

STATE OF NEW YORK  
TAX APPEALS TRIBUNAL

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In the Matter of the Petition :  
of :  
**BI-COUNTY ELECTRIC CORPORATION** :  
for Revision of a Determination or for Refund :  
of Sales and Use Taxes under Articles 28 and 29 :  
of the Tax Law for the Period June 1, 1987 :  
through February 28, 1991. :

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DECISION  
DTA Nos. 811880  
and 811883

In the Matter of the Petition :  
of :  
**ROBERT E. REZNY, OFFICER OF** :  
**BI-COUNTY ELECTRIC CORPORATION** :  
for Revision of a Determination or for Refund :  
of Sales and Use Taxes under Articles 28 and 29 :  
of the Tax Law for the Period June 1, 1987 :  
through February 28, 1991. :

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Petitioners Bi-County Electric Corporation, 2279 Jerusalem Avenue, North Bellmore, New York 11710-1820 and Robert E. Rezny, Officer of Bi-County Electric Corporation, 247 Park Avenue, Merrick, New York 11566-2836, filed an exception to the determination of the Presiding Officer issued on March 30, 1995. Petitioner Bi-County Electric Corporation appeared pro se by Robert E. Rezny its president. Petitioner Robert E. Rezny appeared pro se. The Division of Taxation appeared by Steven U. Teitelbaum, Esq. (Christina L. Seifert, Esq., of counsel).

On August 24, 1995, the Tax Appeals Tribunal (hereinafter the "Tribunal") issued a Notice of Intent to Dismiss this exception on the grounds that it was precluded by Tax Law § 2012 and was not timely filed. The parties were given until September 28, 1995 to respond. Petitioners and the Division of Taxation responded to the Notice of Intent to Dismiss. Any

responses from the parties were due on September 28, 1995 and this date began the six-month period for the issuance of 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 responses of the parties to the Tribunal's Notice of Intent to Dismiss, the Tribunal renders the following decision.

### ***ISSUE***

Whether the Tax Appeals Tribunal has subject matter jurisdiction over petitioners' exception.

### ***FINDINGS OF FACT***

We find the following facts.

The determination of the Presiding Officer was mailed to petitioner Bi-County Electric Corporation on March 30, 1995 at its last known address at 2279 Jerusalem Avenue, North Bellmore, New York 11710-1820 and to petitioner Robert E. Rezny, Officer of Bi-County Electric Corporation on March 30, 1995 at his last known address at 247 Park Avenue, Merrick, New York 11566-2836.

Petitioners' exception to the determination of the Presiding Officer was received by the Office of the Secretary to the Tribunal via facsimile transmission on May 3, 1995. The records of the Tax Appeals Tribunal do not contain any other exception filed by petitioners.

On August 24, 1995, the Tribunal issued a Notice of Intent to Dismiss this exception on the grounds that it was precluded by Tax Law § 2012 and was not timely filed. The parties were given until September 28, 1995 to respond. The Division responded by a letter dated September 28, 1995 stating it agreed with the Tribunal's intention to issue a decision dismissing the exception. Petitioners responded by a letter dated September 21, 1995 asking the Tribunal to reconsider its intent to dismiss the exception. In addition, petitioners submitted proof in the form of a Receipt for Certified Mail, PS Form 3800, that an article of mail, article number Z410854428, was mailed to the Secretary to the Tax Appeals Tribunal on May 1, 1995. Also

submitted was a Domestic Return Receipt, PS Form 3811, indicating acceptance by the Division of Tax Appeals of an article of mail, article number Z410854428, on May 3, 1995.

***OPINION***

With respect to the timeliness of the exception in this matter, we find that petitioners have proven, by the submission of the Receipt for Certified Mail and the Domestic Return Receipt, that their exception was filed on May 1, 1995, which date is within 30 days from the issuance of the Presiding Officer's determination.

However, the exception in this matter was filed to appeal a determination of a Presiding Officer. Tax Law § 2012 provides as follows with respect to a determination of a Presiding Officer:

"The final determination of the presiding officer in the small claims unit shall be conclusive upon all parties and shall not be subject to review by any other unit in the division of tax appeals, by the tax appeals tribunal or by any court of the state."

20 NYCRR 3000.13(h)(2) provides, in part, as follows:

"Effect of determination. The final determination of the presiding officer shall be conclusive upon all parties and shall not be subject to review by any other unit in the division of tax appeals or by the tribunal."

Therefore, while petitioners' exception was timely filed, exceptions to determinations of presiding officers are precluded by Tax Law § 2012 and 20 NYCRR 3000.13(h)(2) (see also, Matter of Morrock, Tax Appeals Tribunal, April 28, 1994).

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

On the Tax Appeals Tribunal's own motion, the exception of petitioners Bi-County Electric Corporation and Robert E. Rezny, Officer of Bi-County Electric Corporation be, and hereby is, dismissed with prejudice as of this date.

DATED: Troy, New York  
February 1, 1996

/s/John P. Dugan

John P. Dugan  
President

/s/Francis R. Koenig

Francis R. Koenig  
Commissioner

/s/Donald C. DeWitt

Donald C. DeWitt  
Commissioner