

STATE OF NEW YORK
APPEALS TRIBUNAL

In the Matter of the Petition :
of :
CASTLE SERVICE CENTER, INC. :
for Revision of a Determination, or for Refund of :
Sales and Use Taxes under Article 28 and 29 of :
the Tax Law for the periods June 1, 1979 through :
May 31, 1980 and September 1, 1980 through :
February 28, 1981 :

DECISION

The Division of Taxation made a motion before the Tax Appeals Tribunal to deny an exception by petitioner, Castle Service Center, Inc. , 2400 *FE.,ST* Tremont Avenue, Bronx, New York 10461 to a determination of an Administrative Law Judge (File Nos. 801055 and 801463). The Division's basis for the motion was that the exception was not timely filed by the petitioner with the Tax Appeals Tribunal.

The Tribunal grants the motion of the Division of Taxation.

Tax Law section 2010(4) provides:

"A determination Issued by an administrative Law Judge shall finally decide the matters in controversy unless any party to the hearing takes exception by timely requesting a review by the tax appeals tribunal as provided for in section two thousand six of this article.

Tax Law section 2006(7) authorizes the Tribunal:

"To provide for a review of the determination of an administrative [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... The tribunal in its discretion may grant oral argument. The Tribunal may also grant an extension of time for filing an exception provided an application for such extension is filed within the time period for taking exception to a determination under this subdivision . . . "

With respect to the filing of motions, the regulations adopted by the Tax Appeals Tribunal provide:

"(1) Filing of all pleadings, motions and other papers with the Division of Tax Appeals or the tribunal, or service on a division, bureau or unit of the department pursuant to this Part, shall be made by either delivery during business hours to its Albany offices or by mail properly addressed to such offices. Where service is made by mail, the date of service is the date of the United States postmark stamped on the envelope. Where a machine metered stamp is used on the envelope, or where service is made by courier, delivery, messenger or similar services, the date of service is the date of receipt. Service on parties can be made in the same manner. The provisions of the CPLR regarding service shall apply to this Part unless they clearly conflict." (20 NYCRR 3000.16[a][1].) (Emphasis added.)

In this case, by letter dated October 4, 1988, petitioner made a request for an extension to file an exception. By letter dated October 6, 1988, the Secretary to the Tax Appeals Tribunal informed petitioner that the request for an extension to file the Notice of Exception was granted and that petitioner now had until November 15, 1988 to file the exception.

Ultimately the Notice of Exception was received by the Tax Appeals Tribunal on November 22, 1988. Delivery of the exception had been made by way of the United States mail. As noted earlier, when the United States mail is used to effect delivery, the date of service is the date of the United States postmark stamped on the envelope (20 NYCRR 3000.16[a][1]). Here the date of the United States postmark on the envelope is November 16, 1988. Since the last day for petitioner to file an exception was November 15, 1988 we conclude that petitioner's exception was not timely filed.

Accordingly, the motion of the Division of Taxation dismissing the exception of Castle Service Center, Inc. is granted.

Dated: Albany, New York
MAR 23, 1989

John P. Dugan
President

Francis R. Koenig
Commissioner