

STATE OF NEW YORK
TAX APPEALS TRIBUNAL

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| In the Matter of the Petition | : | |
| of | : | |
| DAISY HUANG | : | DECISION DTA NO. 821668 |
| for Revision of a Determination or for Refund of Real Estate Transfer Tax under Article 31 of the Tax Law for the Year 2005. | : | |

Petitioner, Daisy Huang, filed an exception to the order of the Administrative Law Judge issued on September 13, 2007. Petitioner appeared by Laurence Keiser, Esq. The Division of Taxation appeared by Daniel Smirlock, Esq. (John E. Matthews, Esq., of counsel).

On October 25, 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 November 29, 2007 to respond.

On its own motion, after reviewing the order, 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 her 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 7007 0710 0004 8869 6711) in Troy, New York to petitioner on September 13, 2007 at petitioner’s last known address at c/o Stern Keiser Panken and Wohl, LLP, 1025 Westchester

Avenue, Suite 305, White Plains, NY 10604. A copy of the order was also mailed by certified mail (certified control number 7007 0710 0004 8869 6704) in Troy, New York to petitioner's representative Laurence Keiser, Esq., Stern Keiser Panken and Wohl, LLP, 1025 Westchester Avenue, Suite 305, White Plains, NY 10604.

Petitioner filed an exception to the order which was received by the Office of the Secretary to the Tax Appeals Tribunal on October 19, 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, 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 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 determination 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 order was served on petitioner on September 13, 2007 and the exception to the order of the Administrative Law Judge was due to be filed on or before October 13, 2007.¹ The exception was filed with the Tax Appeals Tribunal on October 19, 2007. Therefore, the exception was not timely filed as required by Tax Law § 2006(7).

Petitioner's response to the Notice of Intent to Dismiss Exception failed to discuss the issue of a timely filed petition in this case, but rather, presented arguments regarding the substantive issues underlying her refund claim. Unfortunately, the Tribunal is unable to address the merits of this case since the exception was not timely filed.

Accordingly, it is ORDERED, ADJUDGED, and DECREED that:

¹October 13, 2007 is the 30th day from September 13, 2007. However, as October 13, 2007 fell on a Saturday, the exception was required to be filed by Monday, October 15, 2007 (*see*, General Construction Law, § § 20, 25-a).

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

DATED: Troy, New York
May 29, 2008

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

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

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