

STATE OF NEW YORK
TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
JOHN P. BARTOLOMEI, OFFICER OF WINTERGARDEN INN ASSOCIATES	:	DECISION DTA No. 812888
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, 1991 through August 31, 1991.	:	

Petitioner John P. Bartolomei, Officer of Wintergarden Inn Associates, 335 Buffalo Avenue, Niagara Falls, New York 14303, filed an exception to the determination of the Administrative Law Judge issued on February 15, 1996. Petitioner appeared pro se. The Division of Taxation appeared by Steven U. Teitelbaum, Esq. (Andrew S. Haber, Esq., of counsel).

On March 28, 1996, the Tax Appeals Tribunal (hereinafter the "Tribunal") issued a Notice of Intent to Dismiss this exception on the ground that it was not timely filed. The parties were given until May 3, 1996 to respond. Only petitioner submitted a response to the Notice of Intent to Dismiss. Any responses from the parties were due on May 3, 1996 and this date began the six-month period for the issuance of 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.

ISSUE

Whether petitioner timely filed his exception to the determination of the Administrative Law Judge.

FINDINGS OF FACT

We find the following facts.

Petitioner's address as set forth in his petition was 335 Buffalo Avenue, Niagara Falls, New York 14303.

The determination of the Administrative Law Judge was mailed to petitioner on February 15, 1996 at 335 Buffalo Avenue, Buffalo, New York 14303.

Petitioner's exception to the determination of the Administrative Law Judge was received by the Office of the Secretary to the Tribunal on March 22, 1996. It was delivered to said office by UPS Next Day Air.

On March 28, 1996, the Tribunal issued a Notice of Intent to Dismiss this exception on the ground that it was not timely filed. The parties were given until May 3, 1996 to respond. Petitioner responded by submitting "Written Comments to Notice of Intent to Dismiss Exception" which was received on May 3, 1996.

OPINION

The Notice of Intent to Dismiss this exception was based on the fact that petitioner did not timely file his exception to the determination of the Administrative Law Judge within 30 days of the date that petitioner was given notice of such determination as required by Tax Law § 2006(7). However, since the Administrative Law Judge's determination was mailed to petitioner on February 15, 1996 at 335 Buffalo Avenue, Buffalo, New York 14303 and petitioner's last known address, as shown on his petition, was 335 Buffalo Avenue, Niagara Falls, New York 14303, such determination was not properly issued to him on February 15, 1996. Therefore, his exception filed on March 22, 1996 was timely as the statutory period within which to file an exception had not begun to run.

Accordingly, the Notice of Intent to Dismiss issued by this Tribunal is withdrawn. The Secretary to the Tax Appeals Tribunal is directed to establish a briefing schedule and proceed with petitioner's exception.

DATED: Troy, New York
July 25, 1996

/s/Donald C. DeWitt
Donald C. DeWitt
President

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