

STATE OF NEW YORK
TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
FIRESIDE VENTURE ASSOCIATES	:	
for Revision of a Determination or for Refund	:	DECISION
of Tax on Gains Derived from Certain Real	:	
Property Transfers under Article 31-B of the	:	
Tax Law.	:	

Petitioner, Fireside Venture Associates, c/o Canavan & Boehm, 29 Park Avenue, Manhasset, New York 11030, filed an exception to the determination of the Administrative Law Judge issued on November 23, 1988 with respect to its petition for revision of a determination or for refund of tax on gains derived from certain real property transfers under Article 31-B of the Tax Law (File No. 804660). Petitioner appeared by Thomas J. Canavan, Jr., Esq.

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 November 23, 1988 at petitioner's last known address at c/o Canavan & Boehm, 29 Park Avenue, Manhasset, New York 11030.

The exception to the determination was required to be filed by December 23, 1988. It was received by the office of the Secretary to the Tax Appeals Tribunal on January 20, 1989. The

envelope containing the exception to the Administrative Law Judge's determination had a United States postal service postmark of January 17, 1989, which is 54 days after November 23, 1988.

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."

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."

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). This exception was filed 54 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, Fireside Venture Associates, 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