

STATE OF NEW YORK
TAX APPEALS TRIBUNAL

In the Matter of the Petition

of

MIKHAIL AND ELLA KOFMAN

for Redetermination of a Deficiency or for Refund of New
York State and New York City Personal Income Tax under
Article 22 of the Tax Law and the Administrative Code of the
City of New York for the Year 2013.

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: DECISION
: DTA NO. 828847

Petitioners, Mikhail and Ella Kofman, filed an exception to the determination of the Administrative Law Judge issued on April 20, 2023. On June 20, 2023, the Tax Appeals Tribunal (Tribunal) issued a notice of intent to dismiss exception (notice of intent) on the ground that petitioners' exception was not timely filed. The Division of Taxation, appearing by Amanda Hiller, Esq. (Peter B. Ostwald, Esq., of counsel), responded to the notice of intent by letter received on July 24, 2023. Petitioners, appearing pro se, responded to the notice of intent by letter received on August 9, 2023, which date commenced the six-month period for issuance of this decision.

On its own motion, after reviewing the determination of the Administrative Law Judge, petitioners' exception, the relevant mailing records of the Division of Tax Appeals and the parties' responses to the notice of intent, the Tribunal renders the following decision.

ISSUE

Whether petitioners timely filed their 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 United States Postal Service (USPS) certified mail on April 20, 2023 to petitioners at their last known address.

2. Petitioners filed an exception to the determination that was received on June 8, 2023. The envelope containing the exception bore a USPS postmark dated May 23, 2023.

3. On June 20, 2023, the Tribunal issued a notice of intent on the ground that petitioners' exception was not timely filed.

OPINION

Either party may file an exception for review of an Administrative Law Judge determination with this Tribunal (Tax Law § 2006 [7]). An exception, or an application for an extension of time to file an exception, must be filed within 30 days after the giving of notice of the determination (*id.*). This Tribunal's jurisdiction is limited by statute. We may not consider the merits of an exception filed beyond the 30-day time limitation or, where an extension has been granted, such extended limitations period (Tax Law § 2006 [7]; *see e.g. Matter of Quinones*, Tax Appeals Tribunal, May 8, 2018).

The giving of notice requirement in Tax Law § 2006 (7) is met by mailing a determination in accordance with section 3000.23 (a) of the Tax Appeals Tribunal Rules of Practice and Procedure (Rules) (20 NYCRR 3000.23 [a]). Under that provision, a determination must be enclosed in a post-paid properly addressed wrapper and mailed using certified or registered USPS mail (*id.*). Properly addressed in this context means the petitioner's last known address as indicated in the records of the Division of Tax Appeals (*Matter of Harel*, Tax Appeals Tribunal, April 27, 2023). Assuming compliance with 20 NYCRR 3000.23 (a), the 30-

day limitations period to file an exception begins to run from the date of mailing of the determination.

In this case, the Administrative Law Judge's determination was properly mailed to petitioners by certified mail on April 20, 2023 (Tax Law § 2006 [7]; 20 NYCRR 3000.23 [a]). Therefore, an exception to the determination of the Administrative Law Judge, or an application for an extension of time to file an exception, was due to be filed on or before May 22, 2023¹ (Tax Law § 2006 [7]; 20 NYCRR 3000.17 [a] [1]). Petitioners' exception was received by the Tribunal after this due date. Accordingly, its deemed filing date is the date of the USPS postmark stamped on its envelope, here May 23, 2023 (20 NYCRR 3000.22 [a] [1]). Although late by only one day, this date is nonetheless beyond the 30-day deadline for filing an exception with the Tribunal. Statutory filing deadlines in the Division of Tax Appeals are strictly enforced (*see Matter of American Woodcraft*, Tax Appeals Tribunal, May 15, 2003; *Matter of Maro Luncheonette*, Tax Appeals Tribunal, February 1, 1996 [petitions filed one day late dismissed]). We thus find that the exception was not timely filed.

In their response to the notice of intent, petitioners make no argument regarding the timeliness of their exception. Rather, they recount the audit and their submission of various documents and also relate their current financial condition and ability to pay the underlying liability. Such issues are not relevant at this point, given our lack of jurisdiction (*Matter of Quinones*; *see also Matter of Yim*, Tax Appeals Tribunal, March 16, 2020).

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

¹ May 20 is the 30th day from April 20, 2023. However, as May 20, 2023 fell on a Saturday, the exception was required to be filed by Monday, May 22, 2023 (*see* General Construction Law § 25-a).

On the Tax Appeals Tribunal's own motion, the exception of Mikhail and Ella Kofman is dismissed, with prejudice.

DATED: Albany, New York
February 1, 2024

/s/ Anthony Giardina
Anthony Giardina
President

/s/ Cynthia M. Monaco
Cynthia M. Monaco
Commissioner

/s/ Kevin A. Cahill
Kevin A. Cahill
Commissioner