

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petitions	:	
of	:	
EASTCHESTER ROAD DONUTS, INC.,	:	ORDER
ET AL	:	DTA NOS. 826352,
for Revision of Determinations or for Refund	:	826353, 826354, 826355
of Sales and Use Taxes under Articles 28 and 29	:	AND 826356
of the Tax Law for the Period June 1, 2010	:	
through February 28, 2011.	:	
	:	

Petitioners, Eastchester Road Donuts, Inc., et al, filed petitions for revision of determinations or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period June 1, 2010 through February 28, 2011.

On June 21, 2016, petitioners, appearing by Michael Buxbaum, CPA, filed a motion pursuant to 20 NYCRR 3000.8 to recuse the administrative law judge assigned to the case. The Division of Taxation did not respond to the motion. The Division of Taxation's response was due on July 21, 2016, and it is this date that began the 90-day period for the issuance of this order

Upon review of the entire case file in this matter, Daniel J. Ranalli, Supervising Administrative Law Judge, renders the following order.

FINDINGS OF FACT

1. Following a hearing in the above matters, held on September 9, 2015, Herbert M. Friedman, Administrative Law Judge, sent a letter to the parties, dated June 9, 2016, stating that, in reviewing the record in the cases, he had discovered that the powers of attorney for each of the

petitioners ran solely to Stewart Buxbaum, CPA, and not Michael Buxbaum, CPA, who “alone appeared . . . at the hearing on September 09, 2016 [sic] and has submitted all briefs on their behalf.”

2. Upon further review Judge Friedman discovered that the power of attorney properly included Michael Buxbaum, CPA, as a representative. Accordingly, on the same date, Judge Friedman sent a letter to both parties stating “[u]pon additional review, the powers of attorney in the above cases are fine. Please ignore and excuse my prior letter of today.”

3. Mr. Buxbaum did not respond to the letters from Judge Friedman, but instead filed the instant motion to recuse Judge Friedman from the case because the letters of June 9, 2016 contain errors that “are so egregious that [they] warrant recusal of ALJ Friedman from the . . . matters.”

CONCLUSIONS OF LAW

A. As provided in the Rules of Practice and Procedure of the Tax Appeals Tribunal, “[e]ither party may move before the supervising administrative law judge to recuse the administrative law judge . . . assigned to its case on the basis that the administrative law judge . . . has a personal bias with respect to the case. . . .” (20 NYCRR 3000.8[a][1]).

B. Petitioners’ basis for asking for the recusal of Judge Friedman appears to revolve around one issue, as stated in its motion, and that is that Judge Friedman’s letter of June 9, 2016 contained errors.

C. The motion for recusal must be denied. The only error in the first letter on June 9, 2016 appears to be a typo that changed the year of the hearing to 2016 rather than 2015. That error was immediately rectified by Judge Friedman’s second letter of the same date. It is absurd

to allege that a typographical error is so egregious that the administrative law judge should be recused.

E. The motion of petitioners, Eastchester Road Donuts, Inc., et al, for recusal of the administrative law judge is denied.

DATED: Albany, New York
July 7, 2016

/s/ Daniel J. Ranalli
SUPERVISING ADMINISTRATIVE LAW JUDGE

