

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition :

of :

ESTATE OF SIDNEY ROEMER AND SADIE ROEMER :

DECISION
DTA NO. 815734

for Redetermination of a Deficiency or for Refund of New York State and New York City Personal Income Taxes under Article 22 of the Tax Law and the Administrative Code of the City of New York for the Year 1988. :

Petitioners Estate of Sidney Roemer and Sadie Roemer, 3800 South Ocean Drive, Apt. 1816, Hollywood, Florida 33019-2923, filed an exception to the determination of the Administrative Law Judge issued on September 3, 1998. Petitioners appeared by Melvin M. Bark, C.P.A. The Division of Taxation appeared by Terrence M. Boyle, Esq. (Gary Palmer, Esq., of counsel).

On October 20, 1998, the Tax Appeals Tribunal (hereinafter the "Tribunal") issued a Notice of Intent to Dismiss Exception on the ground that petitioners' exception was not timely filed. The parties were given until November 24, 1998 to respond. A response to the Notice was filed by petitioners. The Division of Taxation did not submit a response.

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 petitioners, the Tribunal renders the following decision.

ISSUE

Whether petitioners timely filed their 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 (certified control number Z 303 892 820) in Troy, New York to petitioners on September 3, 1998 at petitioners' last known address at 3800 South Ocean Drive, Apt. 1816, Hollywood, Florida 33019-2923. A copy of the determination was also mailed by certified mail (certified control number Z 303 892 821), on September 3, 1998, to petitioners' representative Melvin M. Bark, C.P.A. at 6625 Bay Parkway, Brooklyn, New York 11204.

Petitioners' exception to the determination of the Administrative Law Judge was received by the office of the Secretary to the Tribunal on October 8, 1998. The envelope containing the exception bears a United States Postal Service postmark of October 6, 1998.

On October 20, 1998, the Tribunal issued a Notice of Intent to Dismiss Exception on the ground that petitioners' exception was not timely filed. The parties were given until November 24, 1998 to respond. Petitioners responded by submitting a brief in opposition to the Notice of Intent to Dismiss Exception.

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:

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 3000.23(a) provides as follows:

Service of decisions, determinations and orders of the tribunal, administrative law judges and presiding officers shall be made by mail. Registered and certified mail will be used and service shall be complete upon the deposit of the appropriate document, enclosed in a post-paid properly addressed wrapper, in a post office or official depository under the exclusive care and custody of the United States postal service. Such service shall constitute the giving of notice pursuant to section 2006(7) of the Tax Law and service pursuant to section 2016 of the Tax Law.

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 an 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(a)(1) provides:

Date of filing. If any document required to be filed under this Part within a prescribed period or on or before a prescribed date under authority of any provision of article 40 of the Tax Law is, after such period or date, delivered by United States mail to the New York State Division of Tax Appeals or Tax Appeals Tribunal, Riverfront Professional Tower, 500 Federal Street, Troy, NY

12180, the date of the United States postmark stamped on the envelope or other appropriate wrapper in which such document is contained will be deemed to be the date of filing. Where delivery is made by courier, delivery, messenger or similar services, the date of delivery will be deemed to be the date of filing.

Exceptions must be filed within 30 days after the giving of notice of the determination or order 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], [2]). The exception to the determination of the Administrative Law Judge in this matter was required to be filed by October 5, 1998. The envelope containing the exception bears a United States Postal Service postmark of October 6, 1998 which date is deemed to be the date of filing (*see*, 20 NYCRR 3000.22[a][1]). Therefore, the exception was not timely filed as required by Tax Law § 2006(7) and the Tribunal lacks jurisdiction to review it.

In their response to the Notice of Intent to Dismiss Exception, petitioners argue that the 30-day period allowed by law to respond to the determination was reduced since their representative did not receive the determination for at least a week to ten days after it was mailed. We reject petitioners' argument that notice commenced when the determination was received. As we have held in *Matter of Parkview Auto Sales* (Tax Appeals Tribunal, July 11, 1996) and *Matter of Dimino* (Tax Appeals Tribunal, July 1, 1993), a petitioner has 30 days from the giving of notice of the Administrative Law Judge's determination to file an exception, not 30 days from the receipt of the determination. The giving of notice commences when the determination is mailed by the Division of Tax Appeals (Tax Law § 2006[7]; 20 NYCRR 3000.23[a]).

Petitioners further argue that they are being denied a clear, inexpensive and just system for resolving their controversy. However, while providing the public with a just system for resolving

controversies is the stated purpose of the Division of Tax Appeals (Tax Law § 2000), the failure to timely file an exception is fatal, thus, depriving the Tax Appeals Tribunal of jurisdiction in the matter (Tax Law § 2006[7]).

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

On the Tax Appeals Tribunal's own motion, the exception of petitioners Estate of Sidney Roemer and Sadie Roemer is dismissed with prejudice as of this date.

DATED: Troy, New York
May 20, 1999

/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