STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
GREENE VALLEY LIQUORS, INC.	:	DECISION DTA No. 809691
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 March 1, 1985 through November 30, 1986.	:	

Petitioner Greene Valley Liquors, Inc., P.O. Box 428, Catskill, New York 12414 filed an exception to the determination of the Administrative Law Judge issued on March 5, 1992 with respect to its petition 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 March 1, 1985 through November 30, 1986.

Petitioner appeared by DiFabio, Tommaney and Legnard, Esqs. (Mary Ann Tommaney, Esq., of counsel). The Division of Taxation appeared by William F. Collins, Esq. (Donald C. DeWitt, Esq., of counsel).

Petitioner did not file a brief in support. The Division of Taxation filed a letter brief in opposition to the exception. Petitioner filed a letter in response to the Division of Taxation's letter brief. The Division of Taxation filed a letter in response to petitioner's response. Oral argument was not requested.

After reviewing the entire record in this matter, the Tax Appeals Tribunal renders the following decision.[1]

ISSUE

Whether petitioner timely filed a request for a conciliation conference.

[1]Commissioner Francis R. Koenig took no part in deciding the case herein.

FINDINGS OF FACT

We find the facts as determined by the Administrative Law Judge except for findings of fact "1" and "4" which have been modified. The Administrative Law Judge's findings of fact and the modified findings of fact are set forth below.

We modify finding of fact "1" of the Administrative Law Judge's determination to read as follows:

> The Division of Taxation (hereinafter the "Division") mailed to petitioner Greene Valley Liquors, Inc. a Notice of Determination and Demand for Payment of Sales and Use Taxes Due, dated August 3, 1990, assessing tax due of $31,248.91 plus penalty and interest.[2]

The Division submitted the following evidence establishing the fact and date of the mailing of the notice to petitioner.

(a) The affidavit of Robert Keppel, an employee of the Division familiar with the mailing of notices of determination by the Division's Central Office Audit Bureau ("COAB"), describes the routine office procedures used by the Division to prepare such notices for mailing. The affidavit states it is the normal procedure of COAB to prepare a certified mailing record for each set of notices mailed by certified mail each day. By his affidavit, Mr. Keppel states that return receipts are not requested or obtained for notices sent by certified mail.

Mr. Keppel states that on August 3, 1990 he placed duplicate copies of a notice of determination addressed to petitioner in an envelope addressed to Greene Valley Liquors, Inc., c/o Grnvl Corp., P.O. Box 428, Catskill, New York 12414, after first comparing the notices and envelope to establish that they were addressed identically. According to the affidavit, he then

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[2] The Administrative Law Judge's finding of fact "1" read as follows:

> "On August 30, 1990, the Division of Taxation ("Division") mailed to petitioner, Greene Valley Liquors, Inc., a Notice of Determination and Demand for Payment of Sales and Use Taxes Due, assessing tax due of $31,248.91 plus penalty and interest."

Finding of fact "1" has been modified to indicate that the record does not establish when the Division mailed the Notice of Determination, but that the Notice was dated August 3, 1990, not August 30, 1990.

followed the same procedure for 40 other notices of determination. The names and addresses appearing on the 41 envelopes stuffed by Mr. Keppel were listed on the certified mailing record. Mr. Keppel states that after preparing the envelopes for mailing he signed his name to an affidavit appearing on page 2 of each copy of the certified mailing record and that his signature was witnessed by Edward Van Denburgh, an employee of the Division designated to witness such signatures. Mr. Keppel states that he then wrapped the envelopes listed on the certified mailing record in three copies of the certified mailing record and placed the entire bundle in his office's outgoing mail basket. He states that a COAB employee physically transferred this bundle to the Division's outgoing mail unit which delivers such bundles to the United States Post Office.

(b) The affidavit of Daniel LaFar, a Principal Mail and Supply Clerk fully familiar with the Division's mailing procedures, describes the mailing of the notices. Upon receipt of the envelopes and copies of the certified mailing record, the mailroom staff affixes the proper postage to each envelope, counts the number of envelopes and verifies the names and certified mail numbers against the information contained on the certified mail record. A member of the mailroom staff then delivers the envelopes into the possession of the U.S. Postal Service. A postal service employee matches the envelopes against the names and addresses appearing on the certified mail record and places a U.S. Postal Service postmark on the certified mail record. A postmarked copy of the certified mail record is returned to Mr. LaFar's office which retains it for the Division's records.

(c) Submitted with the affidavits of Mr. Keppel and Mr. LaFar was a copy of a document entitled certified mailing record, dated August 3, 1990. Listed on the form is the name and address of petitioner and the certified mail number 499,695. Other names and addresses have been redacted. Page 2 of the certified mail record includes the signed affidavit referred to in Mr. Keppel's affidavit. It states:

> "enclosing the original and a true copy thereof in an envelope addressed as shown and by depositing same in an envelope, properly addressed in accordance with Tax Law 1147(a), under the exclusive care and custody of the United States Postal Service within the State of New York."

The affidavit is signed by Mr. Keppel, witnessed by Edward Van Denburgh and dated August 3, 1990. The certified mail record is signed by a Postal Service employee and bears a United States Postal Service date stamp of August 3, 1990.

Attached to the petition is a notice of determination addressed to petitioner, bearing certified mail number 499695.

We modify finding of fact "4" of the Administrative Law Judge's determination to read as follows:

> On November 13, 1990, the Division's Bureau of Conciliation and Mediation Services ("BCMS") received from petitioner a request for a conciliation conference, dated November 3, 1990, and a cover letter, also dated November 3, 1990, stating that the notice of determination, dated August 3, 1990, was received by petitioner's president, Alexander Varga, on August 6, 1990.[3]

November 1, 1990 is 90 days from the date of mailing of the notice of determination, August 3, 1990.

On March 22, 1991, BCMS issued a Conciliation Order denying petitioner's request for conference on the ground that the request was not received until November 13, 1990 and, therefore, was untimely.

In an affidavit, Mr. Varga states that at the time he received the notice of determination it was his honest belief that the 90-day period for filing a request for a conciliation conference began to run on the date of receipt of the notice, in this case August 6, 1990. In any case, Mr. Varga alleges that the request for conciliation conference was mailed on November 3, 1990 and consequently was only two days late. He also states that he met with two employees of the Division's Tax Compliance Bureau on August 9, 1990 and informed them of his disagreement

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[3] The Administrative Law Judge's finding of fact "4" read as follows:

> "The Division's Bureau of Conciliation and Mediation Services ("BCMS") received from petitioner a request for a conciliation conference, dated November 3, 1990 and a cover letter, also dated November 3, 1990, stating that the notice of determination dated August 3, 1990 was received by petitioner's president, Alexander Varga, on August 6, 1990."

Finding of fact "4" has been modified by the addition of the date BCMS received petitioner's request for a conciliation conference, November 13, 1990.

with the notice of determination. In light of the fact that the Division was not prejudiced by a two-day delay in the filing of the request for a conference and that the Division was informed of Mr. Varga's disagreement with the determination of tax due, Mr. Varga states that it would be inequitable to grant the Division's motion. In this regard, Mr. Varga points out that the Division's answer to the petition was more than three months late.

OPINION

The Administrative Law Judge determined that the Division had established August 3, 1990 as the date of mailing, thereby making the last day to file a petition November 1, 1990. Based on this, the Administrative Law Judge found petitioner's request for a conciliation conference, dated November 3, 1990, to be untimely. The Administrative Law Judge further determined that petitioner's assertion that employees of the Division were aware of petitioner's objections within the the 90-day period does not satisfy the method set out in Tax Law § 2006(4) for requesting a hearing. Finally, the Administrative Law Judge held that the Division of Tax Appeals has no jurisdiction to grant a hearing when the 90-day time limit has not been met.

On exception, petitioner asserts that, contrary to the Administrative Law Judge's analysis, the case Matter of Mareno v. State of New York Tax Commn. (144 AD2d 114, 534 NYS2d 453) supports the proposition that the 90-day period begins on the date the notice is received, and that, based on this, petitioner's request for a conciliation conference was timely.

Further, petitioner states that during its August 9, 1990 meeting with two employees of the Division's Tax Compliance Bureau, petitioner expressed its disagreement with the Division's assessment. Petitioner concludes that this objection qualifies as an "application" or "petition" for a hearing which satisfies the requirements of Tax Law §§ 1138(a)(3)(A) and 2006(4) since neither provision requires the request to be in writing.

Finally, petitioner argues that, even if its request is deemed untimely, the Division of Tax Appeals has the authority to abate an erroneous or excessive assessment, notwithstanding the late-filed request. Petitioner bases this on Tax Law § 1138(a)(3)(A), which grants authority to the Commissioner of Taxation and Finance to abate an erroneous or excessive assessment, and

on Tax Law § 2006(12) which, petitioner asserts, grants the Division of Tax Appeals the same authority as the Commissioner in regard to this matter.

In response, the Division states that Tax Law § 1147(a) undermines petitioner's position, as that section provides that time periods set out in Article 28 are to begin on the date of mailing. The Division also asserts that the Mareno case is distinguishable and not inconsistent with the Administrative Law Judge's conclusions.

Concerning the form of the request for a hearing, the Division asserts that the procedural requirements set forth in the Tax Law, as well as in the corresponding regulations, demonstrate that a timely written request is required.

Finally, the Division contends that Tax Law § 1141(c) constitutes a lien on the consideration, not the purchase price, paid by the buyer to the seller, and that petitioner's payment of outstanding liens or judgments of the seller should be included in the consideration. Therefore, the Division contends that the assessment does not exceed the amount of the consideration paid by petitioner to the seller.

In its letter in response to petitioner's letter brief, the Division concedes that it must modify the assessment so that petitioner's liability is for the amount of taxes owed by the seller ($31,248.91), but not the attendant interest and penalties for which the seller is liable. However, the Division contends that interest and penalty may be imposed on petitioner for its failure to timely remit the taxes assessed. Based on this, the Division states that petitioner's total assessment is to be recalculated based on the $31,248.91 of taxes owed by petitioner, plus interest and penalty, to be computed from the date petitioner received the notice of determination and demand for payment of sales and use taxes due, i.e., August 6, 1990.

We affirm the determination of the Administrative Law Judge for the reasons set forth below.

Tax Law § 1138 addresses the authority of the Commissioner of Taxation and Finance to make assessments for sales tax due, providing, in pertinent part:

> "[n]otice of . . . [a] determination [of tax due] shall be given to the person liable for the collection or payment of the tax" (Tax Law § 1138[a][1]).

Section 1138(a)(3)(A) sets forth a bulk purchaser's right to challenge such an assessment, providing in pertinent part:

> "[t]he liability of a purchaser, transferee or assignee of business assets sold, transferred or assigned in bulk for the payment to the state of taxes determined to be due from the seller, transferor or assignor arising under subdivision (c) of section eleven hundred forty-one of this chapter shall be finally and irrevocably fixed unless the purchaser, transferee or assignee, within ninety days after the giving of notice by the tax commission to such purchaser, transferee or assignee of the total amount of any tax or taxes which the state claims to be due from the seller, transferor or assignor, shall apply to the tax commission for a hearing or unless the tax commission, on its own motion, shall redetermine such liability."

As an alternative to a hearing, a taxpayer may request an informal conciliation conference between the taxpayer, a representative of the Division, and a conciliation conferee (Tax Law § 170[3-a][a]; 20 NYCRR 4000.3[a]; 20 NYCRR 4000.5[c]). The time for filing a request for a conciliation conference is determined by the time period set out in the statutory provision authorizing the assessment which, in this case, was 90 days (Tax Law §§ 170[3-a][a], 1138[a][3][A]; see, 20 NYCRR 4000.3[c]).

Upon proper mailing, notice of the assessment is presumed to be received, and the 90-day period is deemed to begin on the date the notice is mailed:

> "[a] notice of determination shall be mailed promptly by registered or certified mail. The mailing of such notice shall be presumptive evidence of the receipt of the same by the person to whom it is addressed. Any period of time which is determined according to the provisions of this article by the giving of notice shall commence to run from the date of the mailing of such notice" (Tax Law § 1147[a][1]).[4]

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[4] Petitioner asserts that Matter of Mareno v. State of New York Tax Commn. (supra) supports its assertion that the 90-day period begins on the date of receipt, not the date of mailing. The Mareno opinion does contain such language but is, in our opinion, not binding precedent. The issue in Mareno was whether the petitioner had received the notice of determination; the issue was not how to measure the time period for a timely petition. Therefore, the Mareno court's statement as to the start of the 90-day period is dicta, not precedent.

Further, the court in Mareno cites to Matter of Halperin v. Chu (138 AD2d 915, 526 NYS2d 660, appeal dismissed in part, denied in part 72 NY2d 938, 532 NYS2d 845) as support for its position. However, there is no language in the Halperin opinion which supports the Mareno court's statement. Finally, our conclusion on this point is in accord with the language of Tax Law § 1147(a)(1) and the Appellate Court's prior decision in Matter of Ruggerite, Inc. v. State Tax Commn. (97 AD2d 634, 468 NYS2d 945, affd 64 NY2d 688, 485 NYS2d 517).

Failure to timely file a petition bars the Division of Tax Appeals from entertaining the case (Tax Law § 2006[4]; see, 20 NYCRR 3000.3[c]).

Based upon these principles, we affirm the Administrative Law Judge's dismissal of petitioner's challenge to the order denying the conciliation conference.

Petitioner's request for a conciliation conference was deemed untimely and was denied by BCMS. Therefore, the issue is whether the Division can demonstrate that these notices were properly mailed (Matter of Malpica, Tax Appeals Tribunal, July 19, 1990, citing Magazine v. Commissioner, 89 TC 321). Demonstration of proper mailing by the Division causes petitioner's request to be untimely and properly denied (Tax Law § 1138[a][1]); failure to make such a showing may result in the finding that the request for a conciliation conference was timely (see, Matter of Novar TV & Air Conditioner Sales and Serv., Tax Appeals Tribunal, May 23, 1991).

When addressing a proof of mailing issue, the Division must demonstrate the use of a standard mailing procedure, and introduce evidence that this procedure was used when conducting the particular mailing at issue (Matter of Katz, Tax Appeals Tribunal, November 14, 1991; Matter of Novar TV & Air Conditioner Sales and Serv., supra; see also, Cataldo v. Commissioner, 60 TC 522). These requirements have not been satisfied.

As proof of proper mailing, the Division offered the affidavits of Robert Keppel, Central Office Audit Bureau Clerk, Sales Tax section, and Daniel LaFar, Principal Mail and Supply Clerk, as well as a copy of the certified mail record bearing petitioner's address (see, Division's Answer). Mr. Keppel's affidavit describes the general office procedure of comparing the addresses on the notices of determination with the addresses on the envelopes and the copies of the certified mailing record for accuracy. The notices are then placed in their respective envelopes, and the number of envelopes is compared to the number of addressees on the copies of the certified mailing record. Mr. Keppel then signs the certified mailing record as an attestation that the mailing procedure had been followed. This signing was witnessed by Edward Van Denburgh, an employee of the Department. The copies of the certified mailing

record are then wrapped around the notices of determination, placed in the outgoing mail basket, and delivered to the Department's outgoing mail unit.

Mr. LaFar's affidavit states that, upon arriving at the outgoing mail unit, the envelopes are weighed and sealed, proper postage is attached, and the number of envelopes is compared to the number of addressees on the pages of the certified mailing record. The envelopes are then delivered to the United States Post Office where a Postal employee compares the envelopes to the pages of the certified mailing record. The Postal employee then date stamps the last page of the certified mailing record to indicate receipt by the United States Postal Service. The date-stamped certified mailing record serves as the Department's record that the items listed were received by the Postal Service.

Mr. LaFar's affidavit also states that, "based upon his review of the certified mailing record" (Division's Answer, LaFar affidavit, ¶¶ 11 and 12), he concludes that an employee of the mail and supply room delivered the notice in question to the United States Postal Service on August 3, 1990, and that a member of his staff obtained a copy of the certified mailing record, date stamped August 3, 1990 by the Post Office, showing that certified mail of the Department was delivered to and received by the Post Office on that date. The alleged certified mailing record upon which LaFar's conclusions are based is attached to his affidavit and is labeled "Exhibit A" (Division's Answer, LaFar affidavit, ¶ 10). Petitioner's name and address appear on the first sheet of the two-page document, and the second sheet bears the date stamp of the United States Postal Service, Roessleville Branch.

We find that the alleged certified mailing record fails to show that the general mailing procedure was followed with respect to the notice of determination at issue. In recent cases we have found an alleged certified mailing record insufficient because it was impossible to tie together the several sheets offered by the Division (see, Matter of Clark, Tax Appeals Tribunal, June 18, 1992; Matter of Katz, supra). The present situation exhibits the same flaw. First, we are unable to conclude that the two pages are related to one another. Petitioner's name appears on the first, unpostmarked sheet. The second sheet bears an August 3, 1990 postmark.

However, there is no evidence on either of these sheets which would allow us to conclude that they are related.

Second, unlike Postal Form 3877, the second postmarked sheet submitted does not list all the documents received by the Post Office. Therefore, it is impossible to determine whether the sheet on which petitioner's name appears should be included with the page postmarked August 3, 1990.

Finally, the sheet on which petitioner's certified mail number and address appear lacks any postmark. Although the date August 3, 1990 appears on the notice of determination addressed to petitioner, this is in no way related to the date upon which the notice is alleged to have been mailed (see, Matter of Malpica, supra) and is, therefore, irrelevant to the present inquiry.

We conclude, as we did in Matter of Clark (supra) and Matter of Katz (supra), that the direct evidence of mailing offered here is not sufficient to establish that the Division mailed the notice on the date claimed. What is missing here, as in Clark and Katz, is any evidence which would allow us to determine that the relevant page of the purported certified mailing record was, in fact, attached to the page bearing the postmark at the time the document was delivered to the Postal Service. Although the Keppel and LaFar affidavits describe the process by which the Division generates the certified mailing record, it offers no description of the process by which the Division ensures that the multi-page document generated is the same one ultimately delivered to the Postal Service and then returned to the Division.

In our view, if the Division has elected to abandon the use of a document complete on one page bearing a postmark and the signature of a Postal Service employee (i.e., Postal Form 3877) as its direct evidence of mailing, then it must provide us with additional information that allows us to determine that the relevant page of the computer-generated, multi-page certified mailing record was, in fact, delivered to the Postal Service with the postmarked page. One form that this additional information could take would be a description of office practices suited to the new form of direct evidence -- an articulated procedure employed by the Division to ensure that

the integrity of the certified mail record is maintained from the time that the document is generated, delivered to the Postal Service and returned to the custody of the Division.

The absence of such an articulated procedure renders meaningless, for our purposes, the statements in the LaFar affidavit that the pages entered into evidence are in fact the certified mail record of notices of deficiency mailed on August 3, 1990. Without any information in the record for us to determine the basis of Mr. LaFar's statement, we conclude that the statement does not provide direct evidence that the Division physically deposited the notice with the Postal Service on the date claimed (Matter of Novar TV & Air Conditioner Sales & Serv., supra).

In sum, the two sheets offered by the Division as a certified mail record are insufficient to demonstrate when the Division delivered petitioner's notice of deficiency to the United States Postal Service. Therefore, we reject August 3, 1990 as the date from which the statutory period should be measured.

Where proper mailing cannot be proved, demonstration of receipt of the notice by the taxpayer allows for the statutory period to be measured from the date of receipt (Matter of Bryant Tool & Supply, Tax Appeals Tribunal, July 30, 1992; Matter of Avlonitis, Tax Appeals Tribunal, February 20, 1992). In petitioner's affidavit in opposition to the motion for summary judgment, petitioner acknowledges receipt of the notice of determination on August 6, 1990. Therefore, running the statute of limitations from the date of receipt of the notice, the 90-day period ends on November 4, 1990. As this date falls on a Sunday, the subsequent day, Monday, November 5, 1990, becomes the statutory deadline (General Construction Law § 20; Tax Law § 1147[a][3]).

The Conciliation Conferee denied petitioner's request for a conference because the request was not received until November 13, 1990. Based on the above calculation of the end of the 90-day period from the date of receipt of the notice (November 5, 1990), the November 13, 1990 receipt of the request by BCMS still falls after the expiration of the 90-day period; therefore, petitioner's request is untimely unless evidence exists in the record which contradicts

the November 13, 1990 date of receipt and establishes an earlier, timely actual or deemed (based on a postmark) date of receipt (Tax Law § 1147[a][2]).

Petitioner has offered no such evidence. In its petition to the denial of the conference, petitioner makes no response to the conferee's finding of untimeliness. In its affidavit in opposition to the Division's motion for summary determination, petitioner simply asserts that the request was filed on November 3, 1990, offering no direct proof in support of its assertion. Given this lack of evidence, we must conclude that petitioner's request for a conciliation conference was untimely and, therefore, properly denied.

We now address the procedure for challenging an assessment. Petitioner asserts that its August 9, 1990 meeting with two employees of the Tax Compliance Bureau, at which petitioner disputed the assessment, was a sufficient method for requesting a hearing. As support for its position, petitioner states that neither Tax Law §§ 1138(a)(3)(A) nor 2006(4) requires the request to be in writing.

Tax Law § 170(3-a)(b) states that "[a] request for a conciliation conference shall be applied for in the manner as set forth by regulation of the commissioner . . . ." The applicable regulations, at 20 NYCRR 4000.3, state that "[a]ny person who has received a statutory notice may request a conciliation conference by filing a written request . . . " (20 NYCRR 4000.3[a], emphasis added).

Tax Law § 2006(4) states that the Tax Appeals Tribunal has the authority "[t]o provide a hearing as a matter of right, to any petitioner upon such petitioner's request, pursuant to such rules, regulations, forms and instructions as the tribunal may prescribe . . . ." The applicable regulations, at 20 NYCRR 3000.3, provide that:

> "[a]ll proceedings in the Division of Tax Appeals must be commenced by the filing of a petition. . . . The petition and two conformed copies shall be typewritten, if possible, and shall include all of the information required in subdivision (b) of this section" (20 NYCRR 3000.3[a], emphasis added).

Based on the above-quoted sections of law and regulation, we reject petitioner's assertion that the August 9, 1990 meeting satisfied the requirements for initiating the review process (see also, Matter of Martella, Tax Appeals Tribunal, September 14, 1989).

Finally, petitioner argues that, even if its request is deemed untimely, the Division of Tax Appeals has the authority to abate an erroneous or excessive assessment, notwithstanding the late-filed request, based on Tax Law § 1138(a)(3)(A) and Tax Law § 2006(12). We disagree.

Tax Law § 2006, as relevant, states that:

> "[t]he [tax appeals] tribunal shall have the following functions, powers and duties:
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> * * *
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> "4. To provide a hearing as a matter of right, to any petitioner upon such petitioner's request, pursuant to such rules, regulations, forms and instructions as the tribunal may prescribe, unless a right to such a hearing is specifically provided for, modified or denied by another provision of this chapter. Where such a request is made by a person seeking review of taxes determined or claimed to be due under this chapter, the liability of such person shall become finally and irrevocably fixed, unless such person, within ninety days from the time such liability is assessed, shall petition the division of tax appeals for a hearing to review such liability.
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> * * *
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> "12. To have the same power and authority as the commissioner of taxation and finance in any instance where such commissioner is authorized to impose, modify or waive interest, additions to tax or civil penalties under this chapter" (Tax Law § 2006[4] and [12]).

Tax Law § 1138(a)(3)(A), concerning bulk sales, states, inter alia, that:

> "[t]he commission may, on its motion, abate, on behalf of the purchaser, transferee or assignee, any part of the taxes determined to be erroneous or excessive, whether or not such taxes had become finally and irrevocably fixed."

Based on the above-quoted provisions, we conclude that the Tax Appeals Tribunal lacks the authority to modify petitioner's assessment. The grant of authority in Tax Law § 2006(12) must be read in conjunction with section 2006(4). That passage requires the Tribunal to provide a hearing as a matter of right, and states that liability will be irrevocably fixed unless a petition requesting a hearing is filed in 90 days. Petitioner failed to file a timely petition and, therefore, failed to secure its right to a hearing. Thus, the Tribunal lacks subject matter jurisdiction and is prevented from addressing the validity of petitioner's assessment.

The abatement of an assessment by the Tax Commission on its own motion represents a discretionary act which may be exercised by the Commissioner of Taxation and Finance (Tax

Law §§ 2 and 1138[a][3][A]). As such, it does not constitute an avenue available to petitioner as a matter of right and, therefore, cannot be used by petitioner to secure a review of its substantive arguments by the Tribunal (Tax Law § 2006[4]).

Despite the substantive arguments made by the parties in their briefs and letters, the only issue properly before this Tribunal is the question of timeliness. Therefore, we limit our analysis to this procedural point.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of petitioner Greene Valley Liquors, Inc. is denied;

2. The determination of the Administrative Law Judge is affirmed;

3. The petition of Greene Valley Liquors, Inc. is denied; and

4. The order of the Conciliation Conferee denying petitioner's request for review of the notice of determination dated August 3, 1990 is affirmed.

DATED: Troy, New York
November 25, 1992

/s/John P. Dugan
John P. Dugan
President

/s/Maria T. Jones
Maria T. Jones
Commissioner