

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition :
of :
VALMIRA KURTISHI : DECISION
 : DTA NO. 824357
for Redetermination of a Deficiency or for Refund of :
New York State and City Personal Income Taxes under :
Article 22 of the Tax Law and the Administrative :
Code of the City of New York for the Years 2005, :
2006 and 2007. :

Petitioner, Valmira Kurtishi, filed an exception to the determination of the Administrative Law Judge issued on October 27, 2011. Petitioner appeared *pro se*. The Division of Taxation appeared by Mark Volk, Esq. (John E. Matthews, Esq., of counsel).

On December 14, 2011 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 January 18, 2012 to respond. No responses were filed.

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

ISSUE

Whether petitioner timely filed her 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 7010 1060 0002 3741 4477) in Troy, New York to petitioner on October 27, 2011 at petitioner's last known address at 357 Central Avenue, Wayne, NJ 07470.

Petitioner filed an exception to the determination, which was received by the Office of the Secretary to the Tax Appeals Tribunal on December 5, 2011. The envelope containing the exception bore a United States Postal Service ("USPS") postmark of December 2, 2011.

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 12180-2893¹

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.”

¹ The regulations were recently amended to reflect the Tribunal's new address in Albany, New York.

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 or order 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 October 27, 2011 and the exception to the determination of the Administrative Law Judge was due to be filed on or before November 28, 2011.² The envelope containing petitioner's exception was received by the Office of the Secretary to the Tax Appeals Tribunal on December 5, 2011 and bears a USPS postmark of December 2, 2011. 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:

² November 26, 2011 is the 30th day from October 27, 2011. However, as November 26, 2011 fell on a Saturday, the exception was required to be filed by Monday, November 28, 2011 (*see* General Construction Law §§ 20, 25-a).

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

DATED: Albany, New York
July 12, 2012

/s/ James H. Tully, Jr.
James H. Tully, Jr.
President

/s/ Charles H. Nesbitt
Charles H. Nesbitt
Commissioner