

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition :
of :
GOOD-WILL MECHANICAL CORP. : DECISION
for Revision of a Determination or for Refund of Sales : DTA NO. 825952
and Use Taxes under Articles 28 and 29 of the Tax Law :
for the Period June 1, 2006 through November 30, 2011. :
:

Petitioner, Good-Will Mechanical Corp., filed an exception to the determination of the Administrative Law Judge issued on July 10, 2014. Petitioner appeared by Paul Tong, CPA and Lee Rosen, CPA. The Division of Taxation appeared by Amanda Hiller, Esq. (David Gannon, Esq., of counsel).

On January 27, 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 March 3, 2015 to respond with comments. Neither petitioner nor the Division of Taxation filed a response to the notice of intent to dismiss exception. The six-month period for the issuance of this decision began on March 3, 2015.

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 on July 10, 2014 at petitioner's last known address.

2. Petitioner timely filed with the Secretary to the Tax Appeals Tribunal (Secretary) a request for a 60-day extension of time to file an exception, on the basis that petitioner had retained a new representative. Petitioner was granted until October 10, 2014 to file the exception.

3. Petitioner subsequently timely filed two additional requests for extensions to file its exception. The Secretary granted both requests, which ultimately extended the filing deadline until November 25, 2014.

4. Petitioner filed correspondence with the Administrative Law Judge, dated November 10, 2014, in an envelope that did not bear a United States Postal Service (USPS) date stamp. The correspondence was received by the Division of Tax Appeals on December 5, 2014. This letter did not include an exception form, and did not purport to be an exception.

5. In a letter dated December 31, 2014, petitioner was advised by the Administrative Law Judge that in order to appeal a determination of an administrative law judge, petitioner must timely file an exception with the Secretary.

6. Petitioner filed an exception to the determination, which was received by the Secretary on January 13, 2015. The envelope containing the exception bore a USPS postmark of January 7, 2015.

7. On January 27, 2015, the Tax Appeals Tribunal issued a notice of intent to dismiss exception on the ground that petitioner's exception was not timely filed.¹ As noted, neither party filed a response to the notice of intent.

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]). The Tax Appeals Tribunal may grant an extension of time for filing an exception, provided the extension request is filed within the time period for taking exception to an administrative law judge's determination (*id.*). Exceptions must be filed with the Secretary either in person or by mail (20 NYCRR 3000.17 [a] [1]). An exception delivered by the USPS to the Secretary after the due date is deemed to be filed on the date of the USPS postmark stamped on the envelope (20 NYCRR 3000.22 [a] [1]).

In this case, the notice of the Administrative Law Judge's determination was properly given to petitioner by certified mail on July 10, 2014 (Tax Law § 2006 [7]; 20 NYCRR 3000.23 [a]). Petitioner subsequently filed three timely extension requests to file an exception. The requests were granted, extending the filing deadline until November 25, 2014. Thus, the exception to the determination of the Administrative Law Judge was due to be filed on or before November 25, 2014 (Tax Law § 2006 [7]; 3000.17 [a] [1]). It was received by the Secretary on January 13,

¹ Although the date of issuance of the notice of intent was, in fact, January 27, 2015, page 2 of the notice indicates an issuance date of January 27, 2014. This was a typographical error, not a material error, as all other dates referenced in the notice were correct and the notice was sent under cover letter dated January 27, 2015.

2015, in an envelope that bore a USPS postmark of January 7, 2015, the deemed date of filing (20 NYCRR 3000.22 [a] [1]). Therefore, the exception was not timely filed as required by Tax Law § 2006 (7) and this Tribunal lacks jurisdiction to consider it (*see Matter of Finkelman*, Tax Appeals Tribunal, March, 6, 2014).

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

On the Tax Appeals Tribunal's own motion, the exception of Good-Will Mechanical Corp. is dismissed with prejudice.

DATED: Albany, New York
September 3, 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