

STATE OF NEW YORK
TAX APPEALS TRIBUNAL

In the Matter of the Petition :
of :
SCHULTIS SERVICE STATION, INC. : DECISION
for Revision of a Determination or for Refund :
of Motor Fuel Tax under Article 12-A of the Tax :
Law for the Years 1982 through 1986. :

Petitioner, Schultis Service Station, Inc., 277 West Sunrise Highway, Freeport, New York 11520, filed an exception to a determination of the Administrative Law Judge issued on June 29, 1989 with respect to its petition for revision of a determination or for refund of motor fuel tax under Article 12-A of the Tax Law for the years 1982 through 1986 (File No. 803426).

Petitioner appeared by Neal S. Dobshinsky, Esq. and Roland A. Anderson, P.A.

On its own motion, after reviewing the determination, the exception and the mailing records of the Division of Tax Appeals in this matter, and having received no response to the Tax Appeals Tribunal's Notice of Intent to Dismiss Exception the Tax Appeals Tribunal renders the following decision.

ISSUE

Whether petitioner timely filed its exception to the determination of the Administrative Law Judge.

FINDINGS OF FACT

The determination of the Administrative Law Judge was mailed to petitioner on June 29, 1989, at petitioner's last known address at 277 West Sunrise Highway, Freeport, New York 11520.

The exception to the determination of the Administrative Law Judge was required to be filed by July 31, 1989. Said exception was received by the office of the Secretary to the Tribunal on August 9, 1989.

The envelope containing the exception to the Administrative Law Judge's determination had a United States postal service postmark of August 7, 1989, which is 39 days after June 29, 1989.

On September 26, 1989 the Tribunal issued a Notice of Intent to Dismiss this exception on the ground that it was not timely filed. The parties were allowed 30 days to respond to this Notice; the Tribunal received no responses.

OPINION

Subdivision 7 of section 2006 of the Tax Law provides as follows:

"The Tribunal shall have the following functions, powers and duties:

7. 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)(i) provides as follows:

"Review by tribunal. (a)(i) Filing of exception. Within 30 days after the giving of notice of the determination of an administrative law judge, any party may take exception to such determination and seek review thereof by the tribunal, by filing an exception and two conformed copies with the secretary. 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][i].)

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][i]). An exception received by this Tribunal after the date it was due is deemed to be filed on the date of the United

States postmark stamped on the envelope (20 NYCRR 3000.16). Here that date is August 7, 1989, 39 days after the giving of notice of the determination of the Administrative Law Judge. Therefore, the exception was not timely filed and the Tribunal lacks jurisdiction to review it.

Accordingly, it is ORDERED, ADJUDGED AND DECREED that:

On the Tax Appeals Tribunal's own motion, the exception of the petitioner, Schultis Service Station, Inc., be, and hereby is, dismissed with prejudice as of this date.

DATED: Troy, New York
January 11, 1990

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

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

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