

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

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| In the Matter of the Petition                        | : |                  |
| of   | : |                  |
| <b>RICHARD E. &amp; SABELLE F. GRAY</b>              | : | DECISION         |
| for Redetermination of a Deficiency or for Refund of | : | DTA NOS. 818339, |
| New York State and New York City Personal Income     | : | 818340 & 818341  |
| Taxes under Article 22 of the Tax Law and the New    | : |                  |
| York City Administrative Code for the Years 1984     | : |                  |
| through 1987 and 1992 through 1994.                  | : |                  |

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Petitioners Richard E. and Sabele F. Gray,<sup>1</sup> c/o Richard Asche, 45 Broadway Atrium, New York, New York 10006, filed an exception to the order of the Administrative Law Judge issued on October 3, 2002. Petitioners appeared *pro se*. The Division of Taxation appeared by Barbara G. Billet, Esq. (Kevin R. Law, Esq., of counsel).

On November 25, 2002, 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 December 30, 2002 to respond. Petitioners filed a response to the Notice on December 13, 2002.

After reviewing the entire record in this matter, the Tax Appeals Tribunal renders the following decision.

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<sup>1</sup>Petitioner Sabele F. Gray’s involvement in this matter appears to be limited to having filed a joint return with her husband. Accordingly, references to the term “petitioner” shall be understood to mean Richard E. Gray.

***ISSUE***

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

***FINDINGS OF FACT***

We find the following facts.

The Division of Tax Appeals mailed the order of the Administrative Law Judge by certified mail (certified control number 7002 0860 0008 3339 1024) in Troy, New York to Richard E. and Sabele F. Gray on October 3, 2002 at their last known address of 50 North Street, P. O. Box 625, Litchfield, CT 06759.

Petitioner's exception to the order of the Administrative Law Judge was received by the Office of the Secretary to the Tribunal on November 18, 2002. The envelope containing the exception bears a United States Postal Service postmark of November 12, 2002.

***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 3000.17(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.

Further, 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 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]). An exception received by this Tribunal after the date it was due is deemed to be filed on the date of the United States Postal Service postmark stamped on the envelope (20 NYCRR 3000.22[a][1]). The exception in this matter was due on November 4, 2002.<sup>2</sup> The envelope containing petitioner's exception bears

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<sup>2</sup>November 2, 2002 is the 30<sup>th</sup> day from October 3, 2002. However, as November 2, 2002 fell on a Saturday, the exception was required to be filed by Monday, November 4, 2002 (*see*, General Construction Law §§ 20, 25-a).

a United States Postal Service postmark of November 12, 2002. 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 Exception, petitioner claims that his exception was not timely filed because he is incarcerated in Missouri and is not allowed to post his own mail but has to rely on jail personnel to do so for him. Despite the difficult circumstances in which petitioner finds himself, there is no authority to extend the time within which petitioner could timely file an exception to the Administrative Law Judge's order due to petitioner's incarceration.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

On the Tax Appeals Tribunal's own motion, the exception of petitioner Richard E. and Sabele F. Gray a is dismissed with prejudice as of this date.

DATED: Troy, New York  
May 29, 2003

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

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