

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

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In the Matter of the Petition	:	
	:	
of	:	
	:	
<b>LON G. VON HURWITZ</b>	:	DECISION
	:	DTA NO. 830450
for Redetermination of Deficiencies or for Refund of	:	
Personal Income Tax under Article 22 of the Tax Law	:	
and the Administrative Code of the City of New York	:	
for the Periods Ending June 30, 2018, December 31,	:	
2018, March 31, 2019, June 30, 2019, and September	:	
30, 2019.	:	

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Petitioner, Lon G. Von Hurwitz, filed an exception to the determination of the Administrative Law Judge issued on March 10, 2022. On April 25, 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. (Maria Matos, Esq., of counsel) did not respond to the notice of intent. Petitioner, appearing pro se, responded to the notice of intent by letter received on June 6, 2022, which date began the six-month period for issuance of this decision.

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 petitioner’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 the United States Postal Service (USPS) certified mail on March 10, 2022 to petitioner at his last known address.
2. Petitioner filed an exception to the determination, which was received by the Office of the Secretary to the Tribunal on April 21, 2022. The envelope containing the exception was postmarked April 18, 2022. Petitioner's exception was not on a TA-200 notice of exception form. Instead, his objections to the determination were set forth in a letter dated April 10, 2022, which was the only document contained in the envelope postmarked on April 18, 2022. The Office of the Secretary deemed petitioner's letter to be a notice of exception.
3. On April 25, 2022, the 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 the determination or order in a post-paid properly addressed envelope in the exclusive care and custody of the USPS (20 NYCRR 3000.23 [a]). Either party may file an exception for review of a determination with this Tribunal (Tax Law § 2006 [7]). An exception must be filed within 30 days from the date of mailing of the determination (*id.*). An extension of time for filing an exception may be granted where good cause is shown provided an application for such extension is filed within the 30-day period (*id.*). Exceptions are filed with the Secretary to the Tax Appeals Tribunal either in person or by mail (*id.*) An exception delivered by the USPS to the Tribunal after the due date is deemed to be filed on the date of the USPS postmark stamped on the envelope (20 NYCRR 3000.22 [a] [1]).

In this case, the Administrative Law Judge's determination was properly mailed to petitioner by certified mail on March 10, 2022 (Tax Law § 2006 [7]; 20 NYCRR 3000.23 [a]). Thus, an exception to the determination of the Administrative Law Judge was due to be filed on or before April 11, 2022<sup>1</sup> (Tax Law § 2006 [7]; 20 NYCRR 3000.17 [a] [1]). Petitioner's exception was deemed filed on April 18, 2022. This date is beyond the 30-day deadline for the filing an exception with the Tribunal, thus the exception was not timely filed as required by Tax Law § 2006 (7).

In his response to the notice of intent to dismiss exception, petitioner explained the filing delay by stating that he was sick with COVID symptoms and was unable to mail the April 10, 2022 letter. Petitioner's response refers to the April 10, 2022 letter as an extension request.

While we are sympathetic to petitioner's explanation, this Tribunal has no authority to extend the statutory period of limitations for filing an exception or requesting an extension of time to file an exception (*see Matter of Mahmood*, Tax Appeals Tribunal, April 15, 2021). As such, this Tribunal lacks jurisdiction to consider petitioner's exception (*see e.g. Matter of Marthone*, Tax Appeals Tribunal, March 23, 2018).

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

On the Tax Appeals Tribunal's own motion, the exception of Lon G. Von Hurwitz is dismissed, with prejudice.

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<sup>1</sup> April 9, 2022 is the 30<sup>th</sup> day from March 10, 2022. However, as April 9, 2022 fell on a Saturday, the exception was required to be filed by Monday, April 11, 2022 (*see* General Construction Law § 25-a).

DATED: Albany, New York  
December 1, 2022

/s/ Anthony Giardina  
Anthony Giardina  
President

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

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