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This Week in State Tax (TWIST)

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New York: Failure to file bulk sale notice trips up taxpayer

The New York Tax Appeals Tribunal upheld the denial of a sales tax refund in a case involving a bulk sale transaction, citing several missteps by the petitioner. The Tribunal affirmed that the petitioner failed to give the Department of Taxation and Finance the required 10-day advance notice, did not withhold consideration or the outstanding tax due from the seller, did not prove any qualifying payment of tax which would support a refund, and filed its refund claim outside the statutory window.

In 2008, the petitioner purchased business assets from a seller but did not provide notice to the Department as is statutorily required for bulk sale transactions. The Department in 2010 deemed the parties' agreement to be a bulk sale and issued a notice of determination assessing sales tax; some assessments in this notice were later cancelled. In 2021, the petitioner filed a refund claim which was denied by the Department because the statute of limitations had expired. The petitioner then timely filed a protest to the refund denial, which the Department permits so long as the liability in question has been paid in full. The Administrative Law Judge reviewing this petition determined the petitioner failed to establish when or how much of the liability at issue was previously paid and so denied the petition.

On exception, the petitioner argued the ALJ did not address whether the petitioner was a purchaser in a bulk sale, and further that any tax due should have been collected from the seller of the assets. The Department countered that whether a bulk sale had occurred had already been determined, that the petitioner's failure to provide the required 10-day notice to the Department and to withhold consideration from the seller rendered the petitioner liable for any outstanding tax, and that the petitioner had not met its burden to show the refund denial was erroneous.

The exception was reviewed and denied by the Tribunal. The Tribunal agreed a bulk sale had occurred, held that the petitioner forfeited statutory protections by not giving the required 10-day notice, found the petitioner failed to prove the fair market value of the assets or that any payments had been made, and concluded the refund claim was untimely. For further questions around bulk sales or general administrative procedures in New York, please contact Judy Cheng.

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