

STATE OF NEW YORK  
TAX APPEALS TRIBUNAL

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In the Matter of the Petition :  
of :  
**KENNETH AND MARYANN GREENLAND** : DECISION  
for Redetermination of a Deficiency or for :  
Refund of Personal Income Tax under Article 22 :  
of the Tax Law for the Years 1981 through 1983. :

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Petitioners Kenneth and Maryann Greenland, 1624 N.E. 24th Street, Jensen Beach, Florida 33457, filed an exception to the determination of the Administrative Law Judge issued on March 29, 1990 with respect to a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1981 through 1983 (File No. 802927). Petitioners appeared pro se. The Division of Taxation appeared by William F. Collins, Esq. (Irwin A. Levy, Esq., of counsel).

Petitioners filed a brief on exception. The Department did not. Oral argument was not requested.

On its own motion, after reviewing the determination, the exception, the mailing records of the Division of Tax Appeals in this matter, and the response of petitioners to the Tax Appeals Tribunal's Notice of Intent to Dismiss Exception, the Tax Appeals Tribunal renders the following decision.

***ISSUE***

Whether petitioners timely filed their exception to the determination of the Administrative Law Judge.

***FINDINGS OF FACTS***

The determination of the Administrative Law Judge was mailed to petitioners on March 29, 1990, at petitioners' last known address at 1624 N.E. 24th Street, Jensen Beach, Florida 33457.<sup>1</sup>

The exception to the determination of the Administrative Law Judge was required to be filed by April 30, 1990. Said exception was received by the office of the Secretary to the Tribunal on May 4, 1990.

The envelope containing the exception to the Administrative Law Judge's determination had a United States postal service postmark of May 1, 1990, which is after the 30 day filing period which expired on April 30, 1990.

On June 22, 1990, the Tribunal issued a Notice of Intent to Dismiss this exception on the ground that it was not timely filed. The parties were given 30 days to respond to this Notice. A response to an earlier letter was received from petitioners on June 4, 1990, acknowledging that the petition was not timely filed, but questioning why the 30 day time period begins to run from the date that the Administrative Law Judge's determination is mailed, rather than from the date that such determination is received by petitioners. Furthermore, petitioners question why the time period does not allow for delays in mail sent from New York to Florida.

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<sup>1</sup> Petitioners submitted their petition indicating that their zip code was 33457. The determination of the Administrative Law Judge was mailed to this zip code. In subsequent correspondence, petitioners indicated that their zip code was 34957.

**OPINION**

Subdivision 7 of § 2006 of the Tax Law provides as follows:

"The Tribunal shall have the following functions, powers and duties:

"7. To provide for a review of the determination of an administrative [sic] law judge, if any party to a proceeding conducted before such administrative law judge, within thirty days after the giving of notice of such determination, takes exception to the determination." (Tax Law § 2006.7.)

20 NYCRR 3000.11(a)(i) provides as follows:

"Review by tribunal. (a)(i) Filing of exception. Within 30 days after the giving of notice of the determination of an administrative law judge, any party may take exception to such determination and seek review thereof by the tribunal, by filing an exception and two conformed copies with the secretary. A copy of the exception shall be served at the same time on the other party. When the division of taxation is the other party, service shall be made on the director of the law bureau." (20 NYCRR § 3000.11[a][i].)

Exceptions must be filed within 30 days after the giving of notice of the determination of the Administrative Law Judge (Tax Law § 2006.7; 20 NYCRR 3000.11[a][i]). An exception received by this Tribunal, after the date it was due, is deemed to be filed on the date of the United States postmark stamped on the envelope (20 NYCRR 3000.16). This exception was filed after the 30 day filing period which expired on April 30, 1990. Therefore, the exception was not timely filed and the Tribunal lacks jurisdiction to review it.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

On the Tax Appeals Tribunal's own motion, the exception of the petitioners, Kenneth and Maryann Greenland, be, and hereby is, dismissed with prejudice as of this date.

DATED: Troy, New York  
October 11, 1990

/s/John P. Dugan  
John P. Dugan  
President

/s/Francis R. Koenig  
Francis R. Koenig  
Commissioner

/s/Maria T. Jones  
Maria T. Jones  
Commissioner