

STATE OF NEW YORK
TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
CLAYTON FUNDING CORPORATION	:	ORDER AND OPINION
AND ROBERT J. TADLER, AS OFFICER	:	
	:	DTA Nos. 802638
	:	and 802639
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, 1980	:	
through February 29, 1984.	:	

On March 26, 1992, petitioners Clayton Funding Corporation and Robert J. Tadler, as officer, 82 Main Street, P.O. Box 534, Mineola, New York 11501, appearing pro se, made a motion to the Tax Appeals Tribunal to dismiss the exception to the determination of the Administrative Law Judge filed by the Division of Taxation in this matter. The Division of Taxation appeared by William F. Collins, Esq. (Robert J. Jarvis, Esq., of counsel).

ORDER

Upon reading the Notice of Motion dated the 23rd day of March 1992, the Affidavit in Support of Motion filed therewith, and the letter of the Division of Taxation dated the 17th day of April 1992, submitted in lieu of a formal brief in opposition thereto, and due deliberation having been had thereon,

NOW, upon the motion of Robert J. Tadler, president of Clayton Funding Corporation, it is

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

OPINION

Petitioners seek to have the exception to the determination of the Administrative Law Judge filed by the Division of Taxation (hereinafter the "Division") dismissed because: (1) the Division failed to file a brief or show reasonable cause for not filing a brief at the hearing stage

of this case; and (2) the Division failed to show reasonable cause for requesting an extension of time to file an exception to the determination of the Administrative Law Judge. The Division opposes the motion because: (1) petitioners are not entitled to any relief under section 404(a) of the Civil Practice Law and Rules ("CPLR") and have, in effect, moved for dismissal of their own petition, not of the exception filed by the Division; (2) petitioners' Notice of Motion does not set forth the ground that the Tax Appeals Tribunal (hereinafter the "Tribunal") erred in granting the Division's request for an extension of time to file an exception; (3) there is no requirement to file a brief in a case before an Administrative Law Judge; and (4) reasons other than those that appear to be reasonable to an ordinarily prudent person can be considered good cause for granting an extension of time to file an exception.

Addressing first the technical objections raised by the Division, it is true that petitioners' Notice of Motion does refer to section 404(a) of the CPLR and does ask for an order dismissing the petition herein. However, it is clear from the Notice of Motion and Supporting Affidavit that petitioners are asking this Tribunal to dismiss the exception filed by the Division for failure to file a brief before the Administrative Law Judge and for failure to state good cause as to why an extension of time to file an exception should be granted. Furthermore, petitioners' Notice of Motion specifically states that one of the grounds for the motion is "(ii) the government failed to show reasonable cause . . . for an extension." Again, when this language is read together with the affidavit served simultaneously with the notice, it is clear that one of petitioners' grounds for seeking to have this exception dismissed is the failure of the Division to have shown good cause for an extension to file an exception. The Tribunal sees no reason not to give petitioners' motion papers their obvious meaning.

Addressing next the substantive issues presented by this motion, we find that there is no requirement that parties file a brief in a proceeding before an Administrative Law Judge. The Tax Law makes no mention of briefs before an Administrative Law Judge and, as pointed out by the Division, petitioners correctly describe the rules of practice before the Tribunal as

allowing parties to file such briefs if they wish to do so. The Administrative Law Judge asked that briefs be submitted, made an effort to communicate to the parties what the major issues were, and expressed that she would like those issues addressed in any briefs submitted. In response, the Division's representative stated that he would not necessarily address those issues. The Administrative Law Judge then told the Division's representative that he was free not to address those issues (Tr., pp. 204-206). A party does not lose its right to have an Administrative Law Judge issue a determination on the merits of a case because the party chooses not to file a brief in support of its case. Furthermore, section 2006(7) of the Tax Law provides for the right to file an exception to a determination of an Administrative Law Judge, and such right is in no way conditioned upon the filing of any briefs at the hearing level. The Tribunal wishes to encourage parties to submit briefs setting forth their respective legal arguments in cases. However, the decision on whether to file a brief and the possible consequences of not doing so, belongs to the parties.

Finally, petitioners urge the Tribunal to find that the reasons given by the Division for its requests for additional time to file an exception do not amount to the good cause required by the Tribunal's rules of practice. 20 NYCRR 3000.11(a)(2) states that:

"'good cause' depends on the circumstances of each case, but would include an cause which appears to an ordinarily prudent person as a reasonable ground for failure to file an exception within the prescribed period."

The Division made two requests for an extension of time to file its exception in this matter. The first request stated, "[p]artly due to holiday absences, additional time is needed to review this exception with other members of the Division of Taxation." An additional 30 days to file an exception was granted to the Division on the basis of this request. The second request stated that:

"[d]ue to the time constraints imposed by the necessity of preparing for my January hearings, I have not completed my review of this exception with the appropriate personnel in the Division of Taxation."

An additional two weeks to file the exception, until February 10, 1992, was granted on the basis of this request. The Division filed its exception in accordance with these extensions on

February 10, 1992. In the past, we have held that office workload and deadlines constitute good cause for requesting an extension of time to file an exception (Matter of E. J. Steiger, Inc., Tax Appeals Tribunal, July 11, 1991; Matter of American Express Co. & Am. Express Intl. Banking Corp., Tax Appeals Tribunal, July 3, 1991). Therefore, while again expressing our preference for a more specific statement of good cause, we find the Division's stated reasons sufficient good cause for granting an extension of time to file an exception (cf., Matter of Marshall Farms USA, Tax Appeals Tribunal, August 4, 1988 [where good cause was not shown because request for an extension of time did not state any reason to grant such extension]). Based upon this finding, there is no reason to address the Division's argument that the use of the word "include" in 20 NYCRR 3000.11(a)(2) infers that a reason other than one which would appear "to an ordinarily prudent person as a reasonable ground for failure to file an exception within the prescribed period" could be the basis for the Tribunal granting an extension of time to file an exception.

Accordingly, petitioners' motion is denied, and petitioners' brief in opposition to the exception filed by the Division is due by December 10, 1992.

DATED: Troy, New York
November 5, 1992

/s/John P. Dugan
John P. Dugan
President

/s/Francis R. Koenig
Francis R. Koenig
Commissioner

/s/Maria T. Jones
Maria T. Jones
Commissioner