

STATE OF NEW YORK  
TAX APPEALS TRIBUNAL

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In the Matter of the Petition	:	
of	:	
<b>E.J. STEIGER, INC.</b>	:	DECISION
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 June 1, 1979 through May 31, 1980.	:	

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Petitioner E.J. Steiger, Inc., 489 Stewart Avenue, Bethpage, New York 11714 filed a motion before the Tax Appeals Tribunal to dismiss the exception filed by the Division of Taxation to the Administrative Law Judge's determination dated March 28, 1991 (File No. 806770). Petitioner appeared by Sherman, Feigen & Slivka (William Slivka, Esq., of counsel). The Division of Taxation appeared by William F. Collins, Esq. (Peter J. Martinelli, Esq., of counsel).

***ISSUES***

I. Whether the Division of Taxation's exception to the determination of the Administrative Law Judge should be dismissed as untimely.

II. Whether the Division of Taxation's request for an extension of time in which to file its exception stated "good cause" as required by 20 NYCRR 3000.11(a)(2).

***FINDINGS OF FACT***

On March 28, 1991, the Administrative Law Judge issued a determination which estopped the Division of Taxation (hereinafter the "Division") from proceeding with an assessment against petitioner for the period June 1, 1979 through May 31, 1980, in order to avoid a manifest injustice based upon the exceptional facts and circumstances in this case. The Division filed a request for an extension of time in which to file an exception which was received by the Secretary to the Tax Appeals Tribunal on April 25, 1991. Subsequently, petitioner received the

copy mailed by the Division on April 29, 1991. Thereafter, petitioner filed a motion with the Tax Appeals Tribunal seeking to dismiss the Division's exception on the ground that the Division failed to timely serve the request for an extension on the Tribunal and petitioner in accordance with 20 NYCRR 3000.11(a)(1) and because such request for an extension failed to state good cause as required by 20 NYCRR 3000.11(a)(2).

### ***OPINION***

Petitioner herein seeks to dismiss the Division's exception as untimely. Petitioner argues that the Division's request for an extension of time in which to file an exception was not timely served upon either the Tribunal or petitioner. In support of its position, petitioner cites to 20 NYCRR 3000.11(a)(1) and (2) which, in pertinent part, state:

"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.

"The tribunal may extend the 30-day period for filing an exception, provided an application for extension is filed within such period and served on the other party, and if good cause is shown."

The determination of the Administrative Law Judge was rendered on March 28, 1991. Petitioner asserts that, based upon 20 NYCRR 3000.11(a)(1), the Division was required to file an exception to the determination of the Administrative Law Judge within 30 days of the date of the determination, or, based upon 20 NYCRR 3000.11(a)(2), if the Division needed an extension of time in which to file its exception, such request must have been filed and a copy served simultaneously on petitioner within 30 days of the determination of the Administrative Law Judge. Petitioner argues that "the envelope in which the copy of the request to the Tribunal was enclosed bore a postmark made by an office-metered machine and was not received by petitioner, and upon information and belief was not received by the Tribunal, until after the expiration of the thirty (30) day time period" (Petitioner's representative's affidavit in support of petitioner's

motion). Therefore, petitioner requests that the Division's exception be dismissed as untimely. We disagree.

The Division's request for an extension was dated and received by the Secretary to the Tribunal on April 25, 1991. 20 NYCRR 3000.16(a)(1) states, in pertinent part, that "[w]here delivery is made by courier, delivery, messenger or similar services, the date of delivery will be deemed to be the date of filing." The envelope containing the Division's request for an extension did not bear any postmark, office-metered or otherwise. Therefore, the date of delivery is deemed to be the date of its filing, which in this case was April 25, 1991.

Petitioner argues that it did not receive a copy of the Division's request for an extension until April 29, 1991 which, it argues, is beyond the 30-day period within which the Division's request was required to be filed. However, petitioner does not state which date it considers to be 30 days from the determination of the Administrative Law Judge.

As we recently stated in Matter of American Express Co. and Am. Express Intl. Banking Corp. (Tax Appeals Tribunal, July 3, 1991), in determining the 30-day time period, the date upon which the determination was issued is excluded. In other words, the 30-day count begins on the day after the determination is issued (see also, General Construction Law § 20). In this case, the determination of the Administrative Law Judge was issued on March 28, 1991. Therefore, the 30-day period within which to file an exception or a request for an extension in which to file an exception ended on April 27, 1991, which was a Saturday. When any period of time, computed from a certain day, within which an act is required to be done, ends on a Saturday, Sunday or a public holiday, such act may be done on the next succeeding business day (General Construction Law § 25-a). Therefore, the request for an extension was required to be filed by April 29, 1991. Since the Tribunal received the Division's request on April 25, 1991, and since petitioner admits that it received a copy of the Division's request on April 29, 1991, such request for an extension was timely served on both parties. Since petitioner actually received the request within the 30-day period, we need not address the proof of mailing submitted by the Division.

Next, petitioner argues that good cause was not stated by the Division in its request for an extension. 20 NYCRR 3000.11(a)(2) states that "'good cause' depends on the circumstances of each case, but would include any cause which appears to an ordinarily prudent person as a reasonable ground for failure to file an exception within the prescribed period."

In its request for an extension, the Division states:

"Due to the press of other matters and the need to subject this matter to close scrutiny, the Division hereby requests a thirty (30) day extension to submit the Exception."

Petitioner argues that the above reasons given by the Division do not include any cause which appears to an ordinary prudent person as a reasonable ground for failure to file an exception within the prescribed period pursuant to 20 NYCRR 3000.11(a)(2). The Division failed to address this argument in its letter in response to petitioner's motion.

We note that it is within our discretion to determine whether good cause exists depending upon the facts and circumstances of each case. The Division's stated reasons for its request for an extension are very general in nature and require a liberal construction to be characterized as "good cause." Although we prefer a more specific statement of good cause in a request for an extension, we find, in this case, the Division's aforementioned reasons as sufficient good cause for an extension of time in which to file its exception to the Administrative Law Judge's determination (cf., Matter of Marshall Farms USA, Tax Appeals Tribunal, August 14, 1988 [where good cause was not shown where request for an extension of time did not state any reason to grant such extension]).

Accordingly, we deny petitioner's motion to dismiss the Division's exception.

DATED: Troy, New York  
July 11, 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