

STATE OF NEW YORK
TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
JACK URIEL	:	DECISION
for Revision of a Determination or for	:	DTA No. 814424
Refund of Sales and Use Taxes under Articles	:	
28 and 29 of the Tax Law for the Year 1994.	:	

Petitioner Jack Uriel, 19 Arba Aratzot, Tel Aviv, Israel 62486, filed an exception to the determination of an Administrative Law Judge which was issued on January 16, 1997. Petitioner appeared pro se. The Division of Taxation appeared by Steven U. Teitelbaum, Esq. (Mark F. Volk, Esq., of counsel).

On April 10, 1997, the Tax Appeals Tribunal (hereinafter the "Tribunal") issued a Notice of Intent to Dismiss Exception on the ground that petitioner's exception was not timely filed. The parties were given until May 12, 1997 to respond. Neither party responded to the notice.

On its own motion, after reviewing the determination, the exception and the mailing records of the Division of Tax Appeals in this matter, the Tribunal renders the following decision per curiam.

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 to petitioner on January 16, 1997 at petitioner's last known address at 19 Arba Aratzot, Tel Aviv, Israel 62486.

Petitioner's exception to the determination of the Administrative Law Judge was received by the Office of the Secretary to the Tribunal on April 3, 1997. The envelope containing the exception bears a postmark date of March 26, 1997 from Tel Aviv, Israel.

On April 10, 1997, the Tribunal issued a Notice of Intent to Dismiss Exception on the ground that petitioner's exception was not timely filed. The parties were given until May 12, 1997 to respond. No response was received from either party.

OPINION

Section 2006 of the Tax Law provides that the Tribunal shall have certain functions, powers and duties. Tax Law § 2006(7) provides, in pertinent part, as follows:

"7. 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."

The Tribunal's regulation at 20 NYCRR 3000.17(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. 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 office of counsel."

The Tribunal's regulation at 20 NYCRR 3000.22(f) provides:

"If the envelope or wrapper containing the document is mailed in a foreign country, the date of receipt of the envelope or wrapper will be deemed to be the date of filing."

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 3000.17[a][1]). Where the envelope

or wrapper containing the document is mailed in a foreign country, the date of receipt will be deemed the date of filing (20 NYCRR 3000.22[f]). The determination of the Administrative Law Judge was issued to petitioner on January 16, 1997. Therefore, the exception to the determination of the Administrative Law Judge in this matter was due on February 18, 1997. The envelope containing the exception was mailed from Tel Aviv, Israel on March 26, 1997 and was received by the office of the Secretary to the Tribunal on April 3, 1997. Therefore, it was not timely filed as required by Tax Law § 2006(7) 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 Jack Uriel is dismissed with prejudice as of this date.

DATED: Troy, New York
June 26, 1997

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

/s/Carroll R. Jenkins
Carroll R. Jenkins
Commissioner

/s/Joseph W. Pinto, Jr.
Joseph W. Pinto, Jr.
Commissioner