

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
JAMES M. CARTWRIGHT	:	ORDER
	:	DTA NO. 823018
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 June 13, 2008.	:	

Petitioner, James M. Cartwright, filed a 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 June 13, 2008.

Petitioner brought a motion, dated April 12, 2010, to reopen the record and for reargument pursuant to 20 NYCRR 3000.16. On May 13, 2010, the Division of Taxation, appearing by Daniel Smirlock, Esq. (Justine Clarke Caplan, Esq., of counsel), filed a letter brief in opposition to petitioner's motion. Based upon the motion papers, and all pleadings and proceedings associated with this matter, Daniel J. Ranalli, Assistant Chief Administrative Law Judge, renders the following order.

ISSUE

Whether petitioner's motion to reopen the record and for reargument of a small claims hearing should be granted.

FINDINGS OF FACT

1. This matter was the subject of a small claims hearing pursuant to Tax Law § 2012. At issue therein was whether the Division of Taxation (Division) properly denied petitioner's claim for a refund of use tax paid on a motor vehicle he purchased outside of New York State.

2. A small claims hearing was conducted on December 16, 2009 by Presiding Officer Barbara J. Russo. Petitioner appeared pro se. The Division appeared by Daniel Smirlock, Esq. (Anthony Militana). Each party elected to file a post-hearing brief. The Division requested and was granted a three-week extension to file its reply brief.

3. On April 1, 2010, the Presiding Officer issued a determination denying the petition.

4. On April 12, 2010, petitioner filed a motion "to reopen the record for reargue [*sic*] of DTA #823018" pursuant to section 3000.16 of the Tax Appeals Tribunal's Rules and Regulations. In support of his motion, petitioner complains that the Division was granted additional time to submit its post-hearing arguments. Petitioner further argues that he previously submitted similar refund claims which were paid, and further contends that neither the Division nor the presiding officer's determination addressed petitioner's receipt for sales tax paid. Petitioner requests a review of the record and determination.

CONCLUSIONS OF LAW

A. Tax Law § 2012 authorizes small claims hearings at the request of the petitioner. The statute provides that the hearing be informal and that the presiding officer has the discretion to accept such evidence and testimony that she deems necessary or desirable for a just and equitable determination. The statute also provides that the small claims determination is conclusive on all parties and not subject to any review. Pursuant to the statute and 20 NYCRR 3000.13(h)(2), there is no right to a review of a small claims determination by the Division of Tax Appeals, the

Tax Appeals Tribunal or any court of this state, except that the Tax Appeals Tribunal may, on motion of either party, order a rehearing upon proof or allegation of misconduct by the Presiding Officer (*Matter of Winchester Properties, Inc.*, Tax Appeals Tribunal, November 6, 1997).

Where an allegation of misconduct is made, a rehearing is not automatically granted (*see Matter of Keeffe*, Tax Appeals Tribunal, January 20, 1994, *confirmed Matter of Keeffe v. Tax Appeals Tribunal*, 216 AD2d 692, 627 NYS2d 851[3d Dept 1995], *appeal dismissed* 86 NY2d 884[1995]).

B. In this proceeding, petitioner has not brought a motion before the Tribunal pursuant to 20 NYCRR 3000.13(h)(2) alleging misconduct by the presiding officer. Instead, petitioner seeks to reopen the record and for reargument pursuant to 20 NYCRR 3000.16. That regulation provides that:

An administrative law judge may, upon motion of a party, issue an order vacating a determination rendered by such administrative law judge upon the grounds of:

- (1) newly discovered evidence which, if introduced into the record, would probably have produced a different result and which could not have been discovered with the exercise of reasonable diligence in time to be offered into the record of the proceeding, or
- (2) fraud, misrepresentation, or other misconduct of an opposing party.

Pursuant to 20 NYCRR 3000.13(c)(3), motion practice, including motions to reopen the record and for reargument, are not applicable to small claims proceedings (*see Matter of Keeffe*). As such, the Division of Tax Appeals lacks jurisdiction to grant petitioner's motion.

C. The motion of petitioner James M. Cartwright to reopen the record and for reargument is denied.

DATED: Troy, New York
June 10, 2010

/s/ Daniel J. Ranalli
ASSISTANT CHIEF ADMINISTRATIVE LAW JUDGE