

STATE OF NEW YORK
TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
CONNECTICUT INSULATION DISTRIBUTORS CORPORATION	:	DECISION DTA NO. 831258
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 December 1, 2008 through February 28, 2011.	:	

Petitioner, Connecticut Insulation Distributors Corporation, filed an exception to the determination of the Administrative Law Judge issued on July 25, 2024. Petitioner appeared by John Fall, CPA. The Division of Taxation appeared by Amanda Hiller, Esq. (Aliza J. Chase, Esq., of counsel).

Petitioner did not file a brief in support of the exception. The Division of Taxation filed a letter brief in opposition. Petitioner filed a reply brief. Petitioner's request for oral argument was denied. The six-month period for issuance of this decision began on November 22, 2024, the date that petitioner's reply brief was received.

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

ISSUE

Whether the Division of Taxation's motion to dismiss or for summary determination should be granted.

FINDINGS OF FACT

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

1. The Division of Taxation (Division) issued to petitioner, Connecticut Insulation Distributors Corporation, a notice of determination bearing assessment number L-042823005, dated May 1, 2015, asserting sales and use taxes due in the amount of \$56,345.26, plus interest and penalty, for the period December 1, 2008 through February 28, 2011 (notice).

2. On September 21, 2015, petitioner filed a request for conciliation conference with the Division's Bureau of Conciliation and Mediation Services (BCMS) in protest of the notice. On October 9, 2015, BCMS issued a conciliation order dismissing request, CMS No. 267976 (first conciliation order), to petitioner. The first conciliation order determined that petitioner's protest of the notice was untimely and stated, in part:

"The Tax Law requires that a request be filed within 90 days from the date of the statutory notice. Since the notice(s) was issued on May 1, 2015, but the request was not mailed until September 21, 2015, or in excess of 90 days, the request is late filed."

3. On January 4, 2016, petitioner filed a timely petition with the Division of Tax Appeals in protest of the first conciliation order (first petition). The first petition references the assessment number of the notice and the amount of tax asserted due in the notice. This matter was assigned DTA number 827415.

4. The Division filed a motion seeking an order dismissing the first petition or, in the alternative, seeking summary determination in DTA number 827415.

5. In a determination dated December 21, 2017, Administrative Law Judge Winifred M. Maloney granted the Division's motion for summary determination, denied the first petition, and sustained the notice in DTA number 827415.

6. Petitioner did not file an exception to the determination in DTA number 827415.

7. On November 21, 2022, petitioner filed a second request for conciliation conference with BCMS in protest of the notice. On January 6, 2023, BCMS issued a conciliation order dismissing request, CMS No. 000348085 (second conciliation order), to petitioner. The second conciliation order determined that petitioner's protest of the notice was untimely and stated, in part:

"The Tax Law requires that a request be filed within 90 days from the date of the statutory notice. Since the notice(s) was issued on May 1, 2015, but the request was not mailed until November 21, 2022, or in excess of 90 days, the request is late filed."

8. On February 28, 2023, petitioner filed a timely petition with the Division of Tax Appeals in protest of the second conciliation order (second petition). The second petition references the assessment number of the notice. This matter was assigned DTA number 831258.

9. Accompanying the Division's motion is the affirmation of Aliza J. Chase, Esq. dated April 9, 2024, with attached exhibits. In her affirmation, Ms. Chase asserts that the second petition protests a notice that was the subject of a final determination.

10. Petitioner did not file a response to the Division's motion.

THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE

Citing our Rules of Practice and Procedure (Rules), the Administrative Law Judge noted that the standard of review on a motion to dismiss is the same as that for summary determination. The Administrative Law Judge found that since petitioner did not respond to the Division's motion, petitioner is deemed to have conceded that no question of fact requiring a hearing exists. Additionally, the Administrative Law Judge noted that as petitioner presented no evidence to contest the facts alleged in the Division's motion papers, the facts alleged therein are deemed admitted. The Administrative Law Judge determined that this was petitioner's second petition

seeking to challenge the same statutory notice as in DTA number 827415. The determination of the administrative law judge in DTA number 827415, issued on December 21, 2017, sustained the notice and petitioner did not take exception to it. Accordingly, the Administrative Law Judge determined that petitioner cannot relitigate matters resolved in previous litigation.

ARGUMENTS ON EXCEPTION

On exception, petitioner argues that the determination of the Administrative Law Judge is erroneous because the auditors failed to substantiate the taxes assessed. Petitioner acknowledges ownership of Connecticut Insulation Distributors Corporation, which ceased operations a year before the audit began. Petitioner asserts that personal circumstances; prevented him from addressing the audit. Petitioner requests the Division to reopen the prior audit case against petitioner and help him find a resolution.

The Division in the letter brief in opposition, asserts that the Division of Tax Appeals lacks jurisdiction to adjudicate this matter. The Division relies on Tax Law § 2010 (4) which states that if a petitioner does not file a timely exception to an Administrative Law Judge's determination, the determination becomes final and binding. The Division further argues that the Administrative Law Judge correctly dismissed the petition because the petitioner is attempting to contest the same statutory notice addressed in a prior determination under DTA number 827415 through a subsequent petition.

OPINION

Pursuant to Tax Law § 2006 (4), the Tax Appeals Tribunal must “provide a hearing as a matter of right, to any petitioner upon such petitioner’s request . . . unless a right to such a hearing is specifically provided for, modified or denied by another provision of [the Tax Law]” (*Matter of Moyler*, Tax Appeals Tribunal, October 13, 2022). The jurisdiction of this Tribunal

“is limited to that conferred by the Legislature and may not be extended” (*Matter of Richardson*, Tax Appeals Tribunal, November 17, 2022, citing *Matter of Hooper*, Tax Appeals Tribunal, July 1, 2010).

Petitioner protested the notice of deficiency bearing assessment number L-042823005 and on December 21, 2017, the Administrative Law Judge Winifred M. Maloney granted the Division’s motion for summary determination, denied the first petition, and sustained the notice in DTA number 827415 (*see* finding of fact 5). Petitioner failed to timely file an exception with this Tribunal requesting a review of that determination. Accordingly, the December 21, 2017 determination “finally decide[d] the matters in controversy” (*Matter of Moyler* citing Tax Law § 2010 [4]).

Pursuant to our Rules, a petitioner cannot “attempt to relitigate the matters finally resolved in the previous litigation” (*Matter of Am. Home Assurance Co.*, Tax Appeals Tribunal, August 8, 2002; *see Matter of Yim*, Tax Appeals Tribunal, October 7, 2021; *see also* Tax Law § 2010 [4] [providing that a determination made by an administrative law judge will serve as the final resolution of the issues in dispute unless a party to the hearing files an exception by timely requesting a review by the Tax Appeals Tribunal]).

Here, in his second petition, petitioner seeks to challenge the same statutory notice as in DTA number 827415, therefore, the Division of Tax Appeals lacks subject matter jurisdiction and the petition must be dismissed (*see Matter of Moyler*; *see also Matter of Yim* [petitioner cannot contest a previous determination by filing another petition protesting the same assessment]; *Matter of Mostovoi*, Tax Appeals Tribunal, August 10, 2017; *see generally Matter of Am. Home Assurance Co.*).

As stated above, the matter was decided by the Administrative Law Judge in a determination below dated December 21, 2017, and became fixed and final 30 days later (*see* 20 NYCRR 3000.17 [a]). Petitioner cannot relitigate the same determination by filing another petition. Therefore, we affirm the determination of the Administrative Law Judge.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Connecticut Insulation Distributors Corporation is denied;
2. The determination of the Administrative Law Judge is affirmed; and
3. The petition of Connecticut Insulation Distributors Corporation is dismissed with prejudice.

DATED: Albany, New York
May 8, 2025

/s/ Jonathan S. Kaiman
Jonathan S. Kaiman
President

/s/ Cynthia M. Monaco
Cynthia M. Monaco
Commissioner

/s/ Kevin A. Cahill
Kevin A. Cahill
Commissioner