STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
DIANE D'ANGELO	:	DECISION DTA No. 807053
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 March 1, 1985 through May 31, 1986.	:	

Petitioner Diane D'Angelo, 5 Wagner Court, Melville, New York 11747 filed an exception to the determination of the Administrative Law Judge issued on January 31, 1991 with respect to her 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 March 1, 1985 through May 31, 1986. Petitioner appeared pro se. The Division of Taxation appeared by William F. Collins, Esq. (Angelo A. Scopellito, Esq., of counsel).

Petitioner did not file a brief on exception. The Division of Taxation filed a letter in opposition to the 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 the Division of Taxation properly denied petitioner a conciliation conference on the basis that the request was untimely.

FINDINGS OF FACT

We find the facts as determined the the Administrative Law Judge. These facts are set forth below.

The Division of Taxation (hereinafter the "Division") issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due dated September 28, 1987, to petitioner,

Diane D'Angelo, which assessed sales and use taxes for the period March 1, 1985 through February 28, 1986 in the amount of $5,698.63 plus penalty of $1,670.22 and interest of $1,504.27 for a total amount due of $8,873.12. The Division also issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due to petitioner, dated September 28, 1987, which assessed sales and use taxes for the period March 1, 1986 through May 31, 1986 in the amount of $4,273.15 plus penalty of $512.77 and interest of $108.17 for a total amount due of$4,894.09. Each of the notices stated that, as an officer, petitioner was liable for the sales and use taxes due from Fancy Fronts, Inc. The following direction was printed in bold-faced type in the upper-left hand corner of each of the notices:

> "THIS DETERMINATION MAY BE CHALLENGED THROUGH A HEARING PROCESS.
>
> NOTE: THIS DETERMINATION SHALL BE FINAL UNLESS AN APPLICATION FOR HEARING IS FILED WITH THE STATE TAX COMMISSION WITHIN 90 DAYS FROM THE DATE OF THIS NOTICE OR UNLESS THE TAX COMMISSION SHALL REDETERMINE THE TAX."

In October 1987, petitioner's debts were discharged in bankruptcy.

On December 10, 1987, petitioner went to the Suffolk District office of the Department of Taxation and Finance and spoke with an employee of the Tax Compliance Division. Since she felt she was not responsible, petitioner tried to find out what she could do about protesting the sales tax assessments. Petitioner also explained that she could not pay the amount sought and that she had filed a petition for bankruptcy. Thereafter, the employee of the Tax Compliance Division made a photocopy of the bankruptcy petition and advised petitioner that the filing for bankruptcy was enough to relieve her of liability.

Petitioner did not file a written protest to the notice, because she relied on the statements by the Division employee that there would be no action by New York State.

About a month after the meeting at the Suffolk District Office, petitioner started receiving notices seeking collection of the amounts in issue. Thereafter, petitioner was told that sales tax was not dischargeable in bankruptcy and that the period for filing a petition had expired.

In a memorandum dated March 28, 1988, petitioner was asked to contact a certain tax compliance representative by April 11, 1988 to make payment arrangements. The notice further stated that "UNLESS I HEAR FROM YOU BY THE DATE NOTED ABOVE, I WILL FOLLOW WITH WARRANT PROCEEDINGS WHICH MAY INCLUDE INCOME EXECUTION; SEIZURE OF PERSONAL PROPERTY AND LIEN ON REAL PROPERTY."

On May 31, 1988, warrants were filed in Suffolk County. Subsequently, the Division issued an income execution dated July 14, 1988. At some juncture, petitioner entered into a deferred payment agreement. These payments continued until November 1, 1988. Petitioner stopped making payments, because she was experiencing financial difficulty.

In a notice dated February 13, 1989, petitioner was advised that since payments had not been made as agreed, the Division had cancelled the deferred payment agreement. However, the notice also stated that the agreement would be reinstated if payments in arrears were made by February 23, 1989. Lastly, petitioner was informed that her failure to make the required payments would result in collection enforcement.

Petitioner mailed a Request for Conciliation Conference dated March 2, 1989. The envelope containing the request was postmarked on March 3, 1989 and was received by the Bureau of Conciliation and Mediation Services on March 6, 1989. In a conciliation order dated March 31, 1989, the Bureau of Conciliation and Mediation Services denied petitioner's request for a conciliation conference since the request was received more than 90 days from the date of the statutory notice.

Opinion

The Administrative Law Judge determined that petitioner's oral inquiry at the Suffolk District Office did not constitute the filing of a petition. Further, the Administrative Law Judge determined that petitioner established that the notices of determination were issued by December 10, 1987 at the latest because petitioner acknowledged that she took them with her to the District Office on that date. Thus, the Administrative Law Judge found that the request for a conciliation conference filed on March 3, 1989 untimely, even though the Division did not

submit any proof of mailing. Finally, the Administrative Law Judge concluded that petitioner was not entitled to a conciliation conference because she had not timely requested it. The fact that petitioner had been told by a Division employee that the liability would be discharged by the bankruptcy proceeding did not alter this result, the Administrative Law Judge opined. The Administrative Law Judge distinguished this case from Matter of Eastern Tier Carrier Corp. (Tax Appeals Tribunal, December 6, 1990) on the basis that petitioner waited over a year to file a request for conciliation after finding out that this protest was necessary. The Administrative Law Judge determined that this delay constituted an abandonment by petitioner of her right to a hearing.

On exception, petitioner argues that, due to the erroneous advice received from the Division employee, she was of the understanding that her petition in bankruptcy absolved her from responsibility for the liability and that it was not until after the 90-day protest period had lapsed that she was informed otherwise by the Division's warrants. Petitioner asserts that she made payments on the liability until they became a hardship at which time she requested further help from the Division and received the conciliation forms. On this basis, petitioner claims that she did not abandon her right to a hearing.

In response, the Division argues that the Administrative Law Judge was correct in holding that petitioner did not timely request a hearing.

We sustain the determination of the Administrative Law Judge for the reasons stated below.

Although not explicitly articulated, petitioner's argument is based on the concept that the Division is estopped from denying her a conciliation conference because the Division misled her into believing that her liability was canceled and it was not necessary for her to request a conciliation conference.

As a general rule, the doctrine of estoppel cannot be invoked against the State or its governmental units unless such exceptional facts exist as would require its application in order to avoid "manifest injustice" (see, Matter of Wolfram v. Abbey, 55 AD2d 700, 388 NYS2d 952,

954; Matter of Sheppard-Pollack, Inc. v. Tully, 64 AD2d 296, 409 NYS2d 847, 848). This rule is particularly applicable with respect to a taxing authority since sound public policy favors full and uninhibited enforcement of the tax laws (Matter of Turner Constr. Co. v. State Tax Commn., 57 AD2d 201, 394 NYS2d 78, 80). Thus, the application of the estoppel doctrine against a taxing authority must be limited to the truly unusual fact situations (Schuster v. Commissioner, 312 F2d 311, 62-2 USTC ¶ 12,121 at 86,585).

The elements of the estoppel issue in this case are whether petitioner reasonably relied on the statement of the Division employee that the bankruptcy order would relieve her of the tax liability, whether petitioner, in fact, relied on the statement to her detriment, and whether the detrimental reliance would result in a manifest injustice in the absence of equitable relief (see, Matter of Maximilian Fur Co., Tax Appeals Tribunal, August 9, 1990; Matter of Harry's Exxon Serv. Sta., Tax Appeals Tribunal, December 6, 1988).

We conclude that petitioner has not established that she reasonably relied on the information given her (that the bankruptcy order would discharge the sales tax liability) to take the action she did (failing to file a petition). With respect to the information obtained at the District Office, petitioner testified as follows:

> "I went to the Sales Tax Office and I spoke with a Compliance Representative. Her name was Ms. Caleca. I brought my Notice with me, along with the bankruptcy statement. That I had just been granted. I wanted to see what I could do about protesting of the Sales Tax that was due, and I told her that I couldn't pay this money and I had filed bankruptcy because of marital problems I had, and when she saw the bankruptcy petition, she took a photocopy of it and she asked me if I could have a copy for her file, and she said, 'As long as you filed a bankruptcy --' I filed bankruptcy, and she said that that was sufficient enough to relieve me from the obligation, and she led me to believe that there was no further action by New York State and that is why there was nothing formally in writing in regard to a protest.
>
> "I thought that I had complied with everything, and I took her at her word and that this was the correct information. Then, shortly after that, about a month or so later, I started to receive notices again, and I couldn't understand why, since she had given me this information.
>
> * * *
>
> "That would be the only reason why I did go there, with the intentions to protest, but because of the information she gave me, I assumed it was taken care of, and that is why I didn't pursue it further, until I received notices

> after that, I think in January or February, I'm not sure of the date, I knew it was settled, but apparently it wasn't.
>
> "That's why I took a step to give a written protest, and I was informed that it was not valid because I was beyond the time limit . . ." (Tr., pp. 16-18).

It is important to note that petitioner did not testify that she was told that she need not file a petition. Instead, her testimony indicates that she was told that the bankruptcy order would discharge the sales tax liability. It appears that petitioner herself made the inference that no petition was required to be filed to cause this result. We find such an inference unwarranted, particularly because the notice of determination states on its face that it becomes final unless an application for a hearing is filed within 90 days from the date the notice was issued (Exhibit A).

Further, petitioner has not established that it was reasonable to rely on the particular employee with whom she spoke. Petitioner described the employee as a "Compliance Representative" but offered nothing to show that the status of the employee in the Division's organization was such that petitioner reasonably could have determined that the employee was authorized to speak on behalf of the Division (cf., Matter Of Harry's Exxon Serv. Sta., supra [where the letter to the petitioner was signed by the Chief of the Sales Tax Audit Section of the Buffalo District Office]). In addition, the statement was only orally communicated to petitioner. Petitioner did not obtain a written confirmation of what she was told (cf., Eastern Tier Carrier Corp., supra, and Harry's Exxon Serv. Sta., supra [where the communications to the taxpayer were in writing]).

Since we have concluded that petitioner has not established that she reasonably relied on statements of the Division's employee in deciding not to file a petition, we must decide that there is no basis upon which to estop the Division from denying petitioner a conciliation conference.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of petitioner Diane D'Angelo is denied;
2. The determination of the Administrative Law Judge is affirmed; and
3. The petition of Diane D'Angelo is dismissed.

DATED: Troy, New York
August 22, 1991

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

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

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