

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
GRJH, INC.	:	DECISION
	:	DTA NO. 825192
for Revision of a Determination or for Refund	:	
of Sales and Use Taxes under Articles 28 and 29	:	
of the Tax Law for the Period June 1, 2009	:	
through February 28, 2010.	:	

Petitioner, GRJH, Inc., filed an exception to the determination of the Administrative Law Judge issued on January 15, 2015. Petitioner appeared by E. Stewart Jones Hacker Murphy, LLP (John F. Harwick, Esq., of counsel). The Division of Taxation appeared by Amanda Hiller, Esq. (Robert A. Maslyn, Esq., of counsel).

On March 9, 2015, the Tax Appeals 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 April 8, 2015 to respond with comments. Petitioner filed a response on April 2, 2015. The Division of Taxation filed a response on April 7, 2015, which was received by the Tribunal on April 9, 2015, which date began the six-month period for the issuance of this decision.

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

ISSUE

Whether petitioner timely filed its exception to the determination of the Administrative Law Judge.

FINDINGS OF FACT

We find the following facts.

1. The determination of the Administrative Law Judge was mailed to petitioner and its representative, John F. Harwick, Esq., on January 15, 2015.
2. Petitioner filed an exception to the determination, which was received by the Secretary to the Tax Appeals Tribunal (Secretary) on March 2, 2015. The envelope containing the exception did not bear a United States Postal Service (USPS) postmark. It did bear a machine metered (Pitney Bowes) postmark that provided for proper postage, but such postmark did not bear a date.
3. On March 9, 2015, the Tax Appeals Tribunal issued a notice of intent to dismiss exception on the ground that petitioner's exception was not timely filed.

OPINION

Notice of an administrative law judge determination is given by registered or certified mail and is complete upon placing such determination, in a post-paid properly addressed envelope, in the exclusive care and custody of the USPS (Tax Law § 2006 [7]; 20 NYCRR 3000.23 [a]). A party has 30 days from the date of such mailing to file an exception (Tax Law § 2006 [7]).

In this case, notice of the administrative law judge determination was properly given to petitioner by certified mail on January 15, 2015 (Tax Law § 2006 [7]; 20 NYCRR 3000.23 [a]). Thus, the exception to the determination of the administrative law judge was due to be filed on or before February 17, 2015.¹ Petitioner's exception was received by the Secretary on March 2, 2015, or 13 days beyond the 30-day statutory period. As noted, the envelope containing

¹ February 14, 2015 is the 30th day from January 15, 2015. However, as February 14, 2015 fell on a Saturday and Monday, February 16, 2015 fell on a holiday, the exception was required to be filed by Tuesday, February 17, 2015 (*see* General Construction Law §§ 20, 25-a).

petitioner's exception did not bear a USPS postmark. Rather, it bore a machine metered postmark that provided for proper postage but did not bear a date.

The timeliness of any mailed document, delivered to the Division of Tax Appeals or Tax Appeals Tribunal after its due date, is generally determined by reference to the date of the postmark on the envelope in which the document is mailed. Where a document bears a USPS postmark, the date of such postmark is deemed to be the date of filing (20 NYCRR 3000.22 [a] [1]). Where, as in the present matter, the postmark on the envelope containing the document is made by other than the USPS, i.e., an office metered postmark, then the determination of timeliness is a bit more complicated (*see* 20 NYCRR 3000.22 [b]), but begins with the requirement that the office metered postmark "must bear a date which falls within the prescribed period or on or before the prescribed date for filing the document" (20 NYCRR 3000.22 [b] [1] [i]). The office metered postmark on the envelope containing petitioner's exception is undated. Accordingly, petitioner's exception may not be deemed timely under 20 NYCRR 3000.22 (b) and the date of delivery of the exception is properly deemed the date of its filing (20 NYCRR 3000.22 [a] [1]).² As the exception was delivered on March 2, 2015 or 13 days beyond the statutory due date, it is properly dismissed as untimely (*see Matter of Finkelman*, Tax Appeals Tribunal, March 6, 2014; *Matter of V & Z Deli, Inc.*, Tax Appeals Tribunal, March 18, 2010).

² We observe that, even if the office metered postmark bore a timely date, petitioner's exception would nonetheless fail the tests for timeliness under 20 NYCRR 3000.22 (b). Specifically, we find that the Secretary's receipt of the exception 13 days after the expiration of the 30-day filing period was later than the time that a timely mailed and USPS-postmarked document would ordinarily be received (*see* 20 NYCRR 3000.22 [b] [1] [ii]). Additionally, insufficient evidence of actual mailing and a lack of evidence regarding any delay in the transmission of the mail results in a failure to establish timeliness under 20 NYCRR 3000.22 (b) (2).

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

On the Tax Appeals Tribunal's own motion, the exception of GRJH, Inc. is dismissed with prejudice.

DATED: Albany, New York
October 8, 2015

/s/ Roberta Moseley Nero
Roberta Moseley Nero
President

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

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