

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

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In the Matter of the Petition :  
of :  
**REGINALD MARTHONE** : DECISION  
for Redetermination of a Deficiency or for Refund : DTA NO. 827279  
of New York State Personal Income Tax under :  
Article 22 of the Tax Law for the Years 2010 :  
and 2012. :

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Petitioner, Reginald Marthone, filed an exception to the determination of the Administrative Law Judge issued on June 29, 2017. Petitioner appeared pro se. The Division of Taxation appeared by Amanda Hiller, Esq. (Charles Fishbaum, Esq., of counsel).

On August 23, 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 September 27, 2017 to respond with comments. The Division of Taxation filed a response on August 30, 2017. Petitioner did not file a response. The six-month period for issuance of this decision began on September 27, 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 timely filed his exception to the Administrative Law Judge's determination.

***FINDINGS OF FACT***

We find the following facts.

1. On June 29, 2017, the Division of Tax Appeals mailed the determination of the Administrative Law Judge by certified mail to petitioner at the address listed on his petition.
2. Petitioner filed an exception to the determination, which was received by the Office of the Secretary to the Tax Appeals Tribunal (Tribunal) on August 21, 2017. The envelope containing the exception bore a United States Postal Service (USPS) postmark of August 16, 2017.
3. On August 23, 2017, this 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 (20 NYCRR 3000.23 [a]). In this case, the Division of Tax Appeals properly gave notice of the determination to petitioner on June 29, 2017 (*see* finding of fact 1). A party has 30 days from the date of such mailing to file an exception (Tax Law § 2006 [7]). Thus, petitioner's exception to the determination was due on or before July 31, 2017.<sup>1</sup> Petitioner filed his exception on August 16, 2017 (*see* 20 NYCRR 3000.22 [a] [1] [date of USPS postmark on envelope is deemed date of filing]). Therefore, the exception was not timely filed as required by Tax Law § 2006 (7) and this Tribunal lacks

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<sup>1</sup> July 29, 2017 is the 30<sup>th</sup> day from June 29, 2017. As July 29, 2017 fell on a Saturday, the exception was required to be filed by Monday, July 31, 2017 (*see* General Construction Law §§ 20, 25-a).

jurisdiction to review it.

On the Tax Appeals Tribunal's own motion, the exception of Reginald Marthone is dismissed.

DATED: Albany, New York  
March 23, 2018

/s/ Roberta Moseley Nero  
Roberta Moseley Nero  
President

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

/s/ Anthony Giardina  
Anthony Giardina  
Commissioner