

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

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In the Matter of the Petition :

of :

**M & A ENTERPRISES, INC.** :

DECISION  
DTA NO. 820227

for Revision of a Determination or for Refund of Sales and :  
Use Taxes under Articles 28 and 29 of the Tax Law for  
the Period September 1, 1996 through February 28, 2001. :

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Petitioner M & A Enterprises, Inc., c/o Amin S. Amin, 75 St. Marks Lane, Islip, New York 11751, filed an exception to the determination of the Administrative Law Judge issued on May 19, 2005. Petitioner appeared by William S. Dempsey, CPA. The Division of Taxation appeared by Christopher C. O'Brien, Esq. (John E. Matthews, Esq., of counsel).

On August 10, 2005, 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 September 14, 2005 to respond. Neither petitioner nor the Division of Taxation responded.

On its own motion, after reviewing the determination of the Administrative Law Judge, 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 its 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 7003 1680 0004 6323 5226) in Troy, New York to petitioner on May 19, 2005 at petitioner's last known address of: M & A Enterprises, Inc., c/o Amin S. Amin, 560 Main Street, Suite 5A, Islip, New York 11751-3540. A copy of the determination was mailed by certified mail (certified control number 7003 1680 0004 6323 5233) in Troy, New York to petitioner's representative William S. Dempsey, CPA, on May 19, 2005 at 220 North Wellwood Avenue, Lindenhurst, New York 11757.

The envelope containing the determination mailed to petitioner on May 19, 2005 was returned to the Division of Tax Appeals on May 26, 2005 with a United States Postal Service ("USPS") notation of "return to sender" and with a box checked "other." This copy of the determination was remailed by regular mail to petitioner at petitioner's last known address on May 31, 2005.

Petitioners filed an exception to the determination which was received by the Office of the Secretary to the Tax Appeals Tribunal on August 4, 2005. The envelope containing the exception bore a USPS postmark of August 2, 2005.

***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 USPS. 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 USPS postmark stamped on the envelope or the date of delivery (20 NYCRR 3000.22[a][1]).

In this case, the determination was served on petitioners on May 19, 2005 and the exception to the determination of the Administrative Law Judge was due to be filed on or before June 20, 2005.<sup>1</sup> The envelope containing petitioner's exception bore a USPS postmark of August 2, 2005. Although the address for petitioner contained in petitioner's exception differed from the address to which the determination was mailed on May 19, 2005, the determination was mailed on May 19, 2005 to petitioner's last known address at that time.

As a result, we conclude that petitioner's exception to the determination of the Administrative Law Judge 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 M & A Enterprises, Inc. is dismissed with prejudice as of this date.

DATED: Troy, New York  
February 16, 2006

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/s/Charles H. Nesbitt  
Charles H. Nesbitt  
President

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/s/Carroll R. Jenkins  
Carroll R. Jenkins  
Commissioner

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/s/Robert J. McDermott  
Robert J. McDermott  
Commissioner

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<sup>1</sup> June 18, 2005 is the 30th day from May 19, 2005. However, as June 18, 2005 fell on a Saturday, the exception was required to be filed by Monday, June 20, 2005 (*see*, General Construction Law §§ 20, 25-a).