

STATE OF NEW YORK
TAX APPEALS TRIBUNAL

In the Matter of the Petition :
of :
ROYKEN, LTD. : DECISION
for Review of a Denial, Suspension, or Revocation of a :
Certificate of Authority or Exempt Status under Articles 28 :
and 29 of the Tax Law. :

Petitioner Royken, Ltd., 163-19 Jamaica Avenue, Jamaica, New York 11432 filed an exception to the determination of the Administrative Law Judge issued on June 28, 1990 with respect to its petition for review of a denial, suspension or revocation of a certificate of authority or exempt status under Articles 28 and 29 of the Tax Law (File No. 807884). Petitioner appeared by Harold Shapiro, CPA. The Division of Taxation appeared by William F. Collins, Esq. (Patricia L. Brumbaugh, 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 response of the Division of Taxation 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

We find the following facts.

The determination of the Administrative Law Judge was mailed to petitioner on June 28, 1990 at petitioner's last known address at 163-19 Jamaica Avenue, Jamaica, New York 11432.

Petitioner's exception to the determination of the Administrative Law Judge was required to be filed by July 30, 1990. Petitioner's request for an extension of time to file an exception was received by the Office of the Secretary to the Tax Appeals Tribunal on August 16, 1990. The envelope containing the request for an extension of time to file an exception had a United States Postal Service postmark of August 13, 1990.

By letter dated November 29, 1990, the Secretary to the Tribunal informed petitioner that to enable the Tax Appeals Tribunal to review the issue of timeliness of the request for an extension of time to file an exception, the exception should be filed.

Petitioner then filed an exception which was received by the Office of the Secretary to the Tribunal on December 31, 1990. The envelope containing the exception had a United States Postal Service postmark of December 26, 1990.

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 to this Notice. Petitioner then requested an extension of time to respond to the Notice. The request was granted and petitioner was given until March 20, 1991 to respond. The Division of Taxation was also given until March 20, 1991 to respond to the Notice. A response to the Notice was filed by the Division of Taxation on March 20, 1991 requesting that the exception be dismissed. Petitioner submitted nothing further in response to the Notice of Intent to Dismiss.

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]). The Tribunal may grant an extension of time to file an exception if the request is made within the 30 day period (Tax Law § 2006[7]; 20 NYCRR 3000.11[a][2]).

The exception or a request for an extension of time to file an exception in this matter was due July 30, 1990. The request for an extension of time was received by the Office of the Secretary to the Tribunal on August 16, 1990. The envelope containing the request for an extension of time bore a United States postmark of August 13, 1990. An exception or request for an extension of time 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[a][1]). This request for an extension of time was received after the 30 day period. Therefore, the request for an extension of time was not timely filed, and the Tribunal lacks jurisdiction to review petitioner's exception.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

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

DATED: Troy, New York
June 20, 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