

STATE OF NEW YORK
TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
RICHARD MORROCK	:	DECISION
	:	DTA No. 810646
for Redetermination of a Deficiency or for	:	
Refund of New York State Personal Income Tax	:	
under Article 22 of the Tax Law and New York	:	
City Personal Income Tax under Chapter 46,	:	
Title T of the Administrative Code of the City	:	
of New York for the Year 1985.	:	

Petitioner Richard Morrock, 212-64 16th Avenue, Bay Terrace, New York 11360, filed an exception to the determination of the Presiding Officer issued on August 12, 1993. Petitioner appeared pro se. The Division of Taxation appeared by William F. Collins, Esq. (Christina Seifert, Esq., of counsel).

On November 24, 1993, the Tax Appeals Tribunal (hereinafter the "Tribunal") issued a Notice of Intent to Dismiss this exception on the grounds that it was precluded by Tax Law § 2012 and/or was not timely filed. The parties were given 30 days to respond. Only petitioner submitted a response to the Notice of Intent to Dismiss. Any responses from the parties were due on December 24, 1993 and this date began the six-month period to issue this decision.

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 petitioner to the Tribunal's Notice of Intent to Dismiss, the Tribunal renders the following decision per curiam.

ISSUE

Whether petitioner was precluded from filing an exception to the determination of the Presiding Officer by Tax Law § 2012 and/or whether petitioner timely filed his exception.

FINDINGS OF FACT

We find the following facts.

The determination of the Presiding Officer was mailed to petitioner on August 12, 1993, at petitioner's last known address at 212-64 16th Avenue, Bay Terrace, New York 11360.

Petitioner's exception to the determination of the Presiding Officer was received by the Office of the Secretary to the Tribunal on September 20, 1993. The envelope containing the exception bears a United States Postal Service postmark of September 17, 1993.

On November 24, 1993, the Tribunal issued a Notice of Intent to Dismiss this exception on the ground that it was precluded by Tax Law § 2012 and/or was not timely filed. The parties were given 30 days to respond. Petitioner responded by a letter which was received on December 16, 1993. The Division of Taxation did not respond.

OPINION

Section 2012 of the Tax Law provides, in part, as follows:

"[t]he final determination of the presiding officer in the small claims unit shall be conclusive upon all parties and shall not be subject to review by any other unit in the division of tax appeals, by the tax appeals tribunal or by any court of the state" (Tax Law § 2012).

20 NYCRR 3000.9(h)(2) provides, in part, as follows:

"Effect of determination. The final determination of the presiding officer shall be conclusive upon all parties and shall not be subject to review by any other unit in the Division of Tax Appeals or by the tribunal" (20 NYCRR 3000.9[h][2]).

As provided above, exceptions may not be filed with regard to small claims determinations of presiding officers. Therefore, petitioner's exception is precluded by Tax Law § 2012. In addition, had this exception been filed in response to an Administrative Law Judge determination, it would not be timely. 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 Tribunal for an extension of time to file an exception (Tax Law § 2006[7]; 20 NYCRR 3000.11[a][1], [2]). If this exception had been filed in response to an Administrative Law

Judge's determination, the exception would have been due on September 13, 1993. The exception in this matter was received by the Secretary to the Tribunal on September 20, 1993 and the envelope containing the exception bears a United States Postal Service postmark of September 17, 1993, which is not within the prescribed period for filing an exception. Therefore, the exception was not timely filed.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

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

DATED: Troy, New York
April 28, 1994

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

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