

/7STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition :
of :
JOSERAIDA MITCHELL : DECISION
 : DTA NO. 826177
for Redetermination of a Deficiency or for Refund of New :
York State Personal Income Tax under Article 22 of the :
Tax Law for the Years 2008 through 2010. :

Petitioner, Joseraida Mitchell, filed an exception to the determination of the Administrative Law Judge issued on November 6, 2014. Petitioner appeared pro se. The Division of Taxation appeared by Amanda Hiller, Esq. (Leo Gabovich).

On February 13, 2015, the Tax Appeals 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 March 20, 2015 to respond with comments. Petitioner filed a response on March 5, 2015. The Division of Taxation did not file a response. The six-month period for the issuance of this decision began on March 20, 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 petitioner timely filed her 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 petitioner by certified mail on November 6, 2014.
2. Petitioner filed an exception to the determination, which was received by the Secretary to the Tax Appeals Tribunal (Secretary) on February 3, 2015. The envelope containing the exception bore a metered mail postmark of January 27, 2015.
3. On February 13, 2015, the Tax Appeals Tribunal issued a notice of intent to dismiss exception on the ground that petitioner's 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 November 6, 2014 (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 December 8, 2014.¹ It was received by the Secretary on February 3, 2015, in an envelope that bore a metered mail postmark of January 27, 2015. Therefore, the

¹ December 6, 2014 is the 30th day from November 6, 2014. However, as November 6, 2014 fell on a Saturday, the exception was required to be filed by Monday, December 8, 2014 (*see* General Construction Law § § 20, 25-a).

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).

Petitioner's response to the notice of intent to dismiss exception failed to discuss the issue of a timely filed exception in this case, but rather, presented an argument regarding the substantive issue underlying her 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 Joseraida Mitchell is dismissed with prejudice.

DATED: Albany, New York
September 3, 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