

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
ALAN NEWMAN	:	DECISION
	:	DTA NO. 820300
for Revision of a Determination or for Refund of Sales	:	
and Use Taxes under Articles 28 and 29 of the Tax Law	:	
for the Periods June 1, 1999 through November 30,	:	
1999 and March 1, 2000 through August 31, 2000.	:	

Petitioner Alan Newman, 14 Macintosh Lane, Monsey, New York 10952-1636, filed an exception to the determination of the Administrative Law Judge issued on May 18, 2006.

Petitioner appeared by Alan P. Licciardello, CPA. The Division of Taxation appeared by Mark F. Volk, Esq. (Michele W. Milavec, Esq., of counsel).

On July 6, 2006, 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 August 10, 2006 to respond. A response to the Notice was filed by petitioner on July 13, 2006 and by the Division of Taxation on July 21, 2006.

On its own motion, after reviewing the determination, the exception, the mailing records of the Division of Tax Appeals in this matter and the responses of the parties to the Tribunal's Notice of Intent to Dismiss Exception, 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 7005 2570 0001 4656 0637) in Troy, New York to petitioner on May 18, 2006 at petitioner's last known address at 14 Macintosh Lane, Monsey, New York 10952-1636. A copy of the determination was also mailed by certified mail (certified control number 7005 2570 0001 4656 0644) in Troy, New York to petitioner's representative Alan P. Licciardello, CPA, 160-01 95th Street, Howard Beach, New York 11414.

Petitioner filed an exception to the determination which was received by the Office of the Secretary to the Tribunal on July 3, 2006. The envelope containing the exception bore a United States Postal Service ("USPS") postmark of June 30, 2006.

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 or official depository under the exclusive care and custody of the USPS. 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 USPS postmark stamped on the envelope (*see*, 20 NYCRR 3000.22[a][1]).

In this case, the determination was served on petitioner on May 18, 2006 and the exception to the determination of the Administrative Law Judge was due to be filed on or before June 19,

2006.¹ The envelope containing petitioner's exception bore a USPS postmark of June 30, 2006. Therefore, the exception was not timely filed as required by Tax Law § 2006(7).

In his response to the Notice of Intent to Dismiss Exception, petitioner admits that the exception was not filed within 30 days of the issuance of the Administrative Law Judge's determination as his representative was out of town and not able to confer with him. Petitioner then requests that the Tribunal give him another chance to appeal. However, the Tribunal does not have the discretion and is not empowered to waive the 30-day period for filing an exception.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

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

DATED: Troy, New York
January 11, 2007

/s/Charles H. Nesbitt

Charles H. Nesbitt
President

/s/Carroll R. Jenkins

Carroll R. Jenkins
Commissioner

/s/Robert J. McDermott

Robert J. McDermott
Commissioner

¹June 17, 2006 is the 30th day from May 18, 2006. However, as June 17, 2006 fell on a Saturday, the exception was required to be filed by Monday, June 19, 2006 (*see*, General Construction Law, §§ 20, 25-a).