

STATE OF NEW YORK
TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
LEON MOED	:	ORDER AND OPINION
	:	DTA No. 810997
for Redetermination of a Deficiency or for	:	
Refund of New York State and New York City	:	
Income Taxes under Article 22 of the Tax Law	:	
and the New York City Administrative Code for	:	
the Years 1987 and 1988.	:	

Morrison & Foerster (Arthur R. Rosen and Judith E. Lansky, Esqs., of counsel) filed a motion with the Tax Appeals Tribunal for leave to appear and file an amicus curiae brief in this matter. Petitioner appeared by Siller, Wilk & Mencher (Sheldon Eisenberger, Esq., of counsel). The Division of Taxation appeared by William F. Collins, Esq. (Gary Palmer, Esq., of counsel).

ORDER

Upon reading the Notice of Motion, the accompanying affidavit and the proposed amicus brief filed on August 16, 1994 by Morrison & Foerster, the response of petitioner filed on August 25, 1994, the response of the Division of Taxation filed on August 30, 1994 and the reply of the proposed amicus received on September 12, 1994 and due deliberation having been had thereon,

Now, on the motion of Morrison and Foerster, proposed amicus, it is

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

FINDINGS OF FACT

We find the following facts.

On November 18, 1993, the Administrative Law Judge issued a determination in this matter. On December 15, 1993, petitioner filed a request for an extension of time to file an exception to the determination of the Administrative Law Judge, which was granted by the Secretary to the Tribunal. On December 17, 1993, the Division of Taxation (hereinafter the

"Division") filed its exception. On January 19, 1994, petitioner filed his exception. Both parties filed briefs in support, opposition and reply on exception. On July 21, 1994, oral argument was held. On August 16, 1994, Morrison & Foerster filed a notice of motion for leave to appear as amicus curiae and file a brief.

OPINION

Morrison & Foerster seek permission to appear as amicus curiae in that they have several clients in similar circumstances who will be impacted by the Tax Appeals Tribunal's (hereinafter the "Tribunal") decision in this matter. The position of Morrison & Foerster is that, because of their knowledge in the area, their brief would be of special assistance to the Tribunal and that, therefore, they should be granted permission to appear as amicus curiae. The Division opposes this motion arguing that pursuant to the Tribunal's decision in Matter of Standard Mfg. Co. (Tax Appeals Tribunal, July 11, 1991) the motion was not timely filed. Morrison & Foerster respond that because the number of taxpayers substantially affected by the issues in this case and the new arguments raised in their brief, "... the substantive import of our brief should, in this case, outweigh any nonstatutory, nonregulatory timeliness considerations" (Morrison & Foerster Reply, p. 2).

The proposed amicus has not offered any extenuating circumstances or legal theory as to why the Tribunal should not again look to the rules of the Court of Appeals for guidance as it did in Standard. Furthermore, the proposed amicus has not submitted any basis for distinguishing the present motion from the facts of a case where we denied a motion to file an amicus brief submitted two days prior to oral argument. In that case we stated:

"The Tax Appeals Tribunal has previously determined that it will look to the rules of the Court of Appeals regarding amicus curiae relief in deciding such motions (Matter of Consolidated Edison Co. of New York, Tax Appeals Tribunal, May 28, 1992; Matter of Standard Mfg. Co., Tax Appeals Tribunal, July 11, 1991). 22 NYCRR 500.11(e) of such rules provides that:

"[m]otions for amicus curiae relief, when appropriately made on notice to all of the parties and sufficiently in advance of the argument of the appeal to allow

adequate court review of the motion and the proposed brief . . . (emphasis added).

"We do not feel that two days was sufficient time for the Tribunal to adequately review either the motion or the brief. Accordingly, the motion of Ernst and Young for leave to file an amicus curiae brief is hereby denied" (Matter of Racal Corp. & Decca Elecs., Tax Appeals Tribunal, May 13, 1993).

Accordingly, we deny Morrison & Foerster's motion for leave to file an amicus curiae brief on exception. The Secretary to the Tribunal is directed to forward this matter to the Tribunal for decision.

DATED: Troy, New York
December 8, 1994

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

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