

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition :

of :

ROOSEVELT RHODEN :

DECISION
DTA NO. 826806

for Revision of a Determination or for Refund of Sales and :
Use Taxes under Articles 28 and 29 of the Tax Law for the :
Period August 22, 2010 through January 28, 2013. :

Petitioner, Roosevelt Rhoden, filed an exception to the determination of the Administrative Law Judge issued on January 19, 2017. Petitioner appeared pro se. The Division of Taxation appeared by Amanda Hiller, Esq. (Osborne K. Jack, Esq., of counsel).

On April 7, 2017, 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 May 12, 2017 to respond with comments. The Division of Taxation filed a response on May 2, 2017. Petitioner did not file a response. The six-month period for issuance of this decision began on May 12, 2017.

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 properly or timely filed his 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 his last known address on January 19, 2017. The address to which the determination was mailed is the same as listed on petitioner's petition.

2. Petitioner's facsimile transmission of a notice of exception to the determination was received by the Division of Tax Appeals (DTA) on April 3, 2017, and forwarded to the Office of the Secretary to the Tax Appeals Tribunal on April 4, 2017. The records of the Tax Appeals Tribunal do not contain any other exception filed by petitioner.

3. On April 7, 2017, the Tax Appeals Tribunal issued a notice of intent to dismiss petition on the ground that petitioner's exception was not properly or 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]).

In this case, notice of the Administrative Law Judge's determination was properly given to petitioner by certified mail on January 19, 2017 (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 February 21, 2017 (Tax Law § 2006 [7]).¹ No exception in this matter was received by the Office of the Secretary to the Tax Appeals Tribunal other than the facsimile copy on April 4, 2017.

¹ February 18, 2017 is the 30th day from January 19, 2017. As February 18, 2017 fell on a Saturday and Monday, February 20, 2017 was a New York State holiday, the exception was required to be filed by Tuesday, February 21, 2017 (*see* General Construction Law §§ 20, 25-a).

This Tribunal lacks jurisdiction to consider petitioner's exception. The Rules of Practice and Procedure of the Tax Appeals Tribunal permit the filing of exceptions either in person or by mail (*see* 20 NYCRR 3000.17 [a] [1] and 3000.22 [e] [1]). There is no provision for filing by facsimile. Such defective filing alone is cause to dismiss the exception (*see Matter of Kyte*, Tax Appeals Tribunal, October 9, 2014 [dismissing petition filed by facsimile]). A separate and equally valid basis upon which to dismiss petitioner's exception is that the fax transmission occurred after the 30-day limitations period for filing an exception under Tax Law § 2006 (7) had expired (*see Matter of Finkelman*, Tax Appeals Tribunal, March 6, 2014).

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

On the Tax Appeals Tribunal's own motion, the exception of Roosevelt Rhoden is dismissed.

DATED: Albany, New York
October 05, 2017

/s/ Roberta Moseley Nero
Roberta Moseley Nero
President

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

/s/ Anthony Giardina
Anthony Giardina
Commissioner