

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

:

In the Matter of the Petition :

of :

SHAHID MAHMOOD :

DECISION
DTA NO. 828168

for Revision of a Determination or for Refund of Sales :
and Use Taxes under Articles 28 and 29 of the Tax :
Law for the Period Ending November 30, 2015. :

Petitioner, Shahid Mahmood, filed an exception to the order of the Administrative Law Judge denying petitioner's application to vacate a default determination issued on June 11, 2020. On August 14, 2020, the Tax Appeals Tribunal (Tribunal) issued a notice of intent to dismiss exception on the ground that petitioner's exception was not timely filed. Petitioner, appearing pro se, responded to the notice of intent to dismiss by letter received on September 24, 2020. The Division of Taxation, appearing by Amanda Hiller, Esq. (Melanie Spaulding, Esq, of counsel), responded by letter received on October 15, 2020, which date commenced the six-month period for issuance of this decision.

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

ISSUE

Whether petitioner timely filed his exception to the order of the Administrative Law Judge.

FINDINGS OF FACT

We find the following facts.

1. The order of the Administrative Law Judge was mailed by United States Postal Service (USPS) certified mail on June 11, 2020 to petitioner at his last known address in Rocky Point, New York.

2. Petitioner filed an exception to the order, which was received by the Office of the Secretary to the Tribunal on August 3, 2020. The envelope containing the exception bore a USPS postmark that is not entirely legible. The postmark indicates a two-digit date in July 2020, the first digit of which is clearly a “2,” the second is not legible. Petitioner’s signature on the exception is dated July 15, 2020.

3. On August 14, 2020, 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 or order 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 or final order with this Tribunal (Tax Law § 2006 [7]). An exception must be filed within 30 days from the date of mailing of the determination or order (Tax Law § 2006 [7]; 20 NYCRR 3000.17 [a] [1]). 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 this 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 order was properly mailed to petitioner by

certified mail on June 11, 2020 (*see* Tax Law § 2006 [7]; 20 NYCRR 3000.23 [a]). Thus, an exception to the order of the Administrative Law Judge was due to be filed on or before July 13, 2020¹ (Tax Law § 2006 [7]; 20 NYCRR 3000.17 [a] [1]). Petitioner's exception was postmarked, and thus filed, on July 20, 2020 at the earliest (*see* 20 NYCRR 3000.22 [a] [1]). This date is beyond the 30-day deadline for filing an exception with the Tribunal; therefore, 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 busy with family members during the COVID-19 pandemic. Petitioner also explained that he was unaware that the Division of Tax Appeals was open during the pandemic.

While it appears that petitioner may have had good cause to request an extension of time to file his exception, the 30-day time limit also applies to extension requests (Tax Law § 2006 [7]). The fact is that neither an extension request nor an exception was filed prior to the due date. This Tribunal has no authority to extend the statutory period of limitations for filing an exception or requesting an extension to file an exception (*see Matter of Modica*, Tax Appeals Tribunal, October 1, 2015). 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 Shahid Mahmood is dismissed.

¹ July 11, 2020 is the 30th day from June 11, 2020. However, as July 11, 2020 fell on a Saturday, the exception was required to be filed by Monday, July 13, 2020 (*see* General Construction Law § 25-a).

DATED: Albany, New York
April 15, 2021

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

/s/ Anthony Giardina
Anthony Giardina
Commissioner