

STATE OF NEW YORK  
TAX APPEALS TRIBUNAL

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In the Matter of the Petition	:	
of	:	
<b>JOSEPH H. MEYER</b>	:	DECISION
for Redetermination of a Deficiency or for	:	DTA No. 808273
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Years 1981 through 1987.	:	

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Petitioner Joseph H. Meyer, 3901 S.E. St. Lucie Boulevard, Stuart, Florida 34997 filed an exception to the determination of the Administrative Law Judge issued on December 5, 1991 with respect to his petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1981 through 1987. Petitioner appeared by Robert W. Taylor, Esq. The Division of Taxation appeared by William F. Collins, Esq. (Michael J. Glannon, Esq., of counsel).

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 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 by certified mail to petitioner on December 5, 1991, at petitioner's last known address at 3901 S.E. St. Lucie Boulevard, Stuart, Florida 34997.

Petitioner's exception to the determination of the Administrative Law Judge was required to be filed by January 6, 1992. Petitioner's request for an extension of time to file an exception was received by the Office of the Secretary to the Tribunal on January 10, 1992. The envelope containing the request for an extension of time to file an exception had a United States Postal Service postmark of January 8, 1992.

By letter dated January 13, 1992, the Secretary to the Tribunal informed petitioner that his request for an extension of time to file an exception appeared to be untimely and that the proper procedure to follow would be to file an exception. A Notice of Intent to Dismiss Exception would then be issued and the parties would be given an opportunity to address the jurisdictional issue.

Petitioner then filed an exception which was received by the Office of the Secretary to the Tribunal on January 27, 1992.

On February 19, 1992, the Tribunal issued a Notice of Intent to Dismiss Exception on the ground that it was not timely filed. The parties were given until March 20, 1992 to respond to the Notice. A response to the Notice was filed by the Division of Taxation (hereinafter the "Division") which stated that the Division did not oppose the motion. Petitioner submitted a letter in opposition to the Notice.

By letter dated March 23, 1992, the Secretary to the Tribunal furnished petitioner with a copy of the mailing record of the Division of Tax Appeals in this matter. The Secretary granted petitioner until April 7, 1992 to respond to this information. No further response was received from petitioner.

### ***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."

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."

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]). An exception or request for an extension of time to file 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 6, 1992. The request for an extension was received by the Office of the Secretary to the Tribunal on January 10, 1992, which is not within the 30-day period for filing an exception. The envelope containing the exception bore a United States postmark of January 8, 1992, which is also not within the 30-day period for filing an exception.

Petitioner argues, on exception, that the date of receipt by petitioner of the Administrative Law Judge's determination should commence the running of the 30-day period to file an exception. This argument is without merit. A petitioner has 30 days from the giving of notice of a determination of an Administrative Law Judge to file an exception. The giving of notice commences when the determination is mailed by the Division of Tax Appeals (Tax Law § 2006[7]; 20 NYCRR 3000.17[a]).

Petitioner next argues that the Division of Tax Appeals has not put forth any proof that the determination of the Administrative Law Judge was mailed on December 5, 1991. We find that the Division of Tax Appeals' affidavit of mailing and certified mail record together establish that

the determination was mailed on December 5, 1991. The affidavit of mailing in this matter sets forth the mailing procedures of the Division of Tax Appeals and indicates that the Administrative Law Judge's determination was mailed by certified mail to petitioner on December 5, 1991. The certified mail record, PS form 3877, indicates acceptance by the United States Post Office of certified mail containing petitioner's name and address as well as that of petitioner's representative on December 5, 1991.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

On the Tax Appeals Tribunal's own motion, the exception of petitioner Joseph H. Meyer is hereby dismissed with prejudice as of this date.

DATED: Troy, New York  
June 25, 1992

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

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