

STATE OF NEW YORK
TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
RUPERT AND PETRONELLA BURKS	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of New York State and New York City	:	
Income Taxes under Article 22 of the Tax Law	:	
and the New York City Administrative Code for	:	
the Year 1983.	:	

Petitioners Rupert and Petronella Burks, c/o Robert P. Dubin, 16501 Ventura Boulevard, Suite 211, Encino, California 91436-2047 filed an exception to the determination of the Administrative Law Judge issued on November 15, 1990 with respect to their petition for redetermination of a deficiency or for refund of New York State and New York City income taxes under Article 22 of the Tax Law and the New York City Administrative Code for the Year 1983 (File No. 806791). Petitioner appeared by Robert P. Dubin, C.P.A. The Division of Taxation appeared by William F. Collins, Esq. (Michael Glannon, Esq., of counsel).

Petitioner did not file a brief on exception or request oral argument. The Division of Taxation did not file a brief.

On its own motion, after reviewing the determination, the exception, the mailing records of the Division of Tax Appeals in this matter, and the responses of the parties to the Tax Appeals Tribunal's Notice of Intent to Dismiss Exception, the Tax Appeals Tribunal renders the following decision.

ISSUE

Whether petitioners timely filed their 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 petitioners on November 15, 1990 at petitioners' last known address at 16501 Ventura Boulevard, Suite 211, Encino, California 91436-2047.

Petitioners' exception to the determination of the Administrative Law Judge was required to be filed by December 17, 1990. Said exception was received by the Office of the Secretary to the Tribunal on December 26, 1990. The exception was delivered by Federal Express.

On January 17, 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. Petitioners then requested an extension of time to respond to the Notice. The request was granted and petitioners were given until March 20, 1991 to respond to the Notice. The Division of Taxation was also given until March 20, 1991 to respond to the Notice. A response to the Notice was received from petitioners on February 21, 1991 stating that due to time constraints, and their limited access to the codes and regulations of New York State, their exception should be heard. A response to the Notice was also received from the Division of Taxation on March 21, 1991 requesting that the exception be dismissed as untimely.

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 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][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). Where delivery is made by courier, messenger or similar services such as Federal Express, the date of delivery will be deemed to be the date of filing (20 NYCRR 3000.16).

We reject petitioners' argument that a delay in the courier's delivery caused the exception to be late. Petitioners state that the exception was placed in a Federal Express box on December 21, 1990. Notwithstanding any delay in the mail, the exception was already untimely when delivered to Federal Express as it was required to be filed by December 17, 1990. We further reject petitioners' argument that they should have been entitled to more time to file their exception as their representative was not familiar with the New York tax and civil codes.

The exception in this matter was required to be filed by December 17, 1990. The exception was received by the Office of the Secretary to the Tribunal on December 26, 1990. The exception was delivered by Federal Express and therefore is deemed filed on December 26, 1990. The exception is therefore untimely and we lack jurisdiction to review it.

Accordingly, it is ORDRED, ADJUDGED and DECREED that:

On the Tax Appeals Tribunal's own motion, the exception of petitioners Rupert and Petronella Burks be, and hereby is, dismissed with prejudice as of this date.

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