

STATE OF NEW YORK
TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
UNITED SHIP REPAIR, INC.	:	DECISION
for Redetermination of a Deficiency/Revision	:	
of a Determination or for Refund of New York	:	
State Personal Income Tax under Article(s) 22	:	
of the Tax Law for the Years 1983, 1984 and	:	
1985.	:	

Petitioner, United Ship Repair, Inc., filed an exception to an order of the Administrative Law Judge, dated July 21, 1988, dismissing as untimely its petition for redetermination of a deficiency/revision of a determination or for refund of New York State personal income tax under Article(s) 22 of the Tax Law for the years 1983, 1984 and 1985 (File No. 805549). Petitioner appeared by Dimitrios E. Pappas. The Division of Taxation appeared by William F. Collins, Esq. (Kevin Cahill, Esq., of counsel).

Neither party submitted a brief. Oral argument, at the request of petitioner, was heard on October 11, 1988.

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

ISSUE

Whether petitioner's petition for a hearing was timely filed.

FINDINGS OF FACT

We find the following facts.

On January 29, 1987 the Division issued to petitioner a Notice and Demand for Payment of Income Tax Due in the amount of \$1,882.00 for New York State tax and \$718.00 for New York City tax. The amounts were assessed for 1985.

The Notice stated that the assessment was for "[f]ailure to file wage and tax statements forms IT-2102 or W-2 by the February 28 due date. Penalty is computed at 50.00 for each late filed statement to a maximum penalty of 10,000.00. This penalty has been prorated according to the amounts withheld for each taxing jurisdiction." No tax or interest was assessed, only penalty. Petitioner's petition was mailed on April 28, 1988, 455 days after the Notice was issued.

OPINION

The Administrative Law Judge dismissed petitioner's petition as untimely because it was not filed within the 90 day period prescribed by Tax Law section 2006(4).

We affirm the order of the Administrative Law Judge.

Tax Law section 2006(4) provides that the Tribunal has the power and duty:

"To provide a hearing as a matter of right, to any petitioner upon such petitioner's request, pursuant to such rules, regulations, forms and instructions as the tribunal may prescribe, unless a right to such a hearing is specifically provided for, modified or denied by another provision of this chapter. Where such a request is made by a person seeking review of taxes determined or claimed to be due under this chapter, the liability of such person shall become finally and irrevocably fixed, unless such person, within ninety days from the time such liability is assessed, shall petition the division of tax appeals for a hearing to review such liability."

Since the petition here was not mailed until 455 days after the issuance of the Notice and Demand, the hearing right provided by section 2006(4) is not available.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of petitioner, United Ship Repair, Inc., is denied;
2. The order of the Administrative Law Judge is affirmed; and

3. The petition of United Ship Repair, Inc. is dismissed.

DATED: Troy, New York
June 22, 1989

/s/John P. Dugan

John P. Dugan
President

/s/Francis R. Koenig

Francis R. Koenig
Commissioner