

STATE OF NEW YORK  
TAX APPEALS TRIBUNAL

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In the Matter of the Petition :  
of :

**MOHAMAD MEHDI AND AZAR KESHAVARZ-ARSHADI :**

DECISION  
DTA No. 813019

for Redetermination of a Deficiency or for Refund of New York :  
State Personal Income Tax under Article 22 of the Tax Law and :  
New York City Personal Income Tax under the Administrative :  
Code of the City of New York for the Years 1977, 1978 and 1979.

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Petitioners Mohamad Mehdi and Azar Keshavarz-Arshadi, 171 Devon Road, Colonia, New Jersey 07067, filed an exception to the determination of the Administrative Law Judge issued on August 8, 1996. Petitioners appeared by Karim Arzadi, Esq. and Sidney Finkelstein, CPA. The Division of Taxation appeared by Steven U. Teitelbaum, Esq. (Herbert M. Friedman, Jr., Esq., of counsel).

On September 20, 1996, the Tax Appeals Tribunal (hereinafter the "Tribunal") issued a Notice of Intent to Dismiss Exception on the ground that petitioners' exception was not timely filed. The parties were given until October 25, 1996 to respond. Both parties submitted responses to the Notice of Intent to Dismiss Exception.

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 Exception, the Tribunal renders the following decision per curiam.

***ISSUE***

Whether petitioners timely filed their 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 petitioners on

August 8, 1996 at petitioners' last known address at 171 Devon Road, Colonia, New Jersey 07067. A copy of the determination was also sent to petitioners' representatives, Sidney Finkelstein, CPA, at 160 Tices Lane, East Brunswick, New Jersey 08816-2016 and Karim Arzadi, Esq., at 163 Market Street, Perth Amboy, New Jersey 08861.

A copy of petitioners' exception to the determination of the Administrative Law Judge was received by the Office of the Secretary to the Tax Appeals Tribunal on September 19, 1996. The envelope containing the copy of the exception bears a United States Postal Service postmark of September 17, 1996. No original exception was ever received by the Tribunal.

On September 20, 1996, the Tribunal issued a Notice of Intent to Dismiss Exception on the ground that petitioners' exception was not timely filed. The parties were given until October 25, 1996 to respond. Petitioners responded by a letter dated October 24, 1996. The Division of Taxation (hereinafter the "Division") responded by a letter dated September 26, 1996.

### ***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) and 3000.22(a)(1) provide 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]).

"[i]f any document required to be filed under this Part within a

prescribed period or on or before a prescribed date under authority of any provision of article 40 of the Tax Law is, after such period or date, delivered by United States mail to the New York State Division of Tax Appeals or Tax Appeals Tribunal, Riverfront Professional Tower, 500 Federal Street, Troy, NY 12180, the date of the United States postmark stamped on the envelope or other appropriate wrapper in which such document is contained will be deemed to be the date of filing" (20 NYCRR 3000.22[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]). The exception to the determination of the Administrative Law Judge in this matter was due on September 9, 1996. It was received by the Office of the Secretary to the Tribunal on September 19, 1996. The envelope containing the exception bears a United States Postal Service postmark of September 17, 1996. Therefore, the exception was not timely filed as required by Tax Law § 2006(7), and the Tribunal lacks jurisdiction to review it.

In their response to the Notice of Intent to Dismiss Exception, petitioners do not dispute that the "exception was not received in strict accordance with the time frame requirements" (Petitioners' Response to Notice of Intent to Dismiss Exception, p. 1). Petitioners assert, however, that a car accident that occurred on July 7, 1996, in which they were severely injured, prevented them from timely filing an exception. Petitioners further argue that "[t]here is no prejudice to the State by this nominal delay" and, therefore, the exception should "be accepted as being timely filed" (Petitioners' Response to Notice of Intent to Dismiss Exception, p. 2).

If petitioners felt that they were unable to file an exception within the 30-day time period, they could have requested an extension of time to file their exception (20 NYCRR 3000.17[a][2]). While petitioners' involvement in a car accident is certainly unfortunate, it does not empower us to waive the statutory 30-day time period for filing an exception.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

On the Tax Appeals Tribunal's own motion, the exception of petitioners Mohamad Mehdi and Azar Keshavarz-Arshadi is dismissed with prejudice as of this date.

DATED: Troy, New York  
February 6, 1997

/s/Donald C. DeWitt  
Donald C. DeWitt  
President

/s/Carroll R. Jenkins  
Carroll R. Jenkins  
Commissioner

/s/Joseph W. Pinto, Jr.  
Joseph W. Pinto, Jr.  
Commissioner