

STATE OF NEW YORK
TAX APPEALS TRIBUNAL

In the Matter of the Petition :
of :
WESTWOOD AT CORAM CO. : DECISION
for Revision of a Determination or for Refund of Tax on : DTA No. 810153
Gains Derived from Certain Real Property Transfers :
under Article 31-B of the Tax Law. :

Petitioner Westwood at Coram Co., c/o Island Realty, 1121 Walt Whitman Road, Melville, New York 11747, filed an exception to the determination of the Administrative Law Judge issued on June 3, 1993. Petitioner appeared by Michael L. Weinstein, Esq. The Division of Taxation appeared by William F. Collins, Esq. (Kenneth J. Schultz, Esq., of counsel).

On August 12, 1993, 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. Only the Division of Taxation (hereinafter the "Division") submitted a response to the Notice of Intent to Dismiss. Any responses from the parties were due on September 13, 1993 and this date began the six-month period to issue this decision.

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 the Division to the Tribunal's Notice of Intent to Dismiss, the Tribunal renders the following decision per curiam.

ISSUE

Whether petitioner timely filed its 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 petitioner on June 3, 1993, at petitioner's last known address at 870 Jericho Turnpike, Nesconset, New York 11767.¹ A copy of the determination of the Administrative Law Judge was also mailed, on June 3, 1993, to petitioner's representative, Michael L. Weinstein, Esq., at 445 Broad Hollow Road, Melville, New York 11747.

Petitioner's exception to the determination of the Administrative Law Judge was received by the Office of the Secretary to the Tribunal on July 14, 1993. The envelope containing the exception bears an office metered postmark of July 12, 1993.

On August 12, 1993, 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. Petitioner did not respond. The Division responded by letter dated September 7, 1993.

OPINION

Subdivision 7 of section 2006 of the Tax Law provides that the Tribunal shall have the following functions, 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:

¹The determination was returned to the Division of Tax Appeals by the United States Postal Service marked "Addressee unknown" and "unknown as addressed" on June 11, 1993. A review of the Division of Tax Appeals' file disclosed no other address had been provided. Therefore, on June 16, 1993, petitioner's determination was remailed to petitioner in care of petitioner's representative.

Secretary to the Tax Appeals Tribunal
State of New York
Division of Tax Appeals
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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]).

20 NYCRR 3000.16(b)(1) provides as follows:

"[i]f the postmark on the envelope or wrapper containing the document is made by other than the United States Postal Service (i.e., office metered mail):

"(i) the postmark so made must bear a date which falls within the prescribed period or on or before the prescribed date for filing the document (including any extension of time granted for filing the document); and

"(ii) the document must be received by the State of New York Division of Tax Appeals or the Tax Appeals Tribunal . . . not later than the time when an envelope or other appropriate wrapper which is properly addressed and mailed and sent by the same class of mail would ordinarily be received if it were postmarked at the same point of origin by the United States Postal Service within the prescribed period or on or before the prescribed date for filing . . ." (20 NYCRR 3000.16[b][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], [2]). The exception to the determination of the Administrative Law Judge in this matter was due on July 6, 1993. It was received by the office of the Secretary to the Tax Appeals Tribunal on July 14, 1993. The envelope containing the exception bears an office metered postmark of July 12, 1993. As the office metered postmark does not fall within the prescribed period for filing an exception, the exception was not timely filed and the Tribunal lacks jurisdiction to review it (20 NYCRR 3000.16[b][1]).

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

On the Tax Appeals Tribunal's own motion, the exception of petitioner Westwood at Coram Co. is hereby dismissed with prejudice as of this date.

DATED: Troy, New York
December 23, 1993

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

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