

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
LINDA GREAVES-BEY	:	DECISION
	:	DTA NO. 817940
for Redetermination of a Deficiency or for Refund of	:	
New York State Personal Income Tax under Article 22	:	
of the Tax Law for the Years 1997 and 1998.	:	

Petitioner Linda Greaves-Bey, 8106 243rd Street, Bellerose, New York 11426, filed an exception to the order of the Administrative Law Judge issued on November 21, 2001.

Petitioner appeared *pro se*. The Division of Taxation appeared by Barbara G. Billet, Esq. (Kevin R. Law, Esq., of counsel).

On January 23, 2002, the Tax Appeals Tribunal (hereinafter the “Tribunal”) issued a Notice of Intent to Dismiss Exception on the ground that petitioner’s exception was not timely filed. The parties were given until February 27, 2002 to respond. Petitioner filed a response to the Notice on February 13, 2002.

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 petitioner, the Tribunal renders the following decision.

ISSUE

Whether petitioner timely filed her exception to the order of the Administrative Law Judge.

FINDINGS OF FACT

We find the following facts.

The Division of Tax Appeals mailed the order of the Administrative Law Judge by certified mail (certified control number 7000 1670 0013 8887 0680) in Troy, New York to petitioner Linda Greaves-Bey on November 21, 2001 at petitioner's last known address of 8106 243rd Street, Bellerose, New York 11426.

On December 18, 2001, the envelope containing the order was returned to the Division of Tax Appeals marked "Unclaimed." On December 19, 2001, the Division of Tax Appeals remailed the order of the Administrative Law Judge to petitioner at her last known address at 8106 243rd Street, Bellerose, New York 11426 by first class mail.

Petitioner's exception to the order of the Administrative Law Judge was received by the Office of the Secretary to the Tribunal on January 18, 2002. The envelope containing the exception bears a United States Postal Service postmark of January 16, 2002.

On January 23, 2002, the Tribunal issued a Notice of Intent to Dismiss Exception on the ground that petitioner's exception was not timely filed. The parties were given until February 27, 2002 to respond. Petitioner filed a response to the Notice on February 13, 2002.

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.

Further, 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.

The Tribunal's regulation at 20 NYCRR 3000.23(a) provides that service of determinations and orders shall be made by registered or certified mail and shall be complete upon enclosing the document in a post-paid properly addressed wrapper and depositing it in a post office under the exclusive care and custody of the United States Postal Service. Following this procedure constitutes the giving of notice under section 2006(7) of the Tax Law.

In her response to the Notice of Intent to Dismiss Exception, petitioner has not presented any arguments that are relevant to the issue of timeliness of the exception.

As the order of the Administrative Law Judge was served on petitioner by certified mail on November 21, 2001, the exception to the order of the Administrative Law Judge in this matter was required to be filed by December 21, 2001. The envelope containing the exception bears a United States Postal Service postmark of January 16, 2002 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.

On the Tax Appeals Tribunal's own motion, the exception of Linda Greaves-Bey is dismissed with prejudice as of this date.

DATED: Troy, New York
July 25, 2002

/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