

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
JEFFREY A. CEREFICE	:	DECISION
for Revision of a Determination or for Refund	:	DTA No. 811496
of Sales and Use Taxes under Articles 28 and 29	:	
of the Tax Law for the Quarters Ending	:	
November 30, 1988, November 30, 1989	:	
February 28, 1990 and August 31, 1990.	:	

Petitioner Jeffrey A. Cerefice, 9408 East 34th Street, Tulsa, Oklahoma 74145, filed an exception to the determination of the Administrative Law Judge issued on September 21, 1995. Petitioner appeared pro se. The Division of Taxation appeared by Steven U. Teitelbaum, Esq. (Andrew S. Haber, Esq., of counsel).

Petitioner filed a brief on exception. The Division of Taxation submitted a letter stating it would not be filing a brief in opposition. Oral argument was not requested.

The Tax Appeals Tribunal renders the following decision per curiam.

ISSUE

Whether petitioner is liable as an officer for the sales taxes of Tried and True Rent a Car, Inc.

FINDINGS OF FACT

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

Petitioner, Jeffrey A. Cerefice, was the president of Tried and True Rent a Car, Inc.

Tried and True Rent a Car was located at 204 West 101st Street, New York City. Its business was auto rentals. It was in the business eight years but closed in 1990 due to the high cost of the repair of damaged cars which, under recent legislation, could not be passed on to its customers.

The sales tax return for the quarter ending November 30, 1988 (received by the Division of Taxation ["Division"] on October 30, 1989) shows tax due of \$12,067.93.

The following notices of determination and demands for payment of sales and use taxes due were issued by the Division on May 24, 1991:

- (a) For the sales tax quarter ending November 30, 1988 in the amount of \$12,067.93, plus penalty of \$3,620.19 and interest of \$4,074.58, for a total amount due of \$19,762.70. The amount of tax due was taken from the no remittance return filed on October 30, 1989 (see, above).
- (b) For the sales tax quarter ending November 30, 1989 in the amount of \$28,542.60, plus penalty of \$4,769.81 and interest of \$1,451.54, for a total amount due of \$34,763.95.
- (c) For the sales tax quarter ending February 28, 1990 in the amount of \$36,690.93, plus penalty of \$5,136.72 and interest of \$1,531.96, for a total amount due of \$43,359.61.
- (d) For the sales tax quarter ending August 31, 1990 in the amount of \$11,014.69, plus penalty of \$1,431.90 and interest of \$354.88, for a total amount due of \$12,801.47.

On July 10, 1990, sales tax returns were late filed as follows: for the month of November 1989 showing tax due of \$3,040.13; for the month of December 1989 showing tax due of \$2,817.00; for the month of January 1990 showing tax due of \$2,580.00; for the month of February 1990 showing tax due of \$2,394.00; and for the month of June 1990 showing tax due of \$842.00.

The notices of determination issued were adjusted at a conference on June 23, 1991 downwards to conform to the figures shown on the late filed returns as follows: for the quarter ending November 30, 1990 from \$28,542.60 to \$12,423.26; for the quarter ending February 28, 1990 from \$36,690.93 to \$8,650.70; and for the quarter ending August 31, 1990 from \$11,014.69 to \$842.00.

Petitioner has not denied that he was responsible for the sales taxes of Tried and True Rent a Car, Inc.

Petitioner has not challenged the figures used in either the notices of determination as originally issued or as adjusted after conference. He raises only his inability to pay the assessments as a reason for cancelling them.

OPINION

The Administrative Law Judge found petitioner to be a person responsible for the collection and payment of sales taxes due from Tried and True Rent a Car, Inc. as such person is defined in Tax Law § 1131(1) and further that petitioner has not denied he was responsible for the taxes. The Administrative Law Judge then stated that the Division of Tax Appeals is not empowered to cancel an assessment based on a taxpayer's inability to pay, which was the only reason petitioner put forth in support of his position that the assessments be cancelled.

On exception, petitioner asks that his Offer in Compromise made to the Division be considered. Petitioner also argues that he "may not be [the] only officer of Tried & True Rent a Car who is liable" (Petitioner's Exception).

We affirm the determination of the Administrative Law Judge and find petitioner liable as president of Tried and True Rent a Car, Inc. for the sales taxes due. With respect to petitioner's request that his Offer in Compromise be considered, this Tribunal has no jurisdiction to grant offers in compromise (Tax Law §§ 2, 170, 171). With regard to petitioner's assertion that others may also be liable for the sales taxes of Tried and True Rent a Car, Inc., as we stated in Matter of Pais (Tax Appeals Tribunal, July 18, 1991) and Matter of LaPenna (Tax Appeals Tribunal, March 14, 1991), more than one person can be held liable as a responsible officer under the statute.

We find no basis in the record before us for modifying the Administrative Law Judge's determination on the issues that were before him in any respect. Therefore, we affirm the determination of the Administrative Law Judge on those issues for the reasons stated in said determination.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Jeffrey A. Cerefice is denied;
2. The determination of the Administrative Law Judge is affirmed;
3. The petition of Jeffrey A. Cerefice is denied; and
4. The notices of determination are sustained.

DATED: Troy, New York
January 16, 1997

/s/Donald C. DeWitt
Donald C. DeWitt
President

/s/Carroll R. Jenkins
Carroll R. Jenkins
Commissioner

/s/Joseph W. Pinto, Jr.
Joseph W. Pinto, Jr.
Commissioner