

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
JAMES BROWN	:	DECISION
	:	DTA NO. 820562
for Redetermination of a Deficiency or for Refund of	:	
New York State and City Personal Income Taxes under	:	
Article 22 of the Tax Law and the New York City	:	
Administrative Code for the Year 1997.	:	

Petitioner, James Brown, c/o P.O. Box 740473, Rego Park, NY 11374-0473, filed an exception to the determination of the Administrative Law Judge issued on October 12, 2006. Petitioner appeared *pro se*. The Division of Taxation appeared by Mark F. Volk, Esq. (Justine Clarke Caplan, Esq., of counsel).

On December 12, 2006, the Division of Taxation filed a Motion to Dismiss Exception on the ground that petitioner's exception was not timely filed. Petitioner was given until January 16, 2007 to respond to the motion. Petitioner did not submit a response.

After reviewing the determination, the exception, the mailing records of the Division of Tax Appeals in the matter and the motion of the Division of Taxation, the Tax Appeals 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 to petitioner on October 12, 2006 at petitioner's last known address at c/o P.O. Box 740473, Rego Park, New York 11374-0473.

Petitioner's exception to the determination of the Administrative Law Judge was required to be filed with the Secretary to the Tribunal on or before November 13, 2006. Petitioner's exception was received by the Office to the Secretary to the Tribunal on November 21, 2006.

By motion dated December 12, 2006, the Division of Taxation requested that petitioner's exception be dismissed as not properly filed as required by the Rules of Practice. The Division of Taxation notes that petitioner did mail his exception on November 13, 2006, but such exception was sent to a Division of Taxation employee in the Income Franchise Desk Audit Bureau and not served upon the Secretary to the Tribunal.

By letter dated December 15, 2006, the Secretary to the Tribunal gave petitioner 30 days to respond to the Division of Taxation's motion. Petitioner did not respond to the motion.

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.

Exceptions must be filed with the Secretary to the Tribunal within 30 days after the giving of notice of the determination of the Administrative Law Judge (Tax Law § 2006[7]; 20 NYCRR 3000.17[a][1]). In this case, petitioner's exception was contained in an envelope that bore a United States Postal Service postmark dated November 13, 2006. Although petitioner's exception is postmarked on November 13, 2006, such exception was served on an employee of the Division of Taxation and not on the Secretary to the Tribunal. The exception was forwarded to the Secretary to the Tribunal on November 21, 2006 which date is the filing date for purposes of the statute and regulation. Thus, the exception in this case was not timely filed and we lack jurisdiction to review it.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

On the Division of Taxation's motion, the exception of petitioner James Brown is dismissed with prejudice as of this date.

DATED: Troy, New York
April 12, 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