

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition :
of :
VIJAY PATEL : DECISION
 : DTA NO. 825244
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, 2009 through February :
28, 2010. :
:

Petitioner, Vijay Patel, appearing *pro se*, filed an exception to the order of the Administrative Law Judge issued on April 18, 2013. On August 15, 2013, the Tax Appeals Tribunal (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 19, 2013 to respond. Petitioner filed a response to the Notice of Intent to Dismiss Exception on September 19, 2013.

On its own motion, after reviewing the order, the exception, the relevant mailing records of the Division of Tax Appeals and petitioner's response, the Tribunal renders the following decision.

ISSUE

Whether petitioner timely filed his 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 the United States Postal Service (USPS) certified mail (certified control number 7011 0110 0000 3001 7536) in Albany, New

York, to petitioner, Vijay Patel, on April 18, 2013 at petitioner's last known address, 5 Dogwood Lane, Old Bridge, NJ 08857. On June 26, 2013, the USPS returned the order to the Division of Tax Appeals. The envelope containing the order was marked "return to sender, unclaimed, unable to forward." As a courtesy, a copy of the order was then mailed to petitioner by regular USPS mail.

Petitioner filed an exception to the order, which was received by the Office of the Secretary to the Tribunal on August 8, 2013. The envelope containing the exception bore a USPS postmark of August 6, 2013. Petitioner listed 5 Dogwood Lane, Old Bridge, NJ 08857 as his current address.

On August 15, 2013, 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 19, 2013 to respond.

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 admistative [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" (emphasis added).

Notice of a determination or order is given by registered or certified mail and is complete upon placing it, in a post-paid properly addressed envelope, in the exclusive care and custody of the USPS (Tax Law § 2006 [7]; 20 NYCRR 3000.23 [a]). A party filing an exception has 30 days from the date that service is complete to file the exception. Exceptions are filed with the Secretary to the Tax Appeals Tribunal either in person or by mail (20 NYCRR 3000.17 [a] [1]).

An exception delivered by the USPS to this Tribunal after the date it was due is deemed to be filed on the date of the USPS postmark stamped on the envelope (20 NYCRR 3000.22 [a] [1]).

In this case, notice of the order was properly given to petitioner by certified mail, on April 18, 2013 (Tax Law § 2006 [7]; 20 NYCRR 3000.23 [a]). Thus, the exception to the order of the Administrative Law Judge was due to be filed on or before May 20, 2013¹ (Tax Law § 2006 [7]; 20 NYCRR 3000.17 [a] [1]). It was received by the Office of the Secretary to the Tribunal on August 8, 2013, in an envelope that bore a USPS postmark of August 6, 2013, the deemed date of filing (20 NYCRR 3000.22 [a] [1]). Therefore, the exception was not timely filed as required by Tax Law § 2006 (7).

In his response to the Notice of Intent to Dismiss Exception, petitioner has not presented any evidence to prove that his exception was timely filed. Rather, petitioner argues that his exception was timely filed in that it was mailed to the Secretary to the Tribunal within 30 days of the date he received it. We reject petitioner's argument. As we have held in *Matter of Parkview Auto Sales* (Tax Appeals Tribunal, July 11, 1996) and *Matter of Dimino* (Tax Appeals Tribunal, July 1, 1993), a petitioner has 30 days from the giving of notice of the Administrative Law Judge's determination or order to file an exception, not 30 days from the receipt of the determination or order. Notice of the order was properly given on April 18, 2013 (Tax Law § 2006 [7]; 20 NYCRR 3000.23 [a]; *see also Estate of Sidney Roemer & Sadie Roemer*, Tax Appeals Tribunal, May 20, 1999). The fact that the order was returned to the Division of Tax Appeals indicating that it was unclaimed has no effect on the date that notice was properly given under the circumstances of this case.

As such, the exception was not timely filed and this Tribunal lacks jurisdiction to consider it.

¹ May 18, 2013 is the 30th day from April 18, 2013. However, as May 18, 2013 fell on a Saturday, the exception was required to be filed by Monday, May 20, 2013 (*see* General Construction Law, § 20, 25-a).

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

On the Tax Appeals Tribunal's own motion, the exception of Vijay Patel is dismissed with prejudice.

DATED: Albany, New York
March 6, 2014

/s/ Roberta Moseley Nero
Roberta Moseley Nero
President

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

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