

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
BRIAN L. BURKARD	:	DECISION
for Redetermination of a Deficiency or for Refund of	:	DTA NO. 850256
New York State and New York City Personal Income	:	
Taxes under Article 22 of the Tax Law and the	:	
Administrative Code of the City of New York for the	:	
Year 2019.	:	

Petitioner, Brian L. Burkard, filed an exception to the determination of the Administrative Law Judge issued on August 29, 2024. On October 9, 2024, the Tax Appeals Tribunal (Tribunal) issued a notice of intent to dismiss the exception (Notice) on the ground that petitioner's exception was not properly filed with the Tribunal. The Tribunal granted the parties until November 13, 2024 to respond. The Division of Taxation, appearing by Amanda Hiller, Esq. (Maria Matos, Esq., of counsel) responded to the Notice by letter received on October 24, 2024. Petitioner appearing pro se, did not respond to the Notice by November 13, 2024, which date began the six-month period for issuance of this decision.

On its own motion, after reviewing the determination, the exception, the mailing records of the Division of Tax Appeals in this matter and after receiving no response from petitioner to the Tribunal's Notice, the Tribunal renders the following decision.

ISSUE

Whether petitioner properly filed his 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 August 29, 2024 to petitioner at his last known address.

2. Petitioner filed an exception dated September 18, 2024. Petitioner's exception consists of the blue-backed determination with an incomplete exception form attached. The first page of the notice of determination of the Administrative Law Judge contains handwritten notes by petitioner:

“Returned Service: No UCC Contract Trust and no Territorial office. By: Brian Burkard September 16th of 2024. Non-negotiable.”

3. On October 9, 2024, the Tribunal issued the Notice via certified mail, to petitioner's last known address, stating that petitioner's exception to the determination of the Administrative Law Judge was not properly filed with the Tribunal.

4. The Notice stated that a properly filed exception must contain a statement of findings of fact and conclusions of law contained in the Administrative Law Judge's determination with which the party taking exception disagrees, and a statement of requested alternative findings of facts and conclusions of law.

5. The Notice stated that unless petitioner or the Division responds to the Notice and advises the Tribunal in writing by November 13, 2024 as to why the exception should not be denied, the Tribunal intends to issue a decision dismissing the exception on the ground that it was not properly filed with the Tribunal.

6. Petitioner neither responded to the Notice nor perfected his exception.

OPINION

Pursuant to Tax Law § 2000, the Division of Tax Appeals is an independent division of tax appeals within the department of taxation and finance “responsible for providing the public with a just system of resolving controversies with [the Division of Taxation] and to ensure that the elements of due process are present with regard to such resolution of controversies” (*Matter of Richardson*, Tax Appeals Tribunal, November 17, 2022, citing Tax Law § 2000). The Division of Tax Appeals is authorized “[t]o provide a hearing as a matter of right, to any petitioner upon such petitioner’s request . . . unless a right to such hearing is specifically provided for, modified or denied by another provision of this chapter” (*Matter of Bokaer*, Tax Appeals Tribunal, December 5, 2024, citing Tax Law § 2006 [4]).

Tax Law § 2006 (7) provides, in pertinent part:

“To provide for a review of the determination of an administrative 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.”

Exceptions must be filed within 30 days after the giving of notice of the determination of the administrative law judge or within the time granted by the Tribunal for an extension of time to file an exception (Tax Law § 2006 [7]; 20 NYCRR 3000.17 [a] [1]; *see also Matter of Mehdi and Keshavarz-Arshadi*, Tax Appeals Tribunal, February 6, 1997).

Our Rules of Practice and Procedure (Rules) provide as follows:

“Form of exception; briefs. (1) The exception shall contain:

- (i) the particular findings of fact and conclusions of law with which the party disagrees;
- (ii) the grounds of the exception, with references, wherever possible, to the relevant pages of the transcript of hearing and exhibits; and

(iii) alternative findings of fact and conclusions of law.”

(20 NYCRR 3000.17 [b])

“Failure to comply with this regulation is fatal because ‘an appellate court’s scope of review with respect to an appellant . . . is generally limited to those parts of the judgment that have been appealed and that aggrieve the appealing party’” (*Matter of Canario Express Corp.*, Tax Appeals Tribunal, February 16, 2012, citing *Hecht v City of New York*, 60 NY2d 57, 61 [1983]).

Petitioner’s exception consists of the blue-backed determination with an incomplete exception form attached (*see* finding of fact 2). The Form TA-14 filed by petitioner fails to indicate any of the Administrative Law Judge’s findings of fact or conclusions of law made in the determination below with which petitioner disagrees. The filed papers do not identify any grounds for disagreement with the determination of the Administrative Law Judge.

Additionally, petitioner did not respond to the Notice, although the Notice required a response in writing by November 13, 2024, explaining why the exception should not be dismissed (*see* finding of fact 5). As such, we conclude that petitioner’s exception did not contain the basis of petitioner’s disagreement with the determination issued by the Administrative Law Judge as required by 20 NYCRR 3000.17 (b), and thus the Tribunal lacks jurisdiction to review it (*see Matter of Canario Express Corp.*).

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

On the Tax Appeals Tribunal’s own motion, the exception of Brian L. Burkard is dismissed, with prejudice.

DATED: Albany, New York
May 8, 2025

/s/ Jonathan S. Kaiman
Jonathan S. Kaiman
President

/s/ Cynthia M. Monaco
Cynthia M. Monaco
Commissioner

/s/ Kevin A. Cahill
Kevin A. Cahill
Commissioner