

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition :
of :
JEREMIAH H. AND JUNG J. YIM : DECISION
 : DTA NO. 827687
for Redetermination of a Deficiency or for Refund of :
New York State and City Income Taxes under Article 22 :
of the Tax Law and the Administrative Code of the City :
of New York for the Year 2010. :

Petitioners, Jeremiah H. and Jung J. Yim, filed an exception to the determination of the Administrative Law Judge issued on June 27, 2019. On August 28, 2019, the Tax Appeals Tribunal (Tribunal) issued a notice of intent to dismiss exception on the ground that petitioners' exception was not timely filed. The parties were given until October 2, 2019 to respond. The Division of Taxation, appearing by Amanda Hiller, Esq. (Charles Fishbaum, Esq., of counsel), filed a letter in response on September 5, 2019. Petitioners did not file a response. The six-month period for issuance of this decision began on October 2, 2019, the date that petitioners' response was due.

On its own motion, after reviewing the determination of the Administrative Law Judge, petitioners' 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 petitioners timely filed their 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 by United States Postal Service (USPS) certified mail on June 27, 2019 to petitioners at their last known address in Flushing, New York.
2. Petitioners filed an exception to the determination, which was received by the Office of the Secretary to the Tribunal on August 26, 2019. The envelope containing the exception bore a USPS postmark of August 21, 2019 and the same Flushing, New York, address as a return address.
3. On August 28, 2019, the Tribunal issued a notice of intent to dismiss exception on the ground that petitioners' exception was not timely filed. The parties were given until October 2, 2019 to respond.

OPINION

Notice of an administrative law judge determination is given by registered or certified mail and is complete upon placing the determination in a post-paid properly addressed envelope, in the exclusive care and custody of the USPS (20 NYCRR 3000.23 [a]). Either party may file an exception for review of a determination with this Tribunal (Tax Law § 2006 [7]). An exception must be filed within 30 days from the date of mailing of the determination (Tax Law § 2006 [7]; 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 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 Administrative Law Judge's determination was properly mailed to

petitioners by certified mail on June 27, 2019 (*see* Tax Law § 2006 [7]; 20 NYCRR 3000.23 [a]). Thus, an exception to the determination of the Administrative Law Judge was due to be filed on or before July 29, 2019¹ (Tax Law § 2006 [7]; 20 NYCRR 3000.17 [a] [1]). Petitioners' exception was filed on August 21, 2019 (*see* 20 NYCRR 3000.22 [a] [1]). This date is beyond the 30-day deadline for filing an 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 Quinones*, Tax Appeals Tribunal, May 8, 2018).

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

On the Tax Appeals Tribunal's own motion, the exception of Jeremiah H. and Jung J. Yim is dismissed.

¹ July 27, 2019 is the 30th day from June 27, 2019. However, as July 27, 2019 fell on a Saturday, the exception was required to be filed by Monday, July 29, 2019 (*see* General Construction Law § 25-a).

DATED: Albany, New York
March 16, 2020

/s/ Roberta Moseley Nero
Roberta Moseley Nero
President

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

/s/ Anthony Giardina
Anthony Giardina
Commissioner