

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petitions	:	
of	:	
CARMEN M. QUINONES	:	DECISION
for Redetermination of Deficiencies or for Refund of	:	DTA NOS. 826795,
New York State Personal Income Tax under Article 22 of	:	826804 AND 827510
the Tax Law for the Years 2010, 2011 and 2012.	:	

Petitioner, Carmen M. Quinones, filed an exception to the determination of the Administrative Law Judge issued on August 17, 2017. On October 4, 2017, the Tax Appeals Tribunal (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 November 8, 2017 to respond. The Division of Taxation, appearing by Amanda Hiller, Esq. (Jennifer Hink-Brennan, Esq., of counsel), filed a response on October 11, 2017. Petitioner did not file a response. The six-month period for issuance of this decision began on November 8, 2017, the date that petitioner's response was due.

On its own motion, after reviewing the determination of the Administrative Law Judge, petitioner's exception, the relevant mail records of the Division of Tax Appeals and the Division of Taxation's response to the notice of intent to dismiss exception, 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 the United States Postal Service (USPS) certified mail (certified control number 7016 2070 0000 1147 1212) in Albany, New York, to petitioner on August 17, 2017 at petitioner's last known address in Fredonia, New York.

Petitioner filed an exception to the determination, which was received by the Office of the Secretary to the Tribunal on September 25, 2017. The envelope containing the exception bore a USPS postmark of September 21, 2017 and the Fredonia, New York, address as a return address.

On October 4, 2017, 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 November 8, 2017 to respond.

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 admistative [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.”

Notice of a determination or order is given by registered or certified mail and is complete upon placing it 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 filing an exception has 30 days from the date that service is complete to file the exception (20 NYCRR 3000.17 [a] [1]). Exceptions are filed with the Secretary to the Tax Appeals Tribunal either in person or by mail

(id.). An exception delivered by the USPS to this Tribunal after the date it was due 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 Administrative Law Judge's determination was properly mailed to petitioner by certified mail on August 17, 2017 (*see* Tax Law § 2006 [7]; 20 NYCRR 3000.23 [a]). Thus, the exception to the order of the Administrative Law Judge was due to be filed on or before September 18, 2017¹ (Tax Law § 2006 [7]; 20 NYCRR 3000.17 [a] [1]). It was received by the Office of the Secretary to the Tribunal on September 25, 2017, in an envelope that bore a USPS postmark of September 21, 2017, the deemed date of filing (20 NYCRR 3000.22 [a] [1]). This date is beyond the 30-day deadline for filing any exception with the Tribunal; therefore, the exception was not timely filed as required by Tax Law § 2006 (7).

As this Tribunal's jurisdiction is statutorily limited (*see* Tax Law § 2006 [4]), we lack jurisdiction to consider the merits of a late-filed protest (*see Matter of Lukacs*, Tax Appeals Tribunal, November 8, 2007).

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

On the Tax Appeals Tribunal's own motion, the exception of Carmen M. Quinones is dismissed.

¹ September 16, 2017 is the 30th day from August 17, 2017. However, as September 16, 2017 fell on a Saturday, the exception was required to be filed by Monday, September 18, 2017 (*see* General Construction Law § 25-a).

DATED: Albany, New York
May 8, 2018

/s/ Roberta Moseley Nero
Roberta Moseley Nero
President

/s/ Dierdre K. Scozzafava
Dierdre K. Scozzafava
Commissioner

/s/ Anthony Giardina
Anthony Giardina
Commissioner