

STATE OF NEW YORK
TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
ARTA, INC.	:	DECISION
	:	DTA No. 811221
for Revision of a Determination or for Refund	:	
of Real Estate Transfer Tax under Article 31	:	
of the Tax Law.	:	

Petitioner Arta, Inc., 97-12 63rd Drive, Rego Park, New York 11374, filed an exception to the determination of the Administrative Law Judge issued on September 16, 1993. Petitioner appeared by its president, Djalil Bassaly. The Division of Taxation appeared by William F. Collins, Esq. (Donald C. DeWitt, Esq., of counsel).

On November 24, 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. Neither party responded to the Notice. Any responses from the parties were due on December 24, 1993 and this date began the six-month period to issue this decision.

On its own motion, after reviewing the determination, the exception and the mailing records of the Division of Tax Appeals in this matter, 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 September 16, 1993, at petitioner's last known address at 97-12 63rd Drive, Rego Park, New York 11374.

Petitioner's exception to the determination of the Administrative Law Judge was received by the Office of the Secretary to the Tribunal on November 2, 1993. The envelope containing the exception bears a United States Postal Service postmark of October 27, 1993.

On November 24, 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. Neither party responded to the Notice.

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:

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], [2]). The exception to the determination of the Administrative Law Judge in this matter was due on October 18, 1993. It was received by the office of the Secretary to the Tax Appeals Tribunal on November 2, 1993. The envelope containing the exception bears a United States Postal Service postmark of October 27, 1993. Therefore, the exception was not timely filed as required by Tax Law § 2006(7), 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 petitioner Arta, Inc. is hereby dismissed with prejudice as of this date.

DATED: Troy, New York
April 28, 1994

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

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