

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition :
of :
HALUK INCE : DECISION
for Revision of a Determination or for Refund of Sales : DTA NO. 818537
and Use Taxes under Articles 28 and 29 of the Tax Law
for the Period February 1, 1997 through May 31, 1999. :

Petitioner Haluk Ince, 1125 Titus Avenue, Rochester, New York 14617, filed an exception to the determination of the Administrative Law Judge issued on March 14, 2003. Petitioner appeared by Erdal Erol, Enrolled Agent. The Division of Taxation appeared by Daniel Smirlock, Esq. (Clifford M. Peterson, Esq., of counsel).

On December 6, 2006, 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 January 10, 2007 to respond. No responses were filed.

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 petitioner timely filed his 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 7002 0510 0003 3750 0593) in Troy, New York to petitioner on March 14, 2003 at petitioner's last known address at 98 Knapp Avenue, Rochester, New York 14609. A copy of the determination was also mailed to petitioner's representative by certified mail (certified control number 7002 0510 0003 3750 0586) in Troy, New York on March 14, 2003 to Erdal Erol, 1914 E. Ridge Road, #204, Rochester, New York 14622.

Petitioner filed an exception to the determination which was received by the Office of the Secretary to the Tax Appeals Tribunal on November 17, 2006. The exception was hand-delivered to the offices of the Division of Tax Appeals by both petitioner and his representative.

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 3000.23(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 or official depository 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.

Exceptions must be filed within 30 days after the giving of notice of the determination of an Administrative Law Judge or within the time granted by the Tribunal for an extension of time to file an exception (*see*, Tax Law § 2006[7]; 20 NYCRR 3000.17[a][1], [2]).

In this case, the determination was served on petitioner on March 14, 2003 and the exception to the determination of the Administrative Law Judge was due to be filed on or before April 14, 2003.¹ The exception in this case was hand-delivered to our offices and was received by the Office of the Secretary to the Tax Appeals Tribunal on November 17, 2006. Therefore, the exception was not timely filed as required by Tax Law § 2006(7) and the Tribunal lacks jurisdiction to review it.

¹April 13, 2003 is the 30th day from March 14, 2003. However, as April 13th fell on a Sunday, the exception was required to be filed by Monday, April 14, 2003 (*see*, General Construction Law §§ 20, 25-a).

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

On the Tax Appeals Tribunal's own motion, the exception of Haluk Ince is dismissed with prejudice as of this date.

DATED: Troy, New York
June 28, 2007

/s/ Charles H. Nesbitt

Charles H. Nesbitt
President

/s/ Carroll R. Jenkins

Carroll R. Jenkins
Commissioner

/s/ Robert J. McDermott

Robert J. McDermott
Commissioner