

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

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In the Matter of the Petition :

of :

**J. WILLIAM HOLT** :

DECISION  
DTA NO. 820283

for Redetermination of a Deficiency or for Refund of New York State and New York City Personal Income Tax under Article 22 of the Tax Law and the Administrative Code of the City of New York for the Years 1994 through 1997.

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Petitioner J. William Holt, Amen Farm, 523 Naskeag Point Road, Brooklin, Maine 04616, filed an exception to the determination of the Administrative Law Judge issued on November 2, 2006. Petitioner appeared *pro se*. The Division of Taxation appeared by Daniel Smirlock, Esq. (Peter B. Ostwald, Esq., of counsel).

On February 7, 2007, 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 March 14, 2007 to respond. Petitioner did not respond to the Notice. The Division of Taxation filed a letter urging that the matter be dismissed as untimely filed.

After reviewing the entire record 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 7006 0810 0005 4831 4104) in Troy, New York to petitioner on November 2, 2006 at petitioner's last known address at Amen Farm, 523 Naskeag Point Road, Brookline [sic], Maine 04616.

Petitioner filed an exception to the determination of the Administrative Law Judge which was received by the Office of the Secretary to the Tribunal on January 31, 2007. The envelope containing the exception bore a United States Postal Service postmark of January 29, 2007.

***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, that the Tribunal shall have the power:

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 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.

The Tribunal's regulation at 20 NYCRR 3000.23(a) provides that service of determinations 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 or official depository 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 (*see*, 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 November 2, 2006 and the exception in this matter was due to be filed on or before December 4, 2006.<sup>1</sup> The envelope containing petitioner's exception bears a United States Postal Service postmark of January 29, 2007. 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:

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<sup>1</sup>December 2, 2006 is the 30th day from November 2, 2006. However, as December 2, 2006 fell on a Saturday, the exception was required to be filed by Monday, December 4, 2006 (*see*, General Construction Law §§ 20, 25-a).

On the Tax Appeals Tribunal's own motion, the exception of J. William Holt is dismissed with prejudice as of this date.

DATED: Troy, New York  
September 6, 2007

/c/ Charles H. Nesbitt  
Charles H. Nesbitt  
President

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

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