

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
ROOSEVELT RHODEN : DETERMINATION
DTA NO. 826806
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 August 22, 2010 through January 28, 2013. :

Petitioner, Roosevelt Rhoden, filed a petition 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 August 22, 2010 through January 28, 2013.

On February 2, 2016 and February 3, 2016, respectively, petitioner, appearing pro se, and the Division of Taxation, appearing by Amanda Hiller, Esq. (Osborne K. Jack, Esq., of counsel) consented to have the controversy determined on submission without a hearing. All documentary evidence and briefs were due by August 5, 2016, which date commenced the six-month period for the issuance of a determination in this matter. Upon review of the entire record, Catherine M. Bennett, Administrative Law Judge, renders the following determination.

ISSUE

Whether petitioner proved by clear and convincing evidence that he is entitled to a refund of sales and use taxes paid as a permanent resident of a hotel during the period in issue.

FINDINGS OF FACT

1. Petitioner, Roosevelt Rhoden, filed a request for refund of sales tax paid in the amount of \$3,633.24, as a resident of American Budget Inn, Room 121, 6 Locey Lane, Harriman, New York, from August 22, 2010 to January 28, 2013. The request was filed using Form AU-11, dated August 22, 2013, and date-stamped as received by the Division of Taxation (Division) on September 13, 2013.

2. Based upon information submitted by petitioner, the Division determined that petitioner's refund claim was based on an average sales tax rate applied by two unrelated hotels in the area where petitioner claimed he was a resident, rather than the exact amount of tax petitioner actually paid.

3. Petitioner submitted approximately 100 credit card receipts showing charges to American Budget Inn between October 9, 2010 and January 28, 2013 in differing amounts. The receipts were for lump sum dollar amounts and did not show the dates of occupancy or separately stated sales tax charges.

4. Based upon review of the information, the Division concluded that petitioner did not prove that he lived in the hotel for 90 consecutive days, as required for the refund, or that he had actually paid sales tax.

5. The Division corresponded with petitioner by a letter dated December 17, 2013, requesting that he provide the itemized bills received from the hotel that specifically show sales tax being charged. The Division thereafter spoke with petitioner several times and received copies of letters that petitioner sent to the hotel during January and February 2014, requesting the information that would support his refund.

6. On or about February 19, 2014, petitioner provided an invoice from American Budget Inns bearing petitioner's first name, date of arrival of "10-15," charges for what appeared to be seven nights in the amount of \$39.60 per night, "NYS Tax" of \$22.52, and "OC Room Tax" in the amount of \$13.86.¹ The total of the bill was \$313.58. It denotes a cash payment in the amount of \$176.42 and a balance due. There is no indication the balance due was paid.

7. The Division followed up with correspondence dated March 17, 2014, again requesting itemized bills from the hotel, or at least a spreadsheet from the hotel, showing the total room charges and the taxes paid for the period in issue.

8. When the Division did not receive any additional information to substantiate petitioner's refund claim, it issued a refund denial letter dated May 12, 2014, denying petitioner's refund claim in full.

9. Subsequently, petitioner filed a Request for Conciliation Conference with the Bureau of Conciliation and Mediation Services on or about December 13, 2014. By Conciliation Order Dismissing Request (CMS No. 264609), petitioner's request was dismissed as filed more than 90 days from the issuance of the refund denial letter.² Thereafter, petitioner filed a petition with the Division of Tax Appeals, protesting the refund denial.

10. In support of his case, petitioner submitted three letters addressed to him from GeeGee Sigerist, manager of American Budget Inn. The letters, dated January 11, 2013 and January 28, 2013, required petitioner to vacate the premises at that time. The last letter, dated February 3,

¹ Although the actual amount of change in this dollar amount is illegible, petitioner's handwritten notations on the page provided the actual amount.

² The Division conceded the timeliness of petitioner's protest, since it was unable to produce mailing proof of the refund denial letter.

2013, discussed current hotel rates and petitioner's balance due, i.e., \$2,251.97, and requesting that it be paid at that time. Petitioner provided no proof that this amount was ever paid.

11. Petitioner also provided a notarized letter from James Simmonds, dated January 28, 2016, in support of his position, that stated the following:

"I James Simmonds, residing at 4 Kyleigh Wy, Middletown, NY 10940, worked in the role of desk clerk at the America Budget [sic] in Harriman, NY 10926 for a minimum of ten calendar years before it's [sic] close in Sept 2015. (2005-2015 continuously).

I saw Mr. Roosevelt Rhoden of Room #121 making payments via bankcards [sic] on a weekly basis and provided bankcard [sic] receipts [sic] for a minimum of two and a half years between August 2010 and January 2013."

12. Petitioner also provided two additional legible hotel invoices from American Budget Inn, dated September 2010, for stays during three weeks of the month, all of which showed the payment of New York State tax, and two of which showed a charge for "OC Room Tax." Payments could be identified for two weeks of the invoice charges.

SUMMARY OF THE PARTIES' POSITIONS

13. Petitioner maintains that he was a permanent resident at the American Budget Inns for more than the 90-day period required for him to qualify for a refund of the sales tax paid, and seeks a refund of the same in the amount of \$3,633.24.

14. The Division asserts that petitioner has not demonstrated by clear and convincing evidence that he is entitled to a refund, since petitioner has not established that he was a permanent resident in a hotel for at least 90 consecutive days, he has failed to show that the hotel charged sales tax and failed to show that he actually paid the sales tax for which he is seeking a refund.

CONCLUSIONS OF LAW

A. Tax Law § 1105(e)(1) imposes sales tax on “[t]he rent for every occupancy of a room or rooms in a hotel in this state, except that the tax shall not be imposed upon (i) a permanent resident” Tax Law § 1101(c)(5) defines a permanent resident as “Any occupant of any room or rooms in a hotel for at least ninety consecutive days” The regulation at 20 NYCRR 527.9(b)(8)(i)(a) provides, in pertinent part, as follows:

“Except as provided in clause (‘b’) [not applicable herein] of this subparagraph, any occupant of any room or rooms in a hotel for at least 90 consecutive days is considered a permanent resident with regard to the period of such occupancy. There is no tax on the rent for occupancy of a hotel room by a permanent resident. A hotel operator must collect the tax from an occupant until the occupancy reaches 90 consecutive days. When continuous occupancy has reached 90 days, the sales tax is no longer imposed and the tax previously collected is refundable to the occupant. If any part of the tax refunded by the operator to the occupant has been paid to the Department of Taxation and Finance, the operator may take a credit in the amount of the tax paid on the operator’s next timely filed sales tax return. If the tax is not refunded to the occupant by the hotel operator, the occupant may apply directly to the department for a refund.”

B. Petitioner’s claim fails on various grounds. The statute clearly requires that petitioner remain an occupant in a hotel for at least 90 consecutive days to qualify as a permanent resident. The credit card receipts, though many, do not sufficiently establish the dates of occupancy at the hotel. They merely reflect a payment as of a certain date and nothing more. The affidavit of Mr. Simmonds speaks to payments that were made by petitioner, but not to his residency for a specific time frame. This too fails as sufficient proof of petitioner’s 90-day occupancy, without more.

Even if, in the alternative, it was determined that petitioner established his 90-day occupancy and entitlement to the sales tax refund, petitioner has failed to demonstrate that he actually paid the sales tax. The scant number of invoices that were provided did not all show payments in full, even where the sales tax was charged. Therefore, there is no way of knowing

whether the tax was charged and ultimately paid on all invoices. One letter from the hotel manager demanded a large balance due from petitioner, implying significant payments had not been made, which of course, would include the sales tax. Further, there is no proof that the hotel did not, in fact, refund the sales tax to petitioner.

In this case, petitioner has not provided evidence sufficient to meet his burden of substantiating with any verifiable specificity the amount of the sales tax refund to which he may be entitled. In addition, as to his claim, petitioner estimated the amount of sales tax he paid by averaging tax rates being used by two different hotels. The refund mechanism is for sales tax actually paid, not an estimation of what a person may have paid, and as such, is not a proper basis upon which to grant petitioner's refund. Accordingly, petitioner has simply failed to carry his burden of proving that he is entitled to a refund of sales tax that he may have paid.

C. The petition of Roosevelt Rhoden is denied, and the Division's refund denial dated May 12, 2014, is hereby sustained.

DATED: Albany, New York
January 19, 2017

/s/ Catherine M. Bennett
ADMINISTRATIVE LAW JUDGE