

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition :
of :
DESIREE C. YEAMANS : DECISION
For Review of a Notice of Proposed Driver License : DTA NO. 826467
Suspension Referral Under Tax Law § 171-v. :
:

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 six-month period for issuance of this decision began on July 14, 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 by certified mail to petitioner at her last known address on April 30, 2015. The address to which the determination was mailed is the same as that listed on petitioner's petition. Petitioner did not advise the Division of Tax Appeals of any change in her address.

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.

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.

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 (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, notice of the Administrative Law Judge's determination was properly given to petitioner by certified mail on April 30, 2015 (Tax Law § 2006 [7]; 20 NYCRR 3000.23 [a]). Thus, 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 received by the Secretary on June 8, 2015, in an envelope that bore a USPS postmark of June 3, 2015, the deemed date of filing (20

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).

NYCRR 3000.22 [a] [1]). Therefore, the exception was not timely filed as required by Tax Law § 2006 (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” and “[d]ue to lack of service, I was unaware of key dates and deadlines” Petitioner offered no further elucidation of these claims, however, and she did not respond to the notice of intent to dismiss her exception. Upon review of the record, we find no improprieties in the mailing of the subject determination and we thus conclude that petitioner’s assertions are without merit.

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
January 14, 2016

/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