021963615, L-021963616, L-021963617, L-021963618, L-021963621, L-021963614, L-022035261, L-022035262, L-022035263, and L-022035264, and notices of determination L-029163620, L-022035265 and L-022035266.

DATED: Albany, New York
December 10, 2015

/s/ Winifred M. Maloney
ADMINISTRATIVE LAW JUDGE