

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition :
of :
JASON GUCK : DECISION
for Revision of a Determination or for Refund of : DTA NO. 828973
Sales and Use Taxes under Articles 28 and 29 of the :
Tax Law for the Period September 1, 2012 through :
August 31, 2015. :
:

Petitioner, Jason Guck, filed an exception to the determination of the Administrative Law Judge issued on February 24, 2022. On August 3, 2022, the Tax Appeals Tribunal (Tribunal) issued a notice of intent to dismiss exception (notice of intent) on the ground that petitioner's exception was not timely filed. The Division of Taxation, appearing by Amanda Hiller, Esq. (Adam Roberts, Esq., of counsel) responded to the notice of intent by letter received on August 18, 2022. Petitioner, appearing by Stoner & Associates (Mark T. Stoner, Esq.) did not file a response to the notice of intent. The six-month period for issuance of this decision began on September 7, 2022, the due date for petitioner's response.

On its own motion, after reviewing the determination of the Administrative Law Judge, petitioner's exception, the relevant mail records of the Division of Tax Appeals and the Division of Taxation's response, the Tribunal renders the following decision.

ISSUE

Whether petitioner 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 United States Postal Service (USPS) certified mail on February 24, 2022 to petitioner at his last known address in the records of the Division of Tax Appeals.

2. Petitioner filed an exception to the determination, which was received by the Office of the Secretary to the Tribunal on August 1, 2022. The envelope containing the exception bore a USPS postmark dated July 29, 2022.

3. On August 3, 2022, the Tribunal issued a notice of intent on the ground that petitioner's 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]; *Matter of Yim*, Tax Appeals Tribunal, March 16, 2020).

The mailing of a determination in accordance with section 3000.23 (a) of the Tax Appeals Tribunal Rules of Practice and Procedure (Rules) satisfies the giving of notice requirement in Tax Law § 2006 (7) (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 Jake*

Restaurant Corp., Tax Appeals Tribunal, April 14, 2016). 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.

In this case, the Administrative Law Judge's determination was properly mailed to petitioner by certified mail on February 24, 2022 (Tax Law § 2006 [7]; 20 NYCRR 3000.23 [a]). Therefore, an exception to the determination of the Administrative Law Judge was due to be filed on or before March 28, 2022¹ (Tax Law § 2006 [7]; 20 NYCRR 3000.17 [a] [1]). Petitioner's exception was deemed filed on July 29, 2022 (20 NYCRR 3000.22 [a] [1]). This date is well beyond the 30-day deadline for filing an exception with the Tribunal. As such, the exception was not timely filed as required by Tax Law § 2006 (7).

As noted, we may not consider the merits of a late-filed exception (*Matter of Yim*).

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

On the Tax Appeals Tribunal's own motion, the exception of Jason Guck is dismissed, with prejudice.

¹ March 26th is the 30th day from February 24, 2022. However, as March 26th fell on a Saturday, the exception was required to be filed by Monday, March 28, 2022 (*see* General Construction Law § 25-a).

Dated: Albany, New York
March 2, 2023

/s/ Anthony Giardina
Anthony Giardina
President

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

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