

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition :
of :
PRAKASH T. MELWANI : DECISION
for Revision of a Determination or for Refund of Sales : DTA NO. 818490
and Use Taxes under Articles 28 and 29 of the Tax Law :
for the Period June 1, 1996 through May 31, 1999. :

Petitioner Prakash T. Melwani, 350 Third Avenue, Suite 365, New York, New York 10011, filed an exception to the order of the Administrative Law Judge issued on October 24, 2002. Petitioner appeared *pro se*. The Division of Taxation appeared by Barbara G. Billet, Esq. (Kathleen D. O'Connell, Esq., of counsel).

On December 5, 2002, the Tax Appeals 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 January 9, 2003 to respond. The Division filed a response to the Notice on December 12, 2002. Petitioner filed a response to the Notice on January 7, 2003.

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

ISSUE

Whether petitioner timely filed his 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 denying petitioner's application for costs pursuant to Tax Law § 3030 by certified mail (certified control number 7002 0860 0008 3339 1345) in Troy, New York to Prakash T. Melwani on October 24, 2002 at his last known address of 350 Third Avenue, Suite 365, New York, New York 10011.

Petitioner's exception to the order of the Administrative Law Judge was received by the Office of the Secretary to the Tribunal on November 29, 2002. The envelope containing the exception bears a United States Postal Service postmark of November 26, 2002.

OPINION

Section 2006 of the Tax Law provides that the Tax Appeals Tribunal (hereinafter "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.

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]). An exception received by this Tribunal after the date it was due is deemed to be filed on the date of the United States Postal Service postmark stamped on the envelope (20 NYCRR 3000.22[a][1]). The exception in this matter was due on November 25, 2002.¹ The envelope containing petitioner's exception bears a United States Postal Service postmark of November 26, 2002. Therefore, the exception

¹November 23, 2002 is the 30th day from October 24, 2002. However, as November 23, 2002 fell on a Saturday, the exception was required to be filed by Monday, November 25, 2002 (*see*, General Construction Law §§ 20, 25-a).

was not timely filed as required by Tax Law § 2006(7) and the Tribunal lacks jurisdiction to review it.

In his response to the Notice of Intent to Dismiss Exception, petitioner claims that although his exception was not timely filed, it should be accepted because he simply miscalculated the date for timely filing and there has been no prejudice to either party as a result. Despite the fact that petitioner's exception was filed only one day late, there is no authority to extend the time within which petitioner could timely file an exception to the Administrative Law Judge's order due to inadvertent delay or miscalculation of dates.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

On the Tax Appeals Tribunal's own motion, the exception of petitioner Prakash T. Melwani is dismissed with prejudice as of this date.

DATED: Troy, New York
May 29, 2003

/s/Donald C. DeWitt
Donald C. DeWitt
President

/s/Carroll R. Jenkins
Carroll R. Jenkins
Commissioner