

STATE OF NEW YORK
TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
William Dowling	:	DECISION
Officer of Academy Beer Distributors, Inc.	:	
for Redetermination of a Deficiency/Revision of a	:	
Determination or for Refund of Sales and Use Tax	:	
under Article(s) 28 and 29 of the Tax Law for the	:	
Period 3/1/81-5/31/84.	:	

Petitioner, William Dowling, Officer of Academy Beer Distributors, Inc., RD #4, Lake Carmel, New York 10512, filed an exception to the order of the Administrative Law Judge issued on December 1, 1988 dismissing his petition for redetermination of a deficiency/revision of a determination or for refund of sales and use tax under Article(s) 28 and 29 of the Tax Law for the period March 1, 1981 through May 31, 1984 (File No. 806192). Petitioner appeared by Robert Plautz, Esq. The Division of Taxation appeared by William F. Collins, Esq. (Kevin A. Cahill, Esq., of counsel).

Both parties filed a brief on exception. Petitioner's request for oral argument was denied.

After reviewing the entire record in this matter, the Tax Appeals Tribunal renders the following decision.

ISSUE

Whether petitioner timely filed a petition.

FINDINGS OF FACT

We find the following facts.

A Notice of Determination dated December 20, 1985 was mailed to William Dowling (petitioner), Officer of Academy Beer Distributors, Inc.

Petitioner mailed a petition to the Notice of Determination on September 29, 1988, or 1,014 days after December 20, 1985.

OPINION

The Administrative Law Judge held that petitioner's petition for a hearing was not filed within 90 days after the date of the Division's Notice of Determination dated December 20, 1985, thereby requiring the petition's dismissal with prejudice.

On exception, petitioner asserts that he filed a timely petition by a letter dated March 6, 1986 and acknowledged by the Tax Appeals Bureau (the predecessor of the Division of Tax Appeals) as a petition in the matter of Academy Beer Distributors, Inc. ("the corporation") and James Lyons, as officer.

In response, the Division relies upon In the Matter of Halperin v. Chu (138 AD2d 915, 526 NYS2d 660, lv den 72 NY2d 938, 532 NYS2d 845) for the proposition that an officer individually responsible for tax must personally petition for a hearing separate from the corporation's request.

We affirm the order of the Administrative Law Judge.

Tax Law section 1138(a)(1) provides that a notice of determination and demand "given to the person liable for the collection or payment of the tax . . . shall finally and irrevocably fix the tax unless the person against whom it is assessed, within ninety days after giving of notice of such determination, shall apply to the [Division of Tax Appeals] for a hearing."

Petitioner argues that a petition timely filed for Academy Beer Distributors, Inc. and James Lyons, as officer, was also a petition on behalf of petitioner. The letter that was apparently accepted as a petition was unsigned and on its face only refers to the corporation. Correspondence offered by petitioner from the Tax Appeals Bureau indicates that the letter was accepted as a petition on behalf of James Lyons because the Notice of Determination issued to James Lyons had accompanied the letter.

Inasmuch as petitioner admits that he did not sign this "petition" and has given no indication that James Lyons was empowered to act as his agent thereon, we find no conceivable basis for petitioner's position that the alleged use of the term "we" in said application for a hearing was other than a reference to the corporation and James Lyons as officer. The notice petitioner received "unmistakably informed him that the assessment was against him personally and of the 90-day period of limitations within which to seek a redetermination" (Matter of Halperin v. Chu, supra, 526 NYS2d 660, 662). Thus, we find no basis to conclude that petitioner filed a timely petition.

Accordingly it is ORDERED, ADJUDGED and DECREED that:

1. The exception of the petitioner, William Dowling, Officer of Academy Beer Distributors, Inc. is denied;
2. The order of the Administrative Law Judge is affirmed; and
3. The petition of William Dowling, Officer of Academy Beer Distributors, Inc., dated September 29, 1988 is denied and the notice of determination and demand issued on December 20, 1985 is sustained.

DATED: Troy, New York
September 11, 1989

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

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

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