

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition :
of :
JOHN J. PETITO, CPA, PLLC : DECISION
for Redetermination of Deficiencies or for Refund of : DTA NO. 827385
Penalties for Failure to E-file under Article 1 of the Tax :
Law for the Year 2013. :

Petitioner, John J. Petito, CPA, PLLC, filed an exception to the determination of Administrative Law Judge issued on April 5, 2018. Petitioner appeared pro se. The Division of Taxation appeared by Amanda Hiller, Esq. (Robert J. Tompkins, Esq., of counsel).

On June 8, 2018, 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 July 13, 2018 to respond with comments. Neither party responded. The six-month period for issuance of this decision thus began on July 13, 2018.

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 his exception to the Administrative Law Judge's determination.

FINDINGS OF FACT

We find the following facts.

1. On April 5, 2018, the Division of Tax Appeals mailed the determination of the

Administrative Law Judge by certified mail to petitioner at the address listed on the petition.

2. Petitioner filed an exception to the determination, which was received by the Office of the Secretary to the Tax Appeals Tribunal on June 5, 2018. The FedEx Express envelope containing the exception bore a ship date of June 4, 2018.

3. On June 8, 2018, this 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 United States Postal Service (20 NYCRR 3000.23 [a]). In this case, the Division of Tax Appeals properly gave notice of the determination to petitioner on April 5, 2018 (*see* finding of fact 1). A party has 30 days from the date of such mailing to file an exception or to request an extension of time to file an exception (Tax Law § 2006 [7]). Thus, petitioner's exception to the determination or request for an extension of time to file an exception was due on or before May 7, 2018.¹

Petitioner's exception was shipped by FedEx Express on June 4, 2018. As that company is a designated delivery service pursuant to Internal Revenue Code (26 USC) § 7502 and Tax Law §§ 691 and 1091, the date of such shipment is deemed to be the date the exception was filed (*see Matter of Quinn*, Tax Appeals Tribunal, November 22, 2017; *see also* Department of Taxation and Finance Publication 55 ["Designated Private Delivery Services"] [4/17]).

Therefore, the exception was filed beyond the 30-day limitations period. We find no merit

¹ May 5, 2018 is the 30th day from April 5, 2018. As May 5, 2018 fell on a Saturday, the exception was required to be filed by Monday, May 7, 2018 (*see* General Construction Law §§ 20, 25-a).

to petitioner's argument that he had 60 days to file his exception, as petitioner did not file an application for an extension within the 30-day period (*see* Tax Law 2006 [7]). The exception was thus not timely filed as required by Tax Law § 2006 (7) and this Tribunal lacks jurisdiction to review it (*see Matter of Crail*, Tax Appeals Tribunal, July 26, 2018; *Matter of Marthone*, Tax Appeals Tribunal, March 23, 2018).

Accordingly, on the Tax Appeals Tribunal's own motion, the exception of John J. Petito, CPA, PLLC is dismissed.

DATED: Albany, New York
January 10, 2019

/s/ Roberta Moseley Nero
Roberta Moseley Nero
President

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

/s/ Anthony Giardina
Anthony Giardina
Commissioner