

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D23507
T/kmg

_____AD3d_____

Submitted - April 16, 2009

REINALDO E. RIVERA, J.P.
MARK C. DILLON
ARIEL E. BELEN
L. PRISCILLA HALL, JJ.

2008-00575

DECISION & ORDER

Robert Ryan, appellant, v New York State
Department of Taxation and Finance, respondent.

(Index No. 9769/06)

Monaghan, Monaghan, Lamb & Marchisio, LLP, New York, N.Y. (Patrick J. Monaghan, Jr., and Michael Korik of counsel), for appellant.

Andrew M. Cuomo, Attorney General, New York, N.Y. (Benjamin N. Gutman and Marion R. Buchbinder of counsel), for respondent.

In an action, inter alia, for a judgment declaring a tax assessment null and void, the plaintiff appeals from an order of the Supreme Court, Rockland County (Weiner, J.), dated December 3, 2007, which granted the defendant's motion pursuant to CPLR 3211(a) to dismiss the complaint for failure to exhaust administrative remedies.

ORDERED that the order is affirmed, with costs.

On September 22, 1997, the defendant, New York State Department of Taxation and Finance, sent a notice of determination to the plaintiff stating that it was assessing against him, as an "Officer/Responsible Person" of nonparty 27 West 20th Street Corporation, certain unpaid corporate sales and use taxes. On November 29, 2006, the plaintiff commenced this action seeking, inter alia, a judgment declaring the assessment null and void. The Supreme Court granted the motion to dismiss the action because the plaintiff failed to exhaust his available administrative remedies. We affirm.

"Actions by taxing officers can be reviewed only in the manner prescribed by statute" (*Bankers Trust Corp. v New York City Dept. of Fin.*, 1 NY3d 315, 321; see *El Paso Corp. v New*

June 9, 2009

Page 1.

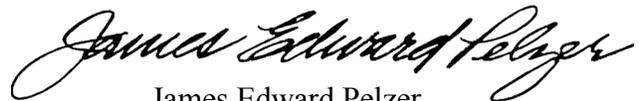
RYAN v NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE

York State Dept. of Taxation & Fin., 36 AD3d 655, 656). Here, the plaintiff failed to exhaust the exclusive statutory remedies provided in the Tax Law (*see* Tax Law §§170[3-a][a]; 1138[a][1]; 1139[c]; 1140; 2016), and failed to establish that an exception to the exhaustion of administrative remedies doctrine was applicable (*see* Tax Law § 1140; *Bankers Trust Corp. v New York City Dept. of Fin.*, 1 NY3d at 321-322; *El Paso Corp. v New York State Dept. of Taxation & Fin.*, 36 AD3d at 658).

The parties' remaining contentions either are without merit or need not be reached in light of our determination.

RIVERA, J.P., DILLON, BELEN and HALL, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive style with a large, stylized initial "J".

James Edward Pelzer
Clerk of the Court