

STATE OF NEW YORK
TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
JOHN D. MURRAY	:	DECISION
OFFICER OF V & B SERVICE CENTER CORP.	:	DTA No. 806468
	:	
for Revision of a Determination or for Refund	:	
of Sales and Use Taxes under Articles 28 and 29	:	
of the Tax Law for the Period March 1, 1984	:	
through November 30, 1984	:	

Petitioner John D. Murray, Officer of V & B Service Center Corp., 42-08 65th Place, Woodside, New York 11377 filed an exception to the determination of the Administrative Law Judge issued on December 20, 1990 with respect to his petition for revision of a determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period March 1, 1984 through November 30, 1984. Petitioner appeared pro se. The Division of Taxation appeared by William F. Collins, Esq. (Irwin A. Levy, Esq., of counsel).

Neither party filed a brief on exception. Oral argument was not requested.

On its own motion, after reviewing the determination, the exception and the mailing records of the Division of Tax Appeals in this matter, the Tax Appeals Tribunal renders the following decision.

ISSUE

Whether petitioner timely filed his 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 petitioner on December 20, 1990 at petitioner's last known address at 42-08 65th Place, Woodside, New York 11377.

Petitioner's exception to the determination of the Administrative Law Judge was required to be filed by January 22, 1991. Said exception was received by the Office of the Secretary to the Tribunal on January 31, 1991. The envelope containing the exception had a United States postmark of January 28, 1991.

On February 15, 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 to this Notice. Neither party responded to the Notice.

OPINION

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

"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 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]). 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). The exception in this matter was required to be filed by January 22, 1991. The exception was received by the Office

of the Secretary to the Tribunal on January 31, 1991 which is not within the 30-day period for filing an exception. The envelope containing the exception bore a United States postmark of January 28, 1991 which is also not within the 30-day period for filing an exception. 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 petitioner John D. Murray, Officer of V & B Service Center Corp. is hereby dismissed with prejudice as of this date.

DATED: Troy, New York
September 26, 1991

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

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

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