

STATE OF NEW YORK
TAX APPEALS TRIBUNAL

In the Matter of the Petition
of
ANTHONY J. D'ANGELO, SR.
for Redetermination of a Deficiency/Revision
of a Determination or for Refund of NYS
Personal Income Tax under Article(s) 22 of
the Tax Law for the Periods 12/1/85-12/31/85
and 11/1/86-12/31/86.

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DECISION
DTA NO. 802952
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Petitioner, Anthony J. D'Angelo, Sr., 2500 Saddlebrook Drive, Vestal, New York 13850 filed an exception to the order of the Administrative Law Judge issued on October 14, 1988 with respect to his petition for redetermination of a deficiency or for revision of a determination of personal income tax pursuant to Article(s) 22 of the Tax Law for the periods December 1, 1985 through December 31, 1985 and November 1, 1986 through December 31, 1986 (File No. 805952). Petitioner appeared by Dwight R. Ball, Esq. The Division of Taxation appeared by William F. Collins, Esq. (Mark F. Volk, Esq., of counsel).

Neither of the parties filed a brief on exception. Petitioner's request for oral argument was denied on January 12, 1989.

After reviewing the entire record in this matter, the Tax Appeals Tribunal renders the following decision.

ISSUE

Whether petitioner timely filed his petition for redetermination of a deficiency or for revision of a determination of personal income tax.

FINDINGS OF FACT

A Notice of Deficiency for payment of personal income tax was mailed to petitioner on April 29, 1988 at petitioner's last known address at 2500 Saddlebrook Drive, Vestal, New York 13850. The petition was mailed, as indicated by the postmark on the envelope, by petitioner on August 5,

1988 or 98 days later and was received by the Division of Tax Appeals on August 8, 1988 or 101 days later.

OPINION

We affirm the order of the Administrative Law Judge dismissing the petition as untimely. On exception petitioner asserts that the petition was mailed earlier but petitioner offered no proof (i.e., a receipt of timely mailing by certified or registered mail) that the petition was filed within 90 days after April 29, 1988 as prescribed by Tax Law sections 689 and 691(a) (see, Matter of Sipam Corporation, Tax Appeals Tribunal, March 10, 1988; Matter of Harron's Electric Service, Inc., Tax Appeals Tribunal, February 19, 1988). Thus, the petition was not timely filed.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of petitioner, Anthony J. D'Angelo, Sr., is denied;
2. The order of the Administrative Law Judge is affirmed; and
3. The petition of Anthony J. D'Angelo, Sr. is denied and the Notice of Deficiency for payment of New York State personal income tax due issued on April 29, 1988 is sustained.

Dated: Albany, New York
April 20, 1989

/s/John P. Dugan

John P. Dugan
President

/s/Francis R. Koenig

Francis R. Koenig
Commissioner