

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
MOHAMMAD GOLAMRABBANI SARKAR	:	DECISION DTA NO. 820399
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 March 1, 2001 through August 31, 2002.	:	

Petitioner, Mohammad Golamrabbani Sarkar, filed an exception to the determination of the Administrative Law Judge issued on May 25, 2006. Petitioner appeared *pro se*. The Division of Taxation appeared by Daniel Smirlock, Esq. (Jennifer A. Murphy, Esq., of counsel).

On May 14, 2007, 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 18, 2007 to respond. Petitioner submitted a letter in opposition to the Notice. The Division of Taxation submitted a letter in support of the Notice.

On its own motion, after reviewing the determination, 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 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 7005 2570 0001 4656 0804) in Troy, New York to petitioner on May 25, 2006 at petitioner's last known address at 1225 Sheridan Avenue, #4B, Bronx, NY 10456.

Petitioner filed an exception to the determination which was received by the Office of the Secretary to the Tax Appeals Tribunal on May 10, 2007. The envelope containing the exception bore a United States Postal Service ("USPS") postmark of May 7, 2007.

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, New York 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 or official depository 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 the notice of the order of an Administrative Law Judge or within the time granted by the Tribunal for an extension of time to file an exception (*see*, 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 (*see*, 20 NYCRR 3000.22[a][1]).

In this case, the determination was served on petitioner on May 25, 2006 and the exception to the determination of the Administrative Law Judge was due to be filed on or before June 24, 2006.¹ The envelope containing petitioner's exception bore a USPS postmark of May 7, 2007. Therefore, 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:

¹June 24, 2006 is the 30th day from May 25, 2006. However, as June 24, 2006 fell on a Saturday, the exception was required to be filed by Monday, June 26, 2006 (*see*, General Construction Law, § § 20, 25-a).

On the Tax Appeals Tribunal's own motion, the exception of Mohammad Golamrabbani Sarkar is dismissed with prejudice as of this date.

DATED:Troy, New York
December 6, 2007

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

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

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