

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition :
of :
CROWN SECURITY, LLC :
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 1, 2011 through August 31, 2011. :
DECISION :
DTA NOS. 824873 AND :
824957

In the Matter of the Petition :
of :
FELIX EKE :
for Revision of Determinations or for Refund of Sales :
and Use Taxes under Articles 28 and 29 of the Tax :
Law for the Period September 1, 2009 through :
August 31, 2010. :

Petitioners, Crown Security, LLC, and Felix Eke, filed an exception to the determination of the Administrative Law Judge issued on May 1, 2014. Petitioners appeared by Richard M. Gabor, Esq. The Division of Taxation appeared by Amanda Hiller, Esq. (Michael Hall, of counsel).

Neither party filed a brief. Oral argument was heard in New York, New York on January 8, 2015, which date began the six-month period for issuance of this decision.

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

ISSUE

Whether petitioners have provided sufficient evidence to show that the contractor exempt purchase certificates provided to Crown Security, LLC, by its customers, were properly completed, and that such certificates were relied upon in good faith.

FINDINGS OF FACT

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

1. Petitioner Crown Security, LLC, provides security guard services at various locations in New York City. Petitioner Felix Eke was the president and a member of Crown Security and concedes his responsibility as a person required to collect and remit sales tax for the periods at issue. During the period at issue, Crown Security provided guard services at construction sites for contractors working on projects for the New York City School Construction Authority.

2. In a letter dated October 21, 2009, Crown Security was advised by the New York City School Construction Authority that its services were subject to New York State sales tax. Also in 2009, Crown Security was advised during the course of an audit by the Division of Taxation (Division) that its services were subject to the imposition of New York State sales tax.

3. As a result of the advice received from the New York City School Construction Authority and the Division, Crown Security filed New York State and local sales and use tax returns for the quarters ended November 30, 2009, February 28, 2010, May 31, 2010 and August 31, 2010. The return for the quarter ended November 30, 2009 was filed late with a partial payment of the amount of tax indicated as due. The returns for the quarters ended February 28, 2010 and May 31, 2010 were also filed late and without remittance of any of the tax indicated as due. The return for the quarter ended August 31, 2010 was timely filed but without

remittance of any of the tax indicated as due.

4. Following the issuance of notices and demands to Crown Security, the Division issued to petitioner Felix Eke four notices of determination, dated May 2, 2011 for the period ended November 30, 2009 (assessment number L-035814573) and dated March 22, 2011 for the periods ended February 28, 2010 (assessment number L-035546540), May 31, 2010 (assessment number L-035546542) and August 31, 2010 (assessment number L-035546541). The notices are based upon Crown Security's failure to timely file returns and pay the sales tax due and were issued to Mr. Eke as a responsible person of Crown Security.

5. The contractor exempt purchase certificates introduced by petitioners in an effort to establish that they are not responsible for the sales tax shown to be due on the returns filed for the periods ended November 30, 2009, February 28, 2010, May 31, 2010 and August 31, 2010 all indicate they were provided by their customers for the purchase of tangible personal property. Some were dated prior to the October 21, 2009 letter from the New York City School Construction Authority and the Division's audit. Others were not dated at all. In addition, several did not contain Crown Security's name as the vendor of the tangible personal property provided.

6. Based upon a review by an auditor in the Division's Technical Unit Field Audit Management of information provided by petitioners and the Division's records, the Division established that during the periods at issue, there was no overlap of any sales and use tax audits of Crown Security's purchasers that would entitle petitioners to a credit for taxes assessed against another entity.

7. On January 23, 2012, the Division issued to petitioner Crown Security, LLC, a notice of determination (estimated) for the period June 1, 2011 to August 31, 2011. The notice stated

that, as Crown Security had not filed a sales and use tax return for the period indicated, the Division was estimating the amount of tax due.

8. Crown Security had filed, on January 17, 2012, a sales and use tax return for the period June 1, 2011 through August 31, 2011. The return indicated sales tax due in the amount of \$22,735.00. Crown Security, however, did not remit to the Division the amount of sales tax due as stated on the return.

9. On March 27, 2012, the Division issued to Crown Security a notice and demand for payment of tax due in the amount of \$22,735.00, plus penalty and interest.

10. During the period May 1, 2009 through June 30, 2013, Crown Security was issued 17 notices of additional tax due. In addition, for the period December 1, 2008 through May 31, 2013, Crown Security failed to file sales and use tax returns for seven quarters.

THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE

The Administrative Law Judge first noted that the security guard services provided by Crown Security were subject to sales tax pursuant to Tax Law § 1105 (c) (8). Next, the Administrative Law Judge reviewed the relevant statutes and regulations addressing the collection and remittance of sales tax with particular regard to reliance on properly completed exemption certificates. The Administrative Law Judge concluded that petitioners failed to submit sufficient evidence that their security services were exempt, or that they relied in good faith on exemption certificates received from customers.

On the issue of penalties, the Administrative Law Judge found that petitioners failed to introduce grounds for abatement. The Administrative Law Judge also noted Crown Security's lengthy history of failing to timely file sales tax returns and pay the tax shown to be due. Accordingly, the Administrative Law Judge sustained the imposition of penalties.

The Administrative Law Judge also concluded that Crown Security's right to a hearing with respect to the notice and demand issued for the period June 1, 2011 through August 31, 2011, was specifically denied pursuant to Tax Law § 173-1 (2) and (3) (c). The Administrative Law Judge determined that petitioner had not provided any statutory document that would confer jurisdiction or the right to a hearing in the Division of Tax Appeals.

ARGUMENTS ON EXCEPTION

Petitioners challenge only the Administrative Law Judge's conclusion that they have failed to present sufficient evidence to show that they received properly completed exemption certificates and that the certificates were relied upon in good faith.

OPINION

We affirm the determination of the Administrative Law Judge.

Preliminarily, we note that there is no dispute that the guard services provided by Crown Security were protective and detective services within the meaning of Tax Law § 1105 (c) (8) and that such services were subject to sales tax.

Tax Law § 1132 (c) creates a presumption that all receipts from the sale of property or services of any type mentioned in subdivisions (a), (b), (c) and (d) of Tax Law § 1105 are subject to tax until the contrary is established, and provides that the burden of proving that any receipt is not taxable is on the person required to collect the tax or the customer. A vendor is deemed to have met such burden and is relieved of responsibility to collect such tax where the vendor, in good faith, accepts a properly completed exemption certificate from the purchaser no later than 90 days after the sale of the property or rendering of the services (Tax Law § 1132 [c] [1], 20 NYCRR 532.4 [5] [2]) .

An exemption certificate is considered to be properly completed when it contains the:

1) date prepared; 2) name and address of the purchaser; 3) name and address of the vendor; 4) identification number of the purchaser as shown on its certificate of authority, or exempt organization number as shown on the exempt organization certificate; 5) signature of the purchaser or the purchaser's authorized representative; and 6) any other information required to be completed on the particular certificate or document (20 NYCRR 532.4 [b] [2] [ii]).

We agree with the Administrative Law Judge that petitioners have failed to present sufficient evidence to show that they received properly completed exemption certificates from their customers. Specifically, all except one of the contractor exempt purchase certificates included in the record identify the purchase of tangible personal property rather than the purchase of security services. The one exception does not identify the purchase at all. Additionally, some of the exemption certificates do not identify Crown Security as the vendor and one is not signed by the purchasing contractor.

Further, petitioners were given an opportunity at oral argument to specifically identify any properly completed exemption certificates in the record. The exemption certificates so identified by petitioners are the same incomplete exemption certificates described above. We thus conclude that petitioners have failed to submit any properly completed exemption certificates.

We also reject petitioners' argument that the exempt purchase certificates were relied upon in good faith. As the Administrative Law Judge noted, petitioners were advised by the New York City School Construction Authority, by letter dated October 21, 2009, that their security services were subject to the imposition of sales tax. Crown Security was also advised during the course of an audit by the Division in 2009 that its services were subject to the imposition of New York State sales tax (*see* Finding of Fact 2). We agree with the Administrative Law Judge's conclusion that once Crown Security was advised of the taxability of its security services, it

could no longer rely “in good faith” on exemption certificates (*see* 20 NYCRR 532.4 [5] [2] [c]). We note that petitioners have not identified any specific sales herein that occurred before they were advised that their services were taxable.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

- 1). The exception of Crown Security, LLC and Felix Eke is denied;
- 2). The determination of the Administrative Law Judge is affirmed;
- 3). The petitions of Crown Security, LLC and Felix Eke are denied; and
- 4). The notices of determination dated May 2, 2011 and March 22, 2011 are sustained.

DATED: Albany, New York
July 2, 2015

/s/ Roberta Moseley Nero
Roberta Moseley Nero
President

/s/ Charles H. Nesbitt
Charles H. Nesbitt
Commissioner

/s/ James H. Tully, Jr.
James H. Tully, Jr.
Commissioner