

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

---

In the Matter of the Petition :  
of :  
**KIMBERLY A. CRAIL** : DECISION  
for Redetermination of a Deficiency or for Refund of : DTA NO. 828086  
Personal Income Tax under Article 22 of the Tax Law :  
for the Year 2009. :

---

Petitioner, Kimberly A. Crail, filed an exception to the determination of the Administrative Law Judge issued on November 9, 2017. Petitioner appeared pro se. The Division of Taxation appeared by Amanda Hiller, Esq. (Michele W. Milavec, Esq., of counsel).

On December 26, 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 January 30, 2018 to respond with comments. The Division of Taxation filed a response on January 22, 2018. Petitioner did not file a response. The six-month period for issuance of this decision began on January 30, 2018.

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 Administrative Law Judge's determination.

***FINDINGS OF FACT***

We find the following facts.

1. On November 9, 2017, the Division of Tax Appeals mailed the determination of the Administrative Law Judge by certified mail to petitioner at the address listed on her 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 December 18, 2017. The envelope containing the exception bore a United States Postal Service (USPS) postmark of December 15, 2017.

3. On December 26, 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 November 9, 2017 (*see* finding of fact 1). A party has 30 days from the date of such mailing to file an exception or to request an extension of time to file an exception (Tax Law § 2006 [7]). Thus, petitioner's exception to the determination or request for an extension of time to file an exception was due on or before December 11, 2017.<sup>1</sup> Petitioner filed her exception on December 15, 2017 (*see* 20 NYCRR 3000.22 [a] [1] [date of USPS postmark on envelope is deemed date of filing]).

In her exception, petitioner explained the filing delay by stating that she incorrectly remembered that she had 60 days instead of 30 to file her exception. Petitioner also explained that she was suffering from three broken bones in her right hand at the time the determination

---

<sup>1</sup> December 9, 2017 is the 30<sup>th</sup> day from November 9, 2017. As December 9, 2017 fell on a Saturday, the exception was required to be filed by Monday, December 11, 2017 (*see* General Construction Law §§ 20, 25-a).

was issued through the time the exception or request for an extension to file an exception was due. Petitioner also provided documents in support of her assertions regarding the injury.

While it appears that petitioner may have had good cause to request an extension of time to file her exception pursuant to Tax Law § 2006 (7), the facts are that neither an extension request nor an exception was filed prior to the due date. Therefore, the exception was not timely filed as required by Tax Law § 2006 (7) and this Tribunal lacks jurisdiction to review it (*see e.g. Matter of Marthone*, Tax Appeals Tribunal, March 23, 2018).

Accordingly, on the Tax Appeals Tribunal's own motion, the exception of Kimberly A. Crail is dismissed.

DATED: Albany, New York  
July 26, 2018

/s/ Roberta Moseley Nero  
Roberta Moseley Nero  
President

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

/s/ Anthony Giardina  
Anthony Giardina  
Commissioner