

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
RICHARD GOODIN	:	DECISION
	:	DTA NO. 816623
for Redetermination of a Deficiency or for Refund of Personal Income Tax under Article 22 of the Tax Law and the New York City Administrative Code for the Years 1990, 1991, 1992 and 1993.	:	

Petitioner Richard Goodin, 19 Willoughby Avenue, Brooklyn, New York 11205-3307 filed an exception to the order of the Administrative Law Judge issued on November 25, 1998.

Petitioner appeared by Howard R. Rosenthal, CPA. The Division of Taxation appeared by Terrence M. Boyle, Esq. (Christina L. Seifert, Esq., of counsel).

On January 28, 1999, the Tax Appeals Tribunal (hereinafter the "Tribunal") issued a Notice of Intent to Dismiss Exception pursuant to 20 NYCRR 3000.9(a)(6) on the ground that petitioner's exception was not timely filed. The parties were given until March 4, 1999 to respond. A response to the Notice was filed by petitioner. The Division of Taxation did not submit a response.

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

ISSUE

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

FINDINGS OF FACT

We find the following facts.

The order of the Administrative Law Judge dismissing the petition of Richard Goodin was mailed by certified mail (certified control number Z 143 716 945) in Troy, New York to petitioner on November 25, 1998 at petitioner's last known address at 19 Willoughby Avenue, Brooklyn, New York 11205-3307. A copy of the order was also mailed by certified mail (certified control number Z 143 716 946) on November 25, 1998 to petitioner's representative Howard W. Rosenthal, CPA, 161-19 Horace Harding Expressway, Flushing, New York 11365.

Petitioner's exception to the order of the Administrative Law Judge was received by the Office of the Secretary to the Tribunal on January 21, 1999. The envelope containing the exception bears a United States Postal Service postmark of January 19, 1999.

On January 28, 1999, the Tribunal issued a Notice of Intent to Dismiss Exception pursuant to 20 NYCRR 3000.9(a)(6) on the ground that petitioner's exception was not timely filed. The parties were given until March 4, 1999 to respond. Petitioner responded by correspondence dated March 2, 1999.

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:

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 3000.1(l) provides that a "determination" includes the report which grants or denies a motion to dismiss a petition. The order of the Administrative Law Judge dismissing the petition of Richard Goodin was a "determination" to which an exception could be taken.

The Tribunal's regulation at 20 NYCRR 3000.23(a) provides as follows:

Service of decisions, determinations and orders of the tribunal, administrative law judges and presiding officers shall be made by mail. Registered and certified mail will be used and service shall be complete upon the deposit of the appropriate document, enclosed in a post-paid properly addressed wrapper, in a post office or official depository under the exclusive care and custody of the United States postal service. Such service shall constitute the giving of notice pursuant to section 2006(7) of the Tax Law and service pursuant to section 2016 of the Tax Law.

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:

Date of filing. 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. Where delivery is made by courier, delivery, messenger or similar services, the date of delivery will be deemed to be the date of filing.

Exceptions must be filed within 30 days after the giving of notice of the determination or order 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 order of the Administrative Law Judge in this matter was required to be filed by December 28, 1998. The envelope containing the exception bears a United States Postal Service postmark of January 19, 1999 which date is deemed to be the date of filing (*see*, 20 NYCRR 3000.22[a][1]). Therefore, the exception was not timely filed as required by Tax Law § 2006(7).

Pursuant to 20 NYCRR 3000.9(a)(6), the Tax Appeals Tribunal may, on its own motion and after notice to the parties, issue a decision dismissing the exception on the ground that the Tribunal lacks jurisdiction over the subject matter of the exception. In his response to the Notice of Intent to Dismiss Exception, petitioner has not presented any arguments that are relevant to the issue of timeliness of the exception. Instead, petitioner acknowledged that the exception was not timely filed. Therefore, as stated above, since the exception was not timely filed as required by Tax Law § 2006(7), 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 Richard Goodin is dismissed with prejudice as of this date.

DATED: Troy, New York
August 5, 1999

/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