

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

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In the Matter of the Petition	:	
of	:	
<b>MICHAEL A. CONNORS</b>	:	DECISION
	:	DTA NO. 819429
for Redetermination of Deficiencies or for Refund of	:	
New York State Personal Income Tax under Article 22	:	
of the Tax Law for the Period July 1, 1998 through	:	
June 30, 2000.	:	

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Petitioner Michael A. Connors, 159 Holmes Road, Newburgh, New York 12550, filed an exception to the order of the Administrative Law Judge issued on September 18, 2003.

Petitioner appeared *pro se*. The Division of Taxation appeared by Mark F. Volk, Esq. (John E. Matthews, Esq., of counsel).

On November 4, 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 December 9, 2003 to respond. A response to the Notice was filed by the Division of Taxation on December 1, 2003 and by petitioner on December 8, 2003.

On its own motion, after reviewing the order of the Administrative Law Judge, 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 order of the Administrative Law Judge.

***FINDINGS OF FACT***

We find the following facts.

The order of the Administrative Law Judge was mailed by certified mail (certified control number 7002 0510 0003 3749 0566) in Troy, New York to petitioner on September 18, 2003 at petitioner's last known address at 159 Holmes Road, Newburgh, NY 12550.

Petitioner filed an exception to the order which was received by the Office of the Secretary to the Tax Appeals Tribunal on October 30, 2003. The envelope containing the exception bore a United States Postal Service postmark of October 28, 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 or order 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 order was served on petitioner on September 18, 2003 and the exception to the order of the Administrative Law Judge was due to be filed on or before October 18, 2003. The envelope containing petitioner's exception bears a United States Postal Service postmark of October 28, 2003. Therefore, despite petitioner's claim that his exception should be considered timely, the exception was not timely filed as required by Tax Law § 2006(7) and the Tribunal lacks jurisdiction to review it.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

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

DATED: Troy, New York  
April 8, 2004

/s/Donald C. DeWitt

Donald C. DeWitt  
President

/s/Carroll R. Jenkins

Carroll R. Jenkins  
Commissioner