

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

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| In the Matter of the Petitions                        | : |                 |
| of  | : |                 |
| <b>ROYAL FRIED CHICKEN OF NEW YORK,</b>               | : | DECISION        |
| <b>INCORPORATED D/B/A ROYAL FRIED CHICKEN</b>         | : | DTA Nos. 822557 |
| <b>AND</b>  | : | and 822601      |
| <b>MOHAMMED S. UDDIN</b>                              | : |                 |
|   | : |                 |
| for Revision of Determinations or for Refund of Sales | : |                 |
| and Use Taxes under Articles 28 and 29 of the Tax Law | : |                 |
| for the Period June 1, 2004 through May 31, 2007.     | : |                 |

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Petitioners, Royal Fried Chicken of New York, Incorporated d/b/a Royal Fried Chicken and Mohammed S. Uddin, filed an exception to the determination of the Administrative Law Judge issued on April 29, 2010. Petitioners appeared *pro se*. The Division of Taxation appeared by Daniel Smirlock, Esq. (Michael B. Infantino, Esq., of counsel).

On June 4, 2010, the Tax Appeals Tribunal issued a Notice of Intent to Dismiss Exception on the ground that petitioners did not timely file an exception in proper form. The parties were given until July 9, 2010 to advise the Tax Appeals Tribunal why such a decision should not be issued. Neither party responded to the Notice.

After reviewing the entire record in this matter, the Tax Appeals Tribunal renders the following decision.

***ISSUE***

Whether petitioners timely filed their exception to the determination of the Administrative Law Judge.

### ***FINDINGS OF FACT***

We find the following facts.

Petitioners filed a Notice of Exception to the determination of the Administrative Law Judge, which was received by the Office of the Secretary to the Tax Appeals Tribunal (“Tribunal”) on May 18, 2010. Included with a blank Notice of Exception was a Certificate of Debtor Education, along with the original Administrative Law Judge Determination.

By telephone call on May 18, 2010, the Tribunal advised petitioner Mohammed S. Uddin of the procedures for the filing of an exception to the Administrative Law Judge’s Determination. Also, on May 18, 2010, the Tribunal returned the above materials to petitioners with correspondence that stated, to wit: if you wish to appeal the Administrative Law Judge Determination, you must file the Notice of Exception form attached to the Determination or a letter requesting an extension by June 1, 2010.

Petitioners filed an incomplete Notice of Exception to the determination, which was received by the Tribunal on June 1, 2010. The envelope containing the exception bore a United States Postal Service postmark (“USPS”) of May 26, 2010 and it was deemed timely pursuant to the provisions of section 3000.22(a)(3) and (b)(1)(ii) of the Tribunal’s Rules of Practice and Procedures.

By letter dated June 4, 2010, the Tribunal acknowledged receipt of petitioners’ exception and issued a Notice of Intent to Dismiss Exception on the ground that it was not in proper form.

### ***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 other party, service shall be made on the office of counsel.

The Tribunal's regulation at 20 NYCRR 3000.17(b)(1) provides as follows:

*Form of exception; briefs.* (1) The exception shall contain:

- (i) the particular findings of fact and conclusions of law with which the party disagrees;
- (ii) the grounds of the exception, with references, wherever possible, to the relevant pages of the transcript of hearing and exhibits; and
- (iii) alternative findings of fact and conclusions of law. A form of exception (Form TA-14) is available from the Division of Tax Appeals upon written request.

In this case, the determination was properly served on petitioners on April 29, 2010, and, any exception to the determination of the Administrative Law Judge was due to be filed on or before June 1, 2010. The envelope containing petitioners' exception bore a USPS postmark of

May 26, 2010 and it was deemed timely pursuant to section 3000.22(a)(3) and (b)(1)(ii) of the Tribunal's Rules of Practice and Procedure.

Although deemed timely, petitioners' exception was not in proper form, in that it did not contain a statement of the findings of fact and conclusions of law contained in the Administrative Law Judge's determination with which petitioners disagree, or a statement of requested alternative findings of fact and conclusions of law (*see*, 20 NYCRR 3000.17[b][1]).

As petitioners failed to respond to the Notice of Intent to Dismiss Exception and there are no provisions in the Tribunal's Rules of Practice and Procedure to allow for an improperly executed exception, we conclude that 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 petitioners Royal Fried Chicken of New York, Incorporated d/b/a Royal Fried Chicken and Mohammad S. Uddin is dismissed with prejudice as of this date.

DATED: Troy, New York  
December 30, 2010

/s/ James H. Tully, Jr.  
James H. Tully, Jr.  
President

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

/s/ Charles H. Nesbitt  
Charles H. Nesbitt  
Commissioner