

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
RICHARD ULLOA	:	DECISION
	:	DTA NO. 820136
for Redetermination of Deficiencies or for Refund of Personal Income Tax under Article 22 of the Tax Law for the Years 1999 and 2002.	:	

Petitioner Richard Ulloa, 22 Ridge Mountain Road, Stone Ridge, New York 12484, filed an exception to the determination of the Administrative Law Judge issued on February 17, 2005. Petitioner appeared *pro se*. The Division of Taxation appeared by Christopher C. O'Brien, Esq. (Michele W. Milavec, Esq., of counsel).

On May 9, 2005, the Tax Appeals Tribunal (hereinafter the "Tribunal") issued a Notice of Intent to Dismiss Exception on the ground that petitioner's exception was not timely filed. The parties were given until June 13, 2005 to respond. Neither party filed a response to the Notice.

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

ISSUE

Whether petitioner timely filed his 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 by certified mail (certified control number 7004 1160 0000 8903 0168) in Troy, New York to petitioner on February 17, 2005 at petitioner's last known address at 22 Ridge Mountain Road, Stone Ridge, New York 12484. Petitioner did not request an extension of time within which to file an exception.

Petitioner's exception to the determination of the Administrative Law Judge was received by the Office of the Secretary to the Tax Appeals Tribunal on May 5, 2005. The envelope containing the exception bore a United States Postal Service postmark of May 3, 2005.

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.

The Tribunal's regulation at 20 NYCRR 3000.23(a) provides that service of determinations and orders shall be made by registered or certified mail and shall be complete upon enclosing the document in a post-paid properly addressed wrapper and depositing it in a post office under the exclusive care and custody of the United States Postal Service. Following this procedure constitutes the giving of notice under section 2006(7) of the Tax Law.

Exceptions must be filed within 30 days after the giving of notice of the determination of an 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]).

In this case, the determination was served on petitioner on February 17, 2005 and the exception to the determination of the Administrative Law Judge was due to be filed on or before March 21, 2005.¹ The envelope containing petitioner's exception bears a United States Postal

¹ March 19, 2005 is the 30th day from February 17, 2005. However, as March 19, 2005 fell on a Saturday, the exception was required to be filed by Monday, March 21, 2005 (*see*, General Construction Law §§ 20, 25-a).

Service postmark of May 3, 2005. Therefore, the exception was not timely filed as required by Tax Law § 2006(7) and the Tribunal lacks jurisdiction to review it.

In a letter accompanying his exception, petitioner claims that the exception was not filed earlier due to a knee operation on February 14, 2005. However, petitioner did not request an extension of time to file his exception and, absent that, there is no authority to extend the statutory time within which petitioner could timely file an exception to the Administrative Law Judge's determination.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

On the Tax Appeals Tribunal's own motion, the exception of petitioner Richard Ulloa is dismissed with prejudice as of this date.

DATED: Troy, New York
December 8, 2005

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

/s/Robert J. McDermott
Robert J. McDermott
Commissioner