

STATE OF NEW YORK
TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
CHARLOTTE E. LANTZ	:	DECISION
for Redetermination of a Deficiency/Revision	:	
of a Determination or for Refund of Sales	:	
and Use Taxes under Articles 28 and 29 of the	:	
Tax Law for the Period September 1, 1984	:	
through August 31, 1987.	:	

Petitioner, Charlotte E. Lantz, filed an exception to the order dismissing petition of the Administrative Law Judge issued on September 28, 1989 with respect to her petition for redetermination of a deficiency/revision of a determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period September 1, 1984 through August 31, 1987 (File No. 807076). Petitioner appeared by Semon & Mondschein, Esqs. (Linda M. Taub, Esq., of counsel). The Division of Taxation appeared by William F. Collins, Esq. (Mark Volk, Esq., of counsel).

Petitioner submitted a brief on exception. The Division submitted a letter in lieu of a brief.

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

ISSUE

Whether petitioner timely filed a petition with the Division of Tax Appeals.

FINDINGS OF FACT

We find the following facts.

A conciliation order, dated March 17, 1989, was issued denying petitioner's request for redetermination of a deficiency/revision of a determination or for refund of sales and use taxes.

Such order identified petitioner as "Charlotte E. Lantz Off. of Zara Contracting Co. Inc." The order was accompanied by a letter, dated March 17, 1989, which identified petitioner as "Charlotte E. Lantz Off. of Zara Contracting Co. Inc., Engel Street, Hicksville, NY 11801."

A petition from petitioner was received by the Division of Tax Appeals on June 21, 1989.

OPINION

The Administrative Law Judge dismissed the petition herein based upon his finding that a conciliation order was mailed to petitioner on March 17, 1989 at petitioner's last known address and the petition was not received until June 21, 1989 which was not within 90 days after the mailing of the conciliation order as required by Tax Law § 170.3-a(e).

On exception, petitioner argues that the Administrative Law Judge erred in dismissing the petition as untimely because the Division failed to mail the conciliation order to petitioner's last known address. As a result, petitioner contends that the Division's mailing error was the sole reason for the delay in the filing of the petition with the Division. Further, petitioner stresses that neither the Division nor the Division of Tax Appeals suffered any harm as a result of the delay in the filing of the petition. Lastly, petitioner contends that there is a meritorious case underlying the petition which equity demands that the petitioner be granted a hearing on.

In response, the Division contends that the order dismissing the petition was correct since the conciliation order was properly mailed both to petitioner and petitioner's representative. In support of this claim the Division has submitted an affidavit of mailing from the Bureau of Mediation and Conciliation Services ("Bureau") as well as a copy of the certified mail record retained by the Bureau.

We reverse the determination of the Administrative Law Judge and remand this case for a full hearing on the issue of whether a timely petition was filed.

The Bureau of Conciliation and Mediation Services is responsible for providing conciliation conferences and issuing conciliation orders (Tax Law § 170[3-a]; 20 NYCRR 4000.1[c]). Conciliation orders are binding upon "the department (of Taxation) and the person who requested the conference," unless such person petitions the Division of Tax Appeals for a hearing "within 90 days after the conciliation order is issued" (Tax Law § 170[3-a][e]; 20 NYCRR 4000.6[b]).

The order of the Administrative Law Judge dismissing petitioner's petition as untimely states that the conciliation order was issued on March 17, 1989 to petitioner's last known address at 977 Wendam Court, Port Orange, Florida 32019. Petitioner asserts on her brief on exception, however, that the conciliation order was not mailed to the address indicated by the Administrative Law Judge, but to a prior address, the address of her former employer. Further, petitioner has asserted that the Department of Taxation had notice of the change in her address by the petition she filed with respect to an income tax assessment. In particular, petitioner points to the conciliation order itself and the accompanying letter which both contain what she claims to be her former address of "Zara Contracting Co. Inc., Engel Street, Hicksville, NY 11801." This address is clearly at odds with that specified for petitioner in the order of the Administrative Law Judge. The Division of Taxation's affidavit states that the conciliation order was mailed to the Zara Contracting Co. Inc. address but does not address the issue of whether this was petitioner's last known address. Without further proof on this matter, we have no basis to determine whether the conciliation order was mailed to petitioner's last known address as required by Tax Law § 1147(a)(1) (see, Matter of Robert G. Wilson & GSA Corporation d/b/a GSA Partners, Tax Appeals Tribunal, July 13, 1989). As a result, we are unable to decide whether petitioner timely filed her petition.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The order of the Administrative Law Judge is reversed; and
2. The case is remanded to the Administrative Law Judge for a new hearing to be scheduled on the timeliness issue.

DATED: Troy, New York
December 28, 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