

STATE OF NEW YORK
TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
JERRY LITT, LTD	:	DECISION
AND JERRY LITT, AS OFFICER	:	DTA No. 807443
	:	
for Revision of Determinations or for Refund of Sales	:	
and Use Taxes under Articles 28 and 29 of the Tax Law	:	
for the Period June 1, 1984 through February 28, 1987.	:	

Petitioners Jerry Litt, Ltd. and Jerry Litt, as Officer, 501 Central Avenue, Cedarhurst, New York 11516 filed an exception to the determination of the Administrative Law Judge issued on August 6, 1992 with respect to their petition for revision of determinations or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period June 1, 1984 through February 28, 1987. Petitioner Jerry Litt, Ltd. appeared by its president Jerry Litt. Jerry Litt, as officer, appeared pro se. The Division of Taxation appeared by William F. Collins, Esq. (Vera R. Johnson, Esq., of counsel).

On November 12, 1992, the Tax Appeals Tribunal (hereinafter 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. Neither party responded. The Tribunal's six month time period to issue its decision began on December 14, 1992, the date any responses were due.

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

ISSUE

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

FINDINGS OF FACT

We find the following facts.

The determination of the Administrative Law Judge was mailed to petitioners on August 6, 1992 at petitioners' last known address 501 Central Avenue, Cedarhurst, New York 11516.

Petitioners' exception to the determination of the Administrative Law Judge was received by the Office of the Secretary to the Tribunal on October 9, 1992. The envelope containing the exception bears a United States Postal Service postmark of October 5, 1992.

OPINION

Subdivision 7 of section 2006 of the Tax Law provides that the Tribunal shall have the following function, powers and duties:

"[t]o 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)(1) provides as follows:

"[w]ithin 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 with the secretary. The exception should be filed with the secretary either in person at the offices in Troy or by mail addressed to:

Secretary to the Tax Appeals Tribunal
State of New York
Division of Tax Appeals
Riverfront Professional Tower
500 Federal Street
Troy, NY 12180-2893

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][1]).

Exceptions must be filed within 30 days after the giving of notice of the determination of the Administrative Law Judge or within the time granted by the Tribunal for an extension of time to file an exception (Tax Law § 2006[7]; 20 NYCRR 3000.11[a][1] and [2]). An extension of

the 30-day period for filing an exception may be granted by the Tribunal provided an application is filed within such period and served on the other party, and if good cause is shown (20 NYCRR 3000.11[a][1]). An exception that is not timely received by the Tribunal may be treated as timely filed if the envelope containing the extension request bears a United States Postal Service postmark which falls within the prescribed period or on or before the prescribed date for filing (20 NYCRR 3000.16[a][1]).

The exception, or a request for an extension of time to file an exception, to the determination of the Administrative Law Judge in this matter was due September 8, 1992. The exception to the determination of the Administrative Law Judge in this matter was received by the Office of the Secretary to the Tribunal on October 9, 1992. The envelope containing the exception bears a United States Postal Service postmark of October 5, 1992, which is not within the prescribed period or on or before the prescribed date for filing. Therefore, it was not timely filed as required by Tax Law § 2006(7), and the Tribunal lacks jurisdiction to review petitioners' exception.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

On the Tax Appeals Tribunal's own motion, the exception of petitioners Jerry Litt, Ltd. and Jerry Litt, as Officer be, and hereby is, dismissed with prejudice as of this date.

DATED: Troy, New York
May 6, 1993

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

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

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