

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition :

of :

HIONAS ENTERPRISES, LTD. AND :
STAMATIOS HIONAS :

DECISION
DTA NO. 816144

for Revision of Determinations or for Refund of Sales
and Use Taxes under Articles 28 and 29 of the Tax Law :
for the Period June 1, 1992 through August 31, 1996.

Petitioners Hionas Enterprises, Ltd. and Stamatios Hionas, 383 Middle Country Road, Coram, New York 11727, filed an exception to the determination of the Administrative Law Judge issued on April 1, 1999. Petitioners appeared by Milton Shaiman, Esq. The Division of Taxation appeared by Terrence M. Boyle, Esq. (Michael B. Infantino, Esq., of counsel).

On June 2, 1999, 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 July 7, 1999 to respond. A response to the Notice was filed by the Division of Taxation. Petitioners 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 the Division of Taxation, 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 319 626 569) in Troy, New York to petitioners on April 1, 1999 at petitioners' last known address at 383 Middle Country Road, Coram, New York 11727. A copy of the determination was also mailed by certified mail (certified control number Z 319 626 570), on April 1, 1999, to petitioners' representative Milton Shaiman, Esq. at 1 Rural Place, Commack, New York 11725.

Petitioners' exception to the determination of the Administrative Law Judge was received by the Office of the Secretary to the Tribunal on May 24, 1999. The envelope containing the exception bears a United States Postal Service postmark of May 19, 1999.

On June 2, 1999, 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 July 7, 1999 to respond. The Division of Taxation responded by letter dated June 14, 1999.

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 May 3, 1999. The envelope containing the exception bears a United States Postal Service postmark of May 19, 1999 which 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.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

On the Tax Appeals Tribunal's own motion, the exception of Hionas Enterprises, Ltd. and Stamatis Hionas is dismissed with prejudice as of this date.

DATED: Troy, New York
December 2, 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