

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

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In the Matter of the Petition	:	
of	:	
<b>ASSOCIATION OF ELECTRICAL</b>	:	DECISION
<b>CONSTRUCTION ENGINEERS</b>	:	DTA NO. 817121
for Review of a Denial of an Application for Exempt	:	
Organization Status under Articles 28 and 29 of the	:	
Tax Law.	:	

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Petitioner, Association of Electrical Construction Engineers, Attn: Michael A. Miller, c/o Consolidated Edison, 4 Irving Place, Room 1214-S, New York, New York 10003, filed an exception to the determination of the Administrative Law Judge issued on June 29, 2000. Petitioner appeared *pro se*. The Division of Taxation appeared by Barbara G. Billet, Esq. (Christina L. Seifert, Esq., of counsel).

Neither party filed a brief on exception. Oral argument was not requested.

After reviewing the entire record in this matter, the Tax Appeals Tribunal renders the following decision.

***ISSUE***

Whether the Division of Taxation properly addressed a letter to petitioner denying petitioner's application for exempt organization status in order that a petition challenging the denial, mailed more than 90 days after the date of mailing of the denial letter, must be dismissed as not timely filed.

***FINDINGS OF FACT***

We find the facts as determined by the Administrative Law Judge. These facts are set forth below.

Petitioner, Association of Electrical Construction Engineers, filed an application with the Division of Taxation (“Division”) seeking exempt organization status, pursuant to Tax Law § 1116(a)(4), with respect to sales and use taxes.

By a letter dated January 27, 1999, the Division denied petitioner’s application. The Division’s letter indicates that petitioner failed to meet the requisite organizational and operational tests for exempt organization status.

Petitioner challenged the denial of its application by filing a petition with the Division of Tax Appeals. The petition is dated and signed on May 25, 1999 and bears a stamp indicating receipt by the Division of Tax Appeals on May 28, 1999. The envelope in which the petition was filed, by first class mail, bears a United States Postal Service postmark date of May 26, 1999. The petition challenges the substantive merits of the Division’s denial of petitioner’s application.

On June 16, 1999, the Division of Tax Appeals issued to petitioner a Notice of Intent to Dismiss Petition. This notice advises that a petition challenging denial of exempt organization status must be filed within 90 days from the date of the denial letter (citing 20 NYCRR 590.11). The notice further states that the denial letter in this instance was issued on January 27, 1999, but the petition was not filed thereafter until May 26, 1999, a span of some 119 days. Therefore, the petition was subject to dismissal for lack of timeliness.

Petitioner responded to the notice by a letter dated June 21, 1999. This letter, authored by petitioner's treasurer, Michael A. Miller, states that 20 NYCRR 590.11 requires that a protest must be filed within 90 days from the date of *receipt* of the denial letter, as opposed to its issuance date. The letter further claims that the petition should be considered filed on the date it was signed, i.e., May 25, 1999, rather than the May 26, 1999 date on which it was mailed. Finally, the letter alleges that correspondence from the Division was consistently delayed, lengthy and untimely.

The parties were afforded the opportunity to submit documents and arguments in support of their respective positions concerning the notice of intent to dismiss the petition as untimely. On October 28, 1999, after review of the parties' arguments on the issue of whether the petition was timely filed, an order was issued. This order held that the Division had in fact mailed the denial letter on January 29, 1999 and that the letter was delivered thereafter as addressed on February 3, 1999. However, it was not clear from the record whether the denial letter had been properly addressed as required. In turn, assuming an incorrect address had been used, petitioner's time within which to protest the denial would not have started with the date of mailing of the denial letter, but rather would have been tolled until the date of actual receipt of the letter by the intended recipient, i.e., the correct addressee. As a result, the matter could not be concluded by a Notice of Intent to Dismiss because there existed an unresolved material question of fact.

The specific unresolved question of fact which precluded determination on the Notice of Intent to Dismiss Petition was whether the address to which the denial letter was mailed should have included the name of petitioner's treasurer, Michael A. Miller. The record for purposes of

the Notice of Intent to Dismiss Petition did not include petitioner's application for exempt status, which would have provided petitioner's specific "last known address" to which the denial letter should have been mailed. Accordingly, the October 28, 1999 order concluded that the matter should be scheduled for a hearing to resolve the question of petitioner's correct last known address. In lieu of a hearing, the parties agreed to submit the matter for determination based on documents and written arguments.

The parties submitted essentially the same documents as were provided in response to the Notice of Intent to Dismiss Petition, with the notable addition that the Division also supplied petitioner's Application for an Exempt Organization Certificate ("Form ST-119.2"). This application is dated November 20, 1998, is date stamped as received by the Division on November 30, 1998, and is signed on petitioner's behalf by Michael A. Miller, Treasurer. Information at the top of the application lists the name of the organization (petitioner herein) as "Association of Electrical Construction Engineers" and lists the following specific address for the organization: "4 Irving Place, room 1006-S, New York, N.Y. 10003-3598." The address section of the application does not list Mr. Miller's name. Instead, the section immediately below the address section is entitled "Name and telephone number of person to be contacted (if the person is someone other than an officer, this application must be accompanied by a power of attorney executed by the officer)." This section lists the following: "Michael A. Miller, Treasurer, [phone number]."

***THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE***

The Administrative Law Judge noted that the only issue to be resolved was whether the Division incorrectly addressed the denial letter by failing to include Michael A. Miller's name as a part of the address, thus forming a basis for tolling the period of limitations on protest until such time as Mr. Miller actually received the denial letter.

The Administrative Law Judge rejected petitioner's argument that the denial letter was incorrectly addressed. The Administrative Law Judge found that the Division had used "the precise address listed by petitioner on the face of its Application for Exempt Organization Certificate," and such address did not include Mr. Miller's name (Determination, conclusion of law "C"). The Administrative Law Judge suggested that petitioner could (and perhaps should) have listed Mr. Miller's name in the address section of the application. The Administrative Law Judge concluded that the Division had complied with the statutory mandate that a notice, in this case a denial letter, is to be mailed to the person or organization for whom it is intended at the address given in the last return filed or in any application made as required by Tax Law § 1147(a)(1). As the petition was not filed within 90 days of the January 29, 1999 mailing date, it was not timely filed. Accordingly, the Administrative Law Judge concluded that the Division of Tax Appeals had no jurisdiction to address the merits of petitioner's application for exempt organization status and the matter must be dismissed.

***ARGUMENT ON EXCEPTION***

On exception, petitioner asserts that by omitting the name of petitioner's treasurer from the address to which the denial of exempt status letter was sent, the Division failed to properly serve the denial letter on petitioner.

***OPINION***

Tax Law § 1116(a)(4) provides exemption from sales and use taxes for organizations which are organized and operated exclusively for charitable, educational or other specified purposes, where no part of the net earnings of such organization inures to the benefit of any private shareholder or individual and where such organization does not engage in proscribed legislative or political activities. Regulations of the Commissioner of Taxation, at 20 NYCRR 529.7(f), provide the manner in which to apply for exempt status pursuant to Tax Law § 1116(a)(4). Petitioner made such application and the Division, upon review of petitioner's application, denied the same by letter dated January 27, 1999.

Section 529.11 of the Commissioner's Regulations details the protest procedures available to an organization whose application for exemption has been denied. Specifically with regard to time periods, 20 NYCRR 529.11(a) provides as follows:

The denial of an exemption claimed or the revocation of an exempt status previously granted will be final unless the person or organization whose exempt status was denied or revoked, within 90 days *after the mailing by certified mail of the revocation or denial* by the [Division], applies to the . . . Division of Tax Appeals, for a hearing (emphasis added).

The filing of a petition within this time period is a prerequisite to the jurisdiction of the Division of Tax Appeals, which has no authority to consider a petition which is not filed within

90 days of the certified mailing of a notice of denial (*see*, Tax Law § 2006(4); *see also*, ***Matter of Roland***, Tax Appeals Tribunal, February 22, 1996).

The Administrative Law Judge correctly determined that the address to which the denial notice was sent by certified mail was the address given by petitioner in its application. While the face of petitioner's application contains the name of petitioner's treasurer as the "person to be contacted," such application only includes that person's name and telephone number. The application does not indicate that such person should be named as an addressee in documents sent to petitioner or that documents should be sent "in care of" the treasurer. There is nothing in the record to indicate that the mailing address of petitioner is the same as that of the treasurer nor does it indicate an address for the treasurer to which documents should be sent. Despite petitioner's arguments, a document sent to petitioner "care of" its treasurer would not have been properly addressed unless that were part of its actual address (*see*, ***Matter of Combemale***, Tax Appeals Tribunal, March 31, 1994). Further, even if the address should have contained the treasurer's name, the notice was actually delivered to the address to which it was sent. The Appellate Division, Third Department held in ***Matter of Riehm v. Tax Appeals Tribunal*** (179 AD2d 970, 579 NYS2d 228, *lv denied* 79 NY2d 759, 584 NYS2d 447), that "[a]s long as a notice of deficiency is actually received by the taxpayer in sufficient time to file a petition for redetermination, the notice is valid despite an error in the taxpayer's mailing address" (***Matter of Riehm v. Tax Appeals Tribunal***, *supra*, 579 NYS2d, at 229).

As noted by the Administrative Law Judge, there is no apparent bar to petitioner refileing its application for exempt status and, upon such application being denied, filing a timely petition

contesting such denial. However, we lack jurisdiction in this case to address the merits of petitioner's challenge to the denial of its application for exempt status.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Association of Electrical Construction Engineers is denied;
2. The determination of the Administrative Law Judge is affirmed; and
3. The petition of Association of Electrical Construction Engineers is dismissed.

DATED: Troy, New York  
March 1, 2001

/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