

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
THOMAS KOHLER, AS OFFICER OF	:	DECISION
CHAMPALE BEER DISTRIBUTORS, INC.	:	DTA No. 812582

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 December 1, 1990 through August 31, 1992.
:

Petitioner Thomas Kohler, as Officer of Champale Beer Distributors, Inc., 1585 Partridge Street, Toms River, New Jersey 08753, filed an exception to the determination of the Administrative Law Judge issued on August 11, 1994. Petitioner appeared *pro se*. The Division of Taxation appeared by William F. Collins, Esq. (Christina L. Seifert, Esq., of counsel).

On November 3, 1994, 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 petitioner submitted a response to the Notice of Intent to Dismiss. Any responses from the parties were due on December 5, 1994 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 petitioner to the Tribunal's Notice of Intent to Dismiss, the Tribunal renders the following decision per curiam.

ISSUE

Whether petitioner timely filed his 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 August 11, 1994, at petitioner's last known address at 1585 Partridge Street, Toms River, New Jersey 08753. A copy of the determination of the Administrative Law Judge was also mailed, on August 11, 1994, to petitioner's then representative, James T. Murphy, Esq., at 30 Bay Street, Staten Island, New York 10301.

Petitioner's exception to the determination of the Administrative Law Judge was received by the Office of the Secretary to the Tribunal on October 13, 1994. The envelope containing the exception bears a United States Postal Service postmark of October 11, 1994.

On November 3, 1994, 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 responded by a letter which was received on December 2, 1994. The Division of Taxation did not respond.

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 September 12, 1994. It was received by the office of the Secretary to the Tax Appeals Tribunal on October 13, 1994. The envelope containing the exception bears a United States Postal Service postmark of October 11, 1994. Therefore, the exception was not timely filed as required by Tax Law § 2006(7), and the Tribunal lacks jurisdiction to review it.

In his response to the Notice of Intent to Dismiss, petitioner acknowledges that he filed his appeal late but this was due to his frame of mind after having filed for bankruptcy (personal). Petitioner also argues the merits of his case. Petitioner's reason for filing his exception late does not empower us to waive the 30-day time period for filing an exception. In addition, as noted above, we cannot address the merits of petitioner's case as the Tribunal has no jurisdiction to review the matter.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

On the Tax Appeals Tribunal's own motion, the exception of petitioner Thomas Kohler, as Officer of Champale Beer Distributors, Inc. is hereby dismissed with prejudice as of this date.

DATED: Troy, New York
April 27, 1995

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

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