

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
FERNANDO CARDONA	:	DECISION
	:	DTA NO. 818709
for Redetermination of a Deficiency or for Refund of New York State Personal Income Tax under Article 22 of the Tax Law for the Year 1992.	:	

Petitioner Fernando Cardona, 84 Grove Street, Newburgh, New York 12550, filed an exception to the determination of the Administrative Law Judge issued on May 9, 2002.

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

On June 25, 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 July 30, 2002 to respond. Petitioner filed a response to the Notice on July 30, 2002.

On its own motion, after reviewing the determination, 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 his exception to the determination of the Administrative Law Judge.

FINDINGS OF FACT

We find the following facts.

The Division of Tax Appeals mailed the determination of the Administrative Law Judge by certified mail (certified control number 7001 2510 0000 5291 7107) in Troy, New York to petitioner Fernando Cardona on May 9, 2002 at petitioner's last known address of 84 Grove Street, Newburgh, New York 12550.

Petitioner's exception to the determination of the Administrative Law Judge was received by the Office of the Secretary to the Tribunal on June 24, 2002. The envelope containing the exception bears a United States Postal Service postmark of June 21, 2002.

On June 25, 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 July 30, 2002 to respond. Petitioner filed a response to the Notice on July 30, 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.

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 June 10, 2002.¹ The envelope containing petitioner's exception bears a United States Postal Service postmark of June 21, 2002. Therefore, the exception was not timely filed as required by Tax Law § 2006(7) and the Tribunal lacks jurisdiction to review it.

¹June 8, 2002 is the 30th day from May 9, 2002. However, as June 8, 2002 fell on a Saturday, the exception was required to be filed by Monday, June 10, 2002 (*see*, General Construction Law §§ 20, 25-a).

In his response to the Notice of Intent to Dismiss Exception, petitioner claims to have requested a thirty-day extension of time to file his exception by letter dated June 6, 2002. Petitioner, therefore, asserts that his exception filed on June 21, 2002 was timely. However, the Secretary to the Tribunal has no record of an application for an extension of time to file his exception to July 10, 2002. In addition, there is no evidence that the Tribunal ever granted such an extension request. Furthermore, petitioner has not offered any proof that he made a timely written request for an extension of time to file his exception. The only document produced by petitioner is a copy of an alleged letter dated June 6, 2002 requesting a thirty-day extension. The Tribunal has no evidence of receipt of this letter and, therefore, it cannot serve as proof of an extension (*see, Matter of Schildkraut*, Tax Appeals Tribunal, October 25, 1990).

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

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

DATED: Troy, New York
November 14, 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