

STATE OF NEW YORK
TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
CHARALAMBOS AND PARASKEVI BALLIS	:	DECISION
	:	DTA No. 814182
for Redetermination of a Deficiency or for	:	
Refund of New York State and New York City	:	
Personal Income Taxes under Article 22 of the	:	
Tax Law and the New York City Administrative	:	
Code for the Years 1983 and 1984.	:	

Petitioners Charalambos and Paraskevi Ballis, 15-74 216th Street, Bayside, New York 11360, filed an exception to the amended determination of the Administrative Law Judge issued on February 20, 1997. Petitioners appeared pro se. The Division of Taxation appeared by Steven U. Teitelbaum, Esq. (Craig Gallagher, Esq., of counsel).

On May 22, 1997, 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 June 23, 1997 to respond. Neither party responded to the notice.

On its own motion, after reviewing the amended determination, the exception and the mailing records of the Division of Tax Appeals in this matter, the Tribunal renders the following decision.

ISSUE

Whether petitioners timely filed their exception to the amended determination of the Administrative Law Judge.

FINDINGS OF FACT

We find the following facts.

The amended determination of the Administrative Law Judge was mailed to petitioners on February 20, 1997 at petitioners' last known address at 15-74 216th Street, Bayside, New York 11360. A copy of the amended determination was also sent to petitioners' representative,

Chris Pysros, CPA, at 34-20 31st Avenue, Astoria, New York 11106.

Petitioners' exception to the amended determination of the Administrative Law Judge was received by the Office of the Secretary to the Tribunal on May 19, 1997. The envelope containing the exception bears a United States Postal Service postmark of May 16, 1997.

On May 22, 1997, 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 June 23, 1997 to respond. No response was received from either party.

OPINION

Section 2006 of the Tax Law provides that the Tribunal shall have certain functions, powers and duties. Tax Law § 2006(7) provides, in pertinent part, as follows:

"7. To 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."

The Tribunal's regulation at 20 NYCRR 3000.17(a)(1) provides as follows:

"Within 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 office of counsel."

The Tribunal's regulation at 20 NYCRR 3000.22(a)(1) provides as follows:

"If 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."

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 amended determination of the Administrative Law Judge in this matter was due on March 24, 1997. It was received by the Office of the Secretary to the Tribunal on May 19, 1997. The envelope containing the exception bears a United States Postal Service postmark of May 16, 1997. 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 petitioners Charalambos and Paraskevi Ballis is dismissed with prejudice as of this date.

DATED: Troy, New York
November 26, 1997

Donald C. DeWitt
President

Carroll R. Jenkins
Commissioner

Joseph W. Pinto, Jr.
Commissioner