

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

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In the Matter of the Petition	:	
of	:	
<b>ROBERT L. BETHEL</b>	:	DECISION
	:	DTA NO. 819161
for Revision of a Determination or for Refund of Sales and	:	
Use Taxes under Articles 28 and 29 of the Tax Law for the	:	
Year 2002.	:	

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Petitioner Robert L. Bethel, 7083 Suzanne Lane, Schenectady, New York 12303, filed an exception to the determination of the Administrative Law Judge issued on April 3, 2003.

Petitioner appeared *pro se*. The Division of Taxation appeared by Mark F. Volk, Esq. (Justine Clarke Caplan, Esq., of counsel).

On May 20, 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 June 24, 2003 to respond. A response to the Notice was filed by the Division of Taxation on June 2, 2003 and by petitioner on June 4, 2003.

On its own motion, after reviewing the determination, the exception, the mailing records of the Division of Tax Appeals in this matter and the responses of petitioner and the Division of Taxation 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 3750 0364) in Troy, New York to petitioner on April 3, 2003 at petitioner's last known address at 7083 Suzanne Lane, Schenectady, New York 12303.

Petitioner filed an exception to the determination which was received by the Office of the Secretary to the Tax Appeals Tribunal on May 16, 2003. The envelope containing the exception bore a United States Postal Service postmark of May 13, 2003.

By letter dated May 20, 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 parties were given until June 24, 2003 to respond. The Division of Taxation responded by letter on June 2, 2003 and petitioner responded by letter on June 4, 2003.

### ***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 served on petitioner on April 3, 2003 and the exception to the determination of the Administrative Law Judge was due to be filed on or before

May 5, 2003<sup>1</sup>. The envelope containing petitioner's exception bears a United States Postal Service postmark of May 13, 2003. Therefore, the exception 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 his exception was not timely filed because he was in the process of moving on a temporary basis to South Carolina in order to participate in several meetings. Despite petitioner's circumstances, there is no 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 Robert L. Bethel is dismissed with prejudice as of this date.

DATED: Troy, New York  
September 25, 2003

/s/Donald C. DeWitt

Donald C. DeWitt  
President

/s/Carroll R. Jenkins

Carroll R. Jenkins  
Commissioner

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<sup>1</sup> May 3, 2003 is the 30th day from April 3, 2003. However, as May 3, 2003 fell on a Saturday, the exception was required to be filed by Monday, May 5, 2003 (*see*, General Construction Law §§ 20, 25-a).