

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
OSSAMA HASSAN	:	DECISION
	:	DTA NO. 818955
for Revision of a Determination or for Refund of	:	
Cigarette Tax under Article 20 of the Tax Law for	:	
the Period September 25, 2000.	:	

Petitioner Ossama Hassan, 42-43 Ithaca Street, Apt. 5-K, Elmhurst, New York 11373, filed an exception to the determination of the Administrative Law Judge issued on August 7, 2003. Petitioner appeared by *pro se*. The Division of Taxation appeared by Mark F. Volk, Esq. (Michelle H. Helm, Esq., of counsel).

On September 24, 2003, 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 October 29, 2003 to respond.

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 to the Tribunal’s Notice of Intent to Dismiss Exception, 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 3749 0924) in Troy, New York to petitioner on August 7, 2003 at petitioner's last known address at 42-43 Ithaca Street, Apt 5-K, Elmhurst, New York 11373.

Petitioner filed an exception to the determination which was received by the Office of the Secretary to the Tax Appeals Tribunal on September 19, 2003. The envelope containing the exception bore a United States Postal Service postmark of September 17, 2003.

By letter dated September 24, 2003, the Secretary to the Tribunal acknowledged receipt of petitioner's exception and issued a Notice of Intent to Dismiss Exception on the ground that petitioner's exception was not timely filed. The Notice of Intent to Dismiss Exception was mailed to petitioner at 42-43 Ithaca Street, Apt 5-K, Elmhurst, New York 11373 by certified mail. The envelope containing the copy of the Notice mailed to petitioner was returned to the Tribunal and marked as "unclaimed" on October 22, 2003. A copy of the Notice of Intent to Dismiss Exception was mailed to petitioner at the same address by first class mail and was not returned. The Division did not respond to the Notice. On October 30, 2003, petitioner filed a response to the Notice.

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 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 (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]). In this case, the determination was properly served on petitioner on August 7, 2003 and any exception to the determination of the Administrative Law Judge was due to be filed on or before September 8, 2003.¹ The envelope containing petitioner's exception bears a United States Postal Service

¹ September 6, 2003 is the 30th day from August 7, 2003. However, as September 6, 2003 fell on a Saturday, the exception was required to be filed by Monday, September 8, 2003 (*see*, General Construction Law §§ 20, 25-a).

postmark of September 17, 2003. Therefore, the exception was not timely filed as required by Tax Law § 2006(7) and the Tribunal lacks jurisdiction to review it.

Petitioner's response to the Notice of Intent to Dismiss Exception was due to be filed on or before October 29, 2003. His response, which explained that he did not timely file his exception due to extenuating personal circumstances, was not filed until October 30, 2003 and was, therefore, untimely. However, even if petitioner's response had been timely filed, it would not have provided authority to extend the statutory time within which petitioner could timely file an exception to the Administrative Law Judge's determination.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

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

DATED: Troy, New York
March 25, 2004

/s/Donald C. DeWitt

Donald C. DeWitt
President

/s/Carroll R. Jenkins

Carroll R. Jenkins
Commissioner

¹(...continued)