

STATE OF NEW YORK
TAX APPEALS TRIBUNAL

In the Matter of the Petition :
of :
LEE PEPIN, OFFICER OF DESIGNS BY LEE, INC. : DECISION
for Revision of a Determination or for Refund : DTA No. 813006
of Sales and Use Taxes under Articles 28 and 29 :
of the Tax Law for the Period March 1, 1986 :
through August 31, 1989. :

Petitioner Lee Pepin, Officer of Designs by Lee, Inc., 129 Interlaken Road, Stamford, Connecticut 06903-5099, filed an exception to the determination of the Administrative Law Judge issued on May 4, 1995. Petitioner appeared pro se. The Division of Taxation appeared by Steven U. Teitelbaum, Esq. (Christina L. Seifert, Esq., of counsel).

On July 27, 1995, 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.¹ The parties were given until August 31, 1995 to respond. Only the Division of Taxation submitted a response to the Notice of Intent to Dismiss. Any responses from the parties were due on August 31, 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 response of the Division to the Tribunal's Notice of Intent to Dismiss, the Tribunal renders the following decision.

ISSUE

Whether petitioner timely filed his exception to the determination of the Administrative Law Judge.

¹Petitioner was also informed by the covering letter to the Notice of Intent that there was a second jurisdictional issue because the person signing the exception did not have a current valid power of attorney on file. Petitioner was given several alternatives to ratify the filing of the exception. No response to this issue was received.

FINDINGS OF FACT

We find the following facts.

The determination of the Administrative Law Judge was mailed to petitioner on May 4, 1995 at petitioner's last known address at 129 Interlaken Road, Stamford, Connecticut 06903-5099.

Petitioner's exception to the determination of the Administrative Law Judge was received by the Office of the Secretary to the Tribunal on June 21, 1995. The envelope containing the exception bears a United States Postal Service postmark of June 19, 1995.

On July 27, 1995, the Tribunal issued a Notice of Intent to Dismiss this exception on the ground that it was not timely filed. The parties were given until August 31, 1995 to respond. The Division responded by a letter dated August 31, 1995.

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 3000.17(a)(1) provides as follows:

"[w]ithin 30 days after the giving of notice of the determination of the 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 office of counsel" (20 NYCRR 3000.17[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 3000.17[a][1], [2]). The exception to the determination of the Administrative Law Judge in this matter was due on June 5, 1995. It was received by the Office of the Secretary to the Tax Appeals Tribunal on June 21, 1995. The envelope containing the exception bears a United States Postal Service postmark of June 19, 1995. Therefore, the exception was not timely filed as required by Tax Law § 2006(7) and the Tribunal lacks jurisdiction to review it.

The covering letter to the Notice of Intent informed petitioner that there was no power of attorney on file for Mr. William T. Galasso, the person signing petitioner's exception. (Mr. Galasso's previous power of attorney had been revoked by a subsequently filed power of attorney.) Petitioner was provided various options that would allow for ratification of the exception filed. No response to this issue was received from petitioner. Therefore, this exception is also jurisdictionally flawed because petitioner did not sign the exception and the person signing the exception did not have in effect a valid power of attorney authorizing him to represent petitioner.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

On the Tax Appeals Tribunal's own motion, the exception of petitioner Lee Pepin, Officer of Designs by Lee, Inc. be, and hereby is, dismissed with prejudice as of this date.

DATED: Troy, New York
January 11, 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