

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

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In the Matter of the Petition	:	
of	:	
<b>ALAN B. MARTIN AND</b>	:	DECISION
<b>ELLEN L. MARTIN</b>	:	DTA NO. 825511
	:	
for Redetermination of a Deficiency or for Refund of Personal Income Tax under Article 22 of the Tax Law for the Year 2009.	:	

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Petitioners, Alan B. and Ellen L. Martin, filed an exception to the determination of the Administrative Law Judge issued on March 5, 2015. Petitioners appeared pro se. The Division of Taxation appeared by Amanda Hiller, Esq. (Michele Milavec, Esq., of counsel).

On April 17, 2015, the Tax Appeals Tribunal issued a notice of intent to dismiss exception on the ground that petitioners' exception was not timely filed. The parties were given until May 22, 2015 to respond with comments. Petitioners filed a response on May 21, 2015. The Division of Taxation filed a response on April 24, 2015. The six-month period for the issuance of this decision began on May 21, 2015.

On its own motion, after reviewing the determination, the exception and the mailing records of the Division of Tax Appeals, 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.

1. The determination of the Administrative Law Judge was mailed to petitioners by certified mail on March 5, 2015.
2. Petitioners filed an exception to the determination, which was received by the Secretary to the Tax Appeals Tribunal (Secretary) on April 9, 2015. The envelope containing the exception bore a United States Postal Service (USPS) postmark of April 7, 2015.
3. On April 17, 2015, the Tax Appeals Tribunal issued a notice of intent to dismiss exception on the ground that petitioners' exception was not timely filed.

***OPINION***

Notice of an administrative law judge determination is given by registered or certified mail and is complete upon placing such determination, in a post-paid properly addressed envelope, in the exclusive care and custody of the United States Postal Service (Tax Law § 2006 [7]; 20 NYCRR 3000.23 [a]). A party has 30 days from the date of such mailing to file an exception (Tax Law § 2006 [7]). The Tax Appeals Tribunal may grant an extension of time for filing an exception, provided that the extension request is filed within the time period for taking exception to an administrative law judge's determination (*id.*). Exceptions must be filed with the Secretary either in person or by mail (20 NYCRR 3000.17 [a] [1]).

In this case, the notice of the Administrative Law Judge's determination was properly given to petitioner by certified mail on March 5, 2015 (Tax Law § 2006 [7]; 20 NYCRR 3000.23 [a]). Thus, the exception to the determination of the Administrative Law Judge was due to be

filed on or before April 6, 2015.<sup>1</sup> It was received by the Secretary on April 9, 2015, in an envelope that bore a USPS postmark of April 7, 2015. Therefore, the exception was not timely filed as required by Tax Law § 2006 (7) (*see also* 20 NYCRR 3000.22 [b] [1]). This Tribunal thus lacks jurisdiction to consider it (*see Matter of Finkelman*, Tax Appeals Tribunal, March 6, 2014).

Petitioners' response to the notice of intent to dismiss exception did not address the issue of a timely filed exception in this case, but rather, presented an argument regarding the substantive issue underlying their claim. Unfortunately, this Tribunal is unable to address the merits of this case, as the exception was not timely filed.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

On the Tax Appeals Tribunal's own motion, the exception of Alan B. and Ellen L. Martin is dismissed with prejudice.

DATED: Albany, New York  
November 12, 2015

/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

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<sup>1</sup> April 4, 2015 is the 30<sup>th</sup> day from March 5, 2015. However, as April 4, 2015 fell on a Saturday, the exception was required to be filed by Monday, April 6, 2015 (*see* General Construction Law §§ 20, 25-a).