

STATE OF NEW YORK
TAX APPEALS TRIBUNAL

In the Matter of the Petitions	:	
of	:	
PETROLEUM COMBUSTION INTERNATIONAL, INC.	:	
AND MARTIN CAREY, AS OFFICER	:	
for Revision of Determinations or for Refunds of Sales and	:	
Use Taxes under Articles 28 and 29 of the Tax Law for the	:	
Period December 1, 1976 through August 31, 1978	:	DECISION
	:	DTA Nos. 802080
	:	802081, 802082
	:	802083
In the Matter of the Petitions	:	
of	:	
GAS VALUE SERVICE STATION, INC.	:	
AND MARTIN CAREY, AS OFFICER	:	
for Revision of Determinations or for Refunds of Sales and	:	
Use Taxes under Articles 28 and 29 of the Tax Law for the	:	
Period December 1, 1976 through August 31, 1978	:	

Petitioners Petroleum Combustion International, Inc. and Martin Carey, as Officer, and Gas Value Service Station, Inc. and Martin Carey, as Officer, 5 East 78th Street, New York, New York 10021 filed an exception to the determination of the Administrative Law Judge issued on August 4, 1988 with respect to their petitions for revision of determinations or for refunds of sales and use taxes under Articles 28 and 29 of the Tax Law for the periods December 1, 1976 through August 31, 1978. Petitioners appeared by Maxwell Philipson, Esq. The Division of Taxation appeared by Williams F. Collins, Esq. (Michael B. Infantino, Esq., of counsel).

On its own motion, after reviewing the determination, the exception, the mailing records of the Division of Tax Appeals in this matter, and the Division of Taxation's response to the Tax Appeals Tribunal's Notice of Intent to Dismiss Exception, the Tax Appeals 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.

The determination of the Administrative Law Judge was mailed to petitioners on August 4, 1988 at petitioners' last known address at 5 East 78th Street, New York, New York 10021. Both the determination mailed to Petroleum Combustion International, Inc. and Martin Carey, as Officer, and the determination mailed to Gas Value Service Station, Inc. and Martin Carey, as Officer, were returned, unclaimed.¹

Petitioners' exception to the determination of the Administrative Law Judge was received by the Office of the Secretary to the Tribunal on November 13, 1989. The envelope containing the exception bears a United States Postal Service postmark of November 9, 1989.²

On July 23, 1991, the Tribunal issued a Notice of Intent to Dismiss this exception on the ground that it was not timely filed. The parties were given 30 days to respond. No response to the Notice was received from petitioners. A response to the Notice was received from the Division of Taxation (hereinafter the "Division") on August 20, 1991 stating that the Division is in agreement with the Tribunal's Notice of Intent.

OPINION

Subdivision 7 of section 2006 of the Tax Law provides that the Tribunal shall have the following functions, powers and duties:

¹The determination was originally mailed on July 8, 1988 to petitioners at 25 Lloyd Haven Drive, Lloyd Harbor, New York 11724. Both copies of the determination were returned marked with a forwarding address of 1635 Privado Road, Westbury, New York 11590 and stamped "unknown." A review of the Division of Tax Appeals' file disclosed a June 18, 1987 letter from petitioners' representative listing the 5 East 78th Street address.

²While the document received on November 13, 1989 was actually a letter, it is hereby deemed to be the exception in this case for purposes of determining timeliness. A TA-14 exception form was received by the Office of the Secretary to the Tax Appeals Tribunal on January 11, 1991.

"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" (Tax Law § 2006[7]).

20 NYCRR 3000.11(a)(1) provides as follows:

"Within 30 days after the giving of notice of the determination of the administrative law judge, any party may take exception to such determination and seek review thereof by the tribunal by filing an exception with the secretary. The exception should be filed with the secretary either in person at the offices in Troy or by mail addressed to:

Secretary to the Tax Appeals Tribunal
State of New York
Division of Tax Appeals
Riverfront Professional Tower
500 Federal Street
Troy, New York 12180-2893

A copy of the exception shall be served at the same time on the other party. When the division of taxation is the other party, service shall be made on the director of the law bureau" (20 NYCRR 3000.11[a][1]).

Exceptions must be filed within 30 days after the giving of notice of the determination of the Administrative Law Judge (Tax Law § 2006[7]; 20 NYCRR 3000.11[a][1]). The Tribunal may grant an extension of time to file an exception if the request is made within the 30-day period (Tax Law § 2006[7]; 20 NYCRR 3000.11[a][2]).

The exception or request for an extension of time to file an exception in this matter was due on September 6, 1988. An exception in this matter was received by the Tribunal on November 13, 1989. The envelope containing the exception bears a United States Postal Service postmark of November 9, 1989. An exception or request for an extension of time received by this Tribunal after the date it is due, is deemed to be filed on the date of the United States Postal Service postmark stamped on the envelope (20 NYCRR 3000.16[a][1]). Since this exception was received after the expiration of the 30 day period, it is deemed to have been filed on November 9, 1989. The exception is, therefore, untimely and we lack jurisdiction to review it.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

On the Tax Appeals Tribunal's own motion, the exception of petitioners Petroleum Combustion International, Inc. and Martin Carey, as Officer, and Gas Value Service Station, Inc. and Martin Carey, as Officer, be, and hereby is, dismissed with prejudice as of this date.

DATED: Troy, New York
January 30, 1992

/s/John P. Dugan
John P. Dugan
President

/s/Francis R. Koenig
Francis R. Koenig
Commissioner

/s/Maria T. Jones
Maria T. Jones
Commissioner