

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition :

of :

DESIREE C. YEAMANS :

For Review of a Notice of Proposed Driver License :
Suspension Referral Under Tax Law § 171-v.

AMENDED
DECISION
DTA NO. 826467

Petitioner, Desiree C. Yeamans, filed an exception to the determination of the Administrative Law Judge issued on April 30, 2015. Petitioner appeared pro se. The Division of Taxation appeared by Amanda Hiller, Esq. (Michele W. Milavec, Esq., of counsel).

On June 9, 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 July 14, 2015 to respond with comments. The Division of Taxation filed a response on June 22, 2015. Petitioner did not file a response. The Tax Appeals Tribunal issued a decision on January 14, 2016 dismissing petitioner's exception.

The Tax Appeals Tribunal subsequently determined that, as a result of a clerical error, the January 14, 2016 decision was based on an incomplete record. Having corrected the error, the Tax Appeals Tribunal advised the parties of its intention to issue an amended decision based on the full record. The parties were given until March 28, 2016 to respond with comments. Petitioner filed a response on March 28, 2016. The Division of Taxation did not file a response. The six-month period for the issuance of this amended decision began on March 28, 2016.

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 amended 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 by certified mail on April 30, 2015 to petitioner at the address listed on her petition.
2. Petitioner's exception to the determination was received by the Secretary to the Tax Appeals Tribunal (Secretary) on June 8, 2015. The envelope containing the exception bore a United States Postal Service (USPS) postmark of June 3, 2015. Petitioner's address as reported on her exception is the same as the address to which the determination was mailed.
3. On June 9, 2015, the Tax Appeals Tribunal issued a notice of intent to dismiss exception on the ground that petitioner's exception was not timely filed.
4. The determination that was mailed to petitioner by certified mail on April 30, 2015 was later returned to the Division of Tax Appeals (DTA) by USPS as unclaimed. The envelope in which the determination was mailed indicates that the USPS attempted delivery on May 2, 7, 17 and 21, 2015. The envelope was then returned to sender as unclaimed on May 22, 2015 and was received by DTA on May 26, 2015.

5. As a courtesy, it is a regular practice of DTA to re-mail by regular mail determinations previously mailed by certified mail that are returned to it. Accordingly, DTA re-mailed the determination to petitioner by regular USPS mail on May 26, 2015 with the following notice:

“Your Determination was mailed to you by certified mail on April 30, 2015. However, it was returned to this office by U.S. Postal Service on May 27 [sic], 2015 as ‘Return to Sender - Unclaimed - Unable to Forward.’

As a courtesy, the Determination is being re-mailed regular mail.

The exception period continues to run from the original date of mailing.”

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 USPS (Tax Law § 2006 [7]; 20 NYCRR 3000.23 [a]). A party has 30 days from the date of such mailing to file an exception (*see* Tax Law § 2006 [7]). 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, the Administrative Law Judge’s determination was correctly addressed to petitioner and was mailed by certified mail on April 30, 2015 (*see* findings of fact 1 and 2). Notice of the Administrative Law Judge’s determination was thus properly given to petitioner on that date (Tax Law § 2006 [7]; 20 NYCRR 3000.23 [a]). Accordingly, petitioner’s exception to the determination of the Administrative Law Judge was due to be filed on or before June 1, 2015.¹ Petitioner’s exception was not filed until June 3, 2015 (*see* finding of fact 2; 20 NYCRR 3000.22 [a] [1]). Therefore, the exception was not timely filed as required by Tax Law § 2006

¹ May 30, 2015 is the 30th day from April 30, 2015. However, as May 30, 2015 fell on a Saturday, the exception was required to be filed by Monday, June 1, 2015 (*see* General Construction Law §§ 20, 25-a).

(7) and this Tribunal lacks jurisdiction to consider it (*see Matter of Finkelman*, Tax Appeals Tribunal, March 6, 2014).

In her exception, petitioner asserts that “[t]he individual to whom the notice was provided is not the taxpayer at issue.” Petitioner offered no further explanation of this claim, however, and we dismiss it accordingly.

Petitioner also contends that “[d]ue to lack of service, I was unaware of key dates and deadlines.” By this assertion, petitioner contends that the June 3, 2015 filing of her exception should be considered timely because she did not actually receive a copy of the determination until after the May 26, 2015 mailing by regular mail (*see* finding of fact 5). This contention is without merit. The relevant regulation provides that the service of determinations “shall be made by mail” and that such service “shall be complete” upon mailing (*see* 20 NYCRR 3000.23 [a]). Accordingly, as noted previously, and as noted in DTA’s May 26, 2015 mailing of the determination, the 30-day period in which to file an exception herein began on April 30, 2015 and ended on June 1, 2015.

We note further that, even if receipt was a component of proper service of a determination, petitioner’s claim of improper service would fail nonetheless. This is because petitioner’s failure to claim the certified mail containing the determination, despite four attempts at delivery, may be construed as a refusal to accept delivery and, hence, the determination may be deemed constructively received (*see Matter of New York City Billionaires Constr. Corp.*, Tax Appeals Tribunal, October 20, 2011 [unclaimed notice of determination deemed constructively received where such notice was properly addressed and proper mailing procedures were followed]).

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

On the Tax Appeals Tribunal's own motion, the exception of Desiree C. Yeamans is dismissed with prejudice.

DATED: Albany, New York
September 28, 2016

/s/ Roberta Moseley Nero
Roberta Moseley Nero
President

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

/s/ Dierdre K. Scozzafava
Dierdre K. Scozzafava
Commissioner