STATE OF NEW YORK

TAX APPEALS TRIBUNAL

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In the Matter of the Petition	:	
of	:	
OTU A. AND CAROL O. OBOT	:	DECISION DTA NO. 816007
for Redetermination of a Deficiency or for Refund of Personal Income Tax under Article 22 of the Tax Law for the Year 1993.	: :	

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Petitioners Otu A. and Carol O. Obot, 502 Windermere Boulevard, Amherst, New York

14226-2863, filed an exception to the order of the Administrative Law Judge issued on July 9,

1998. Petitioners appeared *pro se.* The Division of Taxation appeared by Terrence M. Boyle,

Esq. (Peter T. Gumaer, Esq., of counsel).

On September 11, 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 October 16, 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 order, 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 order of the Administrative Law

Judge.

FINDINGS OF FACT

We find the following facts.

The order of the Administrative Law Judge was mailed by certified mail (certified control number Z 303 892 781) in Troy, New York to petitioners on July 9, 1998 at petitioners' last known address at 502 Windermere Boulevard, Amherst, New York 14226-2863.

Petitioners' exception to the order of the Administrative Law Judge was received by the Office of the Secretary to the Tribunal on August 28, 1998. The envelope containing the exception bears a United States Postal Service postmark of August 26, 1998.

On September 11, 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 October 16, 1998 to respond. Petitioners responded by submitting a "Notice of Exception to the Notice of Intent to Dismiss Exception" dated September 15, 1998.

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 administative [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.
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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 order of the Administrative Law Judge in this matter was required to be filed by

August 10, 1998. The envelope containing the exception bears a United States Postal Service

postmark of August 26, 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 they

filed their exception on July 31, 1998 and enclose a copy of an exception dated July 31, 1998.

However, the only exception that was received by the Tribunal is the untimely exception received

on August 28, 1998 and dated August 20, 1998.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

On the Tax Appeals Tribunal's own motion, the exception of petitioners Otu A. and

Carol O. Obot is dismissed with prejudice as of this date.

DATED: Troy, New York
       April 15, 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