

STATE OF NEW YORK
TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
MADISON BUSINESS FORMS, INC.	:	DECISION
	:	DTA No. 807827
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, 1984	:	
through May 31, 1987.	:	

Petitioner Madison Business Forms, Inc., 16 Gloria Lane, Fairfield, New Jersey 07006 filed an exception to the order of the Chief Administrative Law Judge issued on January 23, 1992 with respect to its request for an order to reopen the record of the instant case for the purpose of the introduction of additional evidence. Petitioner appeared by J. H. Cohn & Co. (Anthony Nigri, CPA). The Division of Taxation appeared by William F. Collins, Esq. (Mark F. Volk, Esq., of counsel).

On April 9, 1992, the Tax Appeals Tribunal (hereinafter the "Tribunal") issued a Notice of Intent to Dismiss Exception informing the parties that it appeared that this exception was not timely filed, and giving the parties 30 days to respond. A response to the Notice was filed by petitioner. The Division of Taxation did not submit a response.

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

ISSUE

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

FINDINGS OF FACT

We find the following facts.

The order of the Chief Administrative Law Judge was mailed to petitioner on January 23, 1992 at petitioner's last known address, 16 Gloria Lane, Fairfield, New Jersey 07006.

Petitioner filed a timely request for an extension of time to file an exception to the order of the Chief Administrative Law Judge in an envelope bearing an office metered mail postmark of February 21, 1992, and received by the Secretary to the Tax Appeals Tribunal on February 24, 1992. By letter dated February 26, 1992, the Secretary to the Tax Appeals Tribunal granted an extension until March 25, 1992.

Petitioner's exception to the order of the Chief Administrative Law Judge was received by the office of the Secretary to the Tax Appeals Tribunal on March 26, 1992. It was delivered to said office by Federal Express.

OPINION

In its response to the Notice of Intent to Dismiss Exception, petitioner acknowledges the requirements of the statute and regulations discussed below, but asks that under the circumstances of this case the Tribunal accept the exception as timely filed.

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

"[t]o 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) and 3000.16(a)(1) provide as follows:

"[w]ithin 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 with the secretary. The exception should be filed with the secretary either in person at the offices in Troy or by mail addressed to:

Secretary to the Tax Appeals Tribunal
State of New York
Division of Tax Appeals
Riverfront Professional Tower
500 Federal Street
Troy, NY 12180-2893

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]).

"[i]f any document required to be filed under this Part within a prescribed period or on or before a prescribed date under authority of any provision of article 40 of the Tax Law is, after such period or date, delivered by United States mail to the New York State Division of Tax Appeals or Tax Appeals Tribunal, Riverfront Professional Tower, 500 Federal Street, Troy, NY 12180, the date of the United States postmark stamped on the envelope or other appropriate wrapper in which such document is contained will be deemed to be the date of filing. Where delivery is made by courier, delivery, messenger or similar services, the date of delivery will be deemed to be the date of filing." (20 NYCRR 3000.16[a][1]).

Exceptions must be filed within 30 days after the giving of notice of the determination of the Administrative Law Judge or within the time granted by the Tax Appeals Tribunal for an extension of time to file an exception (Tax Law § 2006[7]; 20 NYCRR 3000.11[a][1], [2]). Where delivery of an exception is made by a courier or similar service, the date of delivery will be deemed to be the date of filing (20 NYCRR 3000.16[a][1]). The exception to the determination of the Administrative Law Judge in this matter was due on March 25, 1992. It was received by the office of the Secretary to the Tribunal on March 26, 1992. The exception was delivered by Federal Express and is deemed filed on March 26, 1992. Therefore, it was not timely filed as required by Tax Law § 2006(7), and the Tribunal lacks jurisdiction to review petitioner's exception. The Tribunal cannot, as petitioner urges, simply accept the exception as timely filed.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

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

DATED: Troy, New York
October 29, 1992

/s/John P. Dugan

John P. Dugan
President

/s/Francis R. Koenig

Francis R. Koenig
Commissioner

/s/Maria T. Jones

Maria T. Jones
Commissioner