

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
	:	
of	:	
	:	
KENYON D. PURYEAR-EL	:	DECISION
	:	DTA NO. 821559
for Redetermination of a Deficiency/Revision of a	:	
Determination or for Refund of Personal Income Tax	:	
under Article 22 of the Tax Law and the New York	:	
City Administrative Code for the Year 2000.	:	

Petitioner, Kenyon D. Puryear-El, filed an exception to the order of the Administrative Law Judge issued on May 30, 2007. Petitioner appeared *pro se*. The Division of Taxation appeared by Daniel Smirlock, Esq. (John E. Matthews, Esq., of counsel).

On July 5, 2007, the Tax Appeals Tribunal (hereinafter the "Tribunal") issued a Notice of Intent to Dismiss Exception on the grounds that petitioner's exception was not timely filed and the envelope containing the exception did not bear a United States Postal Service Postmark. The parties were given until August 9, 2007 to respond. A response to the Notice was filed by petitioner.

On its own motion, after reviewing the order, 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 order of the Administrative Law Judge.

FINDINGS OF FACT

We find the following facts.

The order of the Administrative Law Judge was mailed by certified mail (certified control number 7006 2150 0003 7752 5886) in Troy, New York to petitioner on May 30, 2007 at petitioner's last known address at c/o 285 East 16th Street, Brooklyn, NY 11226-4519.

Petitioner filed an exception to the order which was received by the Office of the Secretary to the Tax Appeals Tribunal on July 2, 2007. The envelope containing the exception did not bear a United States Postal Service ("USPS") postmark.

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 the 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]).

Petitioner argued that although he agreed that the law clearly states that exceptions must be filed within 30 days after the giving of notice of the determination, he does not agree with the assumption that such notice was given to him on May 30, 2007. Petitioner admits that even though he was out of town, and did not actually become aware of the correspondence until several days afterward, that the Tribunal's receipt of his exception by July 2, 2007 is nevertheless within the 30 day period provided for by law.

In this case, the order was served on petitioner on May 30, 2007 and the exception to the order of the Administrative Law Judge was due to be filed on or before June 29, 2007. It was received by the Office of the Secretary to the Tribunal on July 2, 2007 in an envelope that does

not bear a USPS postmark. Therefore, the exception was not timely filed as required by Tax Law § 2006(7).

Accordingly, it is ORDERED, ADJUDGED, and DECREED that:

On the Tax Appeals Tribunal's own motion, the exception of Kenyon D. Puryear-El is dismissed with prejudice as of this date.

DATED: Troy, New York
January 17, 2008

/s/ Charles H. Nesbitt
Charles H. Nesbitt
President

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

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