

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

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In the Matter of the Petition	:	
of	:	
<b>ANTHONY AND COLETTE PANEBIANCO</b>	:	<b>DECISION</b>
for Redetermination of a Deficiency or for Refund of	:	<b>DTA NO. 816192</b>
Personal Income Tax under Article 22 of the Tax Law	:	
for the Years 1989 and 1990.	:	

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Petitioners Anthony and Colette Panebianco, 13 Parkview Drive, Commack, New York 11725, filed an exception to the determination of the Administrative Law Judge issued on May 27, 1999. Petitioner appeared by Abraham Diamond, CPA. The Division of Taxation appeared by Terrence M. Boyle, Esq. (Kevin R. Law, Esq., of counsel).

On July 14, 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 August 18, 1999 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.

***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 345 734 639) in Troy, New York to petitioners on May 27, 1999 at petitioners' last known address at 20 Greenleaf Drive, Huntington, New York 11743. A copy of the determination was also mailed by certified mail (certified control number Z 345 734 640), on May 27, 1999, to petitioners' representative Abraham Diamond, CPA, 350 5<sup>th</sup> Avenue, Room 3304, New York, New York 10118 and by certified mail (certified control number Z 345 734 641) to petitioners' representative Jerri Ann Cirino, Esq., 33 Walt Whitman Road, Huntington Station, New York 11746.

Petitioners' exception to the determination of the Administrative Law Judge was dated June 30, 1999 and was shipped by United Parcel Service to the Office of the Secretary to the Tribunal. The date of shipment was July 5, 1999 and it was delivered to said office on July 7, 1999.

On July 14, 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 August 18, 1999 to respond. Neither party responded to the Notice.

***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 3000.17(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 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]). Where delivery of an

exception is made by a courier or similar service, the date of delivery will be deemed to be the date of filing (20 NYCRR 3000.22[a][1]). The determination of the Administrative Law Judge was issued to petitioners on May 27, 1999. Therefore, the exception to the determination of the Administrative Law Judge in this matter was due on June 28, 1999. The exception was delivered by United Parcel Service and was received by the office of the Secretary to the Tribunal on July 7, 1999. Therefore, it was not timely filed as required by Tax Law § 2006(7) and the Tribunal lacks jurisdiction to review petitioners' exception.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

On the Tax Appeals Tribunal's own motion, the exception of Anthony and Colette Panebianco is dismissed with prejudice as of this date.

DATED: Troy, New York

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Donald C. DeWitt  
President

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Carroll R. Jenkins  
Commissioner

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Joseph W. Pinto, Jr.  
Commissioner