STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
MARY MONTESANTO	:	DECISION DTA No. 809840
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 June 1, 1985 through May 31, 1988.	: : :	

The Division of Taxation filed an exception to the determination of the Administrative Law Judge issued on April 29, 1993 with respect to the petition of Mary Montesanto, 3 Hampden Road, Copiague, New York 11726. Petitioner appeared by DeGraff, Foy, Holt-Harris & Mealey (James H. Tully, Jr., Esq., of counsel). The Division of Taxation appeared by William F. Collins, Esq. (Robert J. Jarvis, Esq., of counsel).

The Division of Taxation did not file a brief on exception. Petitioner filed a brief in opposition. The six-month period to issue this decision began on October 21, 1993, the date by which the Division of Taxation could have filed a reply brief.

Commissioner Dugan delivered the decision of the Tax Appeals Tribunal. Commissioner Koenig concurs.

ISSUES

I. Whether petitioner filed a valid request for a Conciliation Conference.

II. Whether petitioner was represented by an authorized representative at the Conciliation Conference.

III. Whether petitioner filed a valid petition for hearing within 90 days of the mailing of the Conciliation Order.

IV. Whether the proof offered by the Division of Taxation regarding the mailing of the Conciliation Order is sufficient to prove the date of such mailing.

FINDINGS OF FACT

We find the facts as determined by the Administrative Law Judge except for findings of facts "8(b)," "8(e)" and ""8(g)" which have been modified. The Administrative Law Judge's findings of fact and the modified findings of fact are set forth below.

A Notice of Determination and Demand for Payment of Sales and Use Taxes Due was issued on August 4, 1988 under Articles 28 and 29 of the Tax Law against petitioner, Mary Montesanto, for the period June 1, 1985 through May 31, 1988 in the amount of $22,562.78, plus penalty of $5,577.71 and interest of $4,766.02, for a total amount due of $32,906.51. (The amount for the last quarter was stated to include an amount due from a bulk sale of business assets.) The notice was numbered S880804706C.

On September 21, 1988, the Bureau of Conciliation and Mediation Services ("BCMS") of the Division of Taxation ("Division") received a "petition for revision of a determination" from petitioner. This was treated as a request for a conciliation conference. This petition was stated to be for sales and use taxes due for the period August 31, 1985 through April 13, 1988. It identified the notice number as S880804708C. (The last digit of this number is different from the number on the notice of determination issued August 4, 1988.) A representative was listed as Leonard Klinghoffer of 7000 Boulevard East, Guttenberg, New Jersey 07093. Both petitioner and Mr. Klinghoffer signed this petition.

On September 30, 1988, BCMS wrote to Mr. Klinghoffer requesting that he file a power of attorney. This letter was addressed to 7000 Boulevard East, Guttenberg, New Jersey 07093.

In April 1989, Mr. Klinghoffer moved his home and office from 7000 Boulevard East to 7004 Boulevard East of the same city.

A power of attorney form (Department's Form DTF-14) was introduced into evidence. Petitioner's signature on the form is not dated and not notarized. Mr. Klinghoffer signed the Notice of Appearance section at the bottom. His address on this form was stated to be 7000 Boulevard East.

Petitioner testified that the power of attorney form was signed by both herself and Mr. Klinghoffer at her home in Copiague, New York, and that Mr. Klinghoffer took the form with him to attend the conciliation conference. Mr. Klinghoffer testified that, rather, he mailed the form to BCMS. In any event, this purported power of attorney did not inform the Division of any change of address of Mr. Klinghoffer since the address listed was his former address.

A conciliation conference was held on June 14, 1989. Leonard Klinghoffer attended that conference. Petitioner did not attend. The conferee was Michael Mancini. The conference appears to have been confined to Mr. Klinghoffer's description of the legal status of petitioner's activities and the conferee's request for further documentation thereof.

Mr. Mancini's record of that conference states that a power of attorney was not tendered, but was asked for. Nothing is stated about a new address for Mr. Klinghoffer. The record notes that Mr. Klinghoffer had been very late and had complained of car trouble.

Mr. Klinghoffer's testimony at hearing concerning the conference (occurring three years prior to the hearing) must be rejected. The questioning of the Division's attorney (and his memo after the hearing) very ably point out the problems with this testimony. Mr. Klinghoffer relies only on his memory and not on records. His claim to have notified the conferee of a change in address seems to be based on a presentation of a power of attorney which, as pointed out above, actually lists only his old address. He did not deny or explain the conferee's record that he had been late and had complained of car trouble. Mr. Klinghoffer could not remember whether he submitted documents either at or after the conference and, in fact, changed his answer on this during the hearing twice. His apparent certainty on certain matters (that he mailed a power of attorney to the conferee) are contradicted by the equally certain testimony of petitioner herself (that he carried the power of attorney to the conference). Some answers were phrased as what he "would have" done.

On July 20, 1989, the conciliation conferee wrote to Mr. Klinghoffer requesting documentation he had been promised at the conference and also requesting a power of attorney. This was addressed to the 7000 Boulevard East address.

A Conciliation Order denying the request for conciliation was prepared and dated September 8, 1989. This order referred to the notice number in issue as S800804706C. This is the number on the notice of determination issued on August 4, 1988.

We modify finding of fact "8(b)" of the Administrative Law Judge's determination to read as follows:

> Petitioner had some difficulty in recalling whether she had received the Conciliation Order, but after some questioning by her representative indicated she had received the Order. However, she did not talk to Mr. Klinghoffer about it or take any other action concerning it until "after a judgement" was entered.[1]

Mr. Klinghoffer claims he did not receive a copy of the order. He offered no corroboration for his claims.

The custom and practice in the mailing of conciliation orders has been described for the record in two affidavits, one from the Supervisor of Tax Conferences and the other from the Principal Mail Clerk. These can be paraphrased as follows: The word processing unit of BCMS when preparing a conciliation order and envelope also prepares a "certified mail record" ("CMR") to record the mailing of certified mail. This lists for each day the name and address of each addressee and the amounts of postage and fees which will be paid. Both the order and the

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The original finding of fact "8(b)" of the Administrative Law Judge's determination read as follows:

> "(b) Petitioner did not recall receiving the Conciliation Order and explained that her 'schooling is not really good.' She did not talk to Mr. Klinghoffer about it or take any other action concerning it until 'after a judgment' was entered."

However, this finding is not supported by the record where, on direct examination, petitioner stated as follows:

> "Q This document is called a Conciliation Order. It would have been the decision of the Conciliation conferee concerning your request for conference that Mr. Klinghoffer attended on your behalf.
>
> "A Okay. I got it.
>
> "Q Your received this?
>
> "A Yes" (Tr., p. 64).

CMR are sent to a clerk who verifies the addresses on the envelopes with the CMR. She also assigns and affixes a "certified control number" to each envelope and lists it on the CMR. (This number, judging from the CMR in evidence, has nine digits preceded by a "P". Such a number appears on each certified mail receipt issued by the U.S. Postal Service [PS Form 3800] and which is attached to each envelope.) The clerk carries the envelopes and CMR to the Department's mail room. A mail room clerk verifies the number of envelopes against the number listed on the CMR. He also verifies the addresses on the envelopes against those on the CMR. The clerk then delivers the envelopes and CMR to the Roessleville Branch of the Albany, New York Post Office. The next day a clerk goes to the Post Office and picks up the CMR, date stamped by the Post Office. Both affidavits affirm that, based on the CMR for September 8, 1989, the Conciliation Order here in question was in fact mailed as the Division alleges. The affidavit of the Supervisor of Tax Conferences states also that while conciliation orders are sent by certified mail, "BCMS does not ordinarily request certified mail return receipts . . . ."

We modify finding of fact "8(e)" of the Administrative Law Judge's determination to read as follows:

> The mailing record submitted is as follows:
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> The caption lists the name and address of BCMS and its identity, CMR "conciliation orders issued September 8, 1989". It lists in table form for each item sent the certified number, the name and address of the addressee,
>
> the postage, the fees and has a space for remarks. The information for petitioner is Certified No. P150025535, 3 Hampden Road, Copiague, NY 11726. The information for petitioner's representative is Certified No. 150025536, 7000 Boulevard East, Guttenberg, New Jersey 07093, the address listed on the Power of Attorney introduced into evidence by petitioner. Across the bottom are spaces for the number of pieces listed, the number of pieces received by the Post Office and for the name of the Post Office's receiving employee. The numbers written in are "15." The name written in is illegible though it appears distinctive enough to be recognizable by the signer himself. The page submitted in evidence bears an imprint, apparently from a stamp, of "Sept 8 1989." If there is a remaining portion of this stamp, it is much too faint to be read. The

> CMR also bears a larger stamp of BCMS bearing a date of October 2, 1989.[2]

The Postal Service's employee upon accepting a firm mailing bill is directed to "count the items, postmark and receipt the bill for the total number. Indicate time of mailing if requested, and return the bill to the sender" (Domestic Mail Manual, § 912.45[f]). (The Domestic Mail Manual, "DMM", is incorporated by reference into the Code of Federal Regulations by 39 CFR 111.1.)

We modify finding of fact "8(g)" at the request of the Division to read as follows:

> Petitioner indicated she did receive a copy of the Conciliation Order although she could not recall the exact date. She testified that she called Mr. Klinghoffer about the matter when "the State . . . put a judgment against me." Mr. Klinghoffer makes the bare assertion that he did not receive a copy of the order. The Division, in its post hearing brief, specifically raised the issue of whether petitioner's petition for hearing was timely filed with the Division of Tax Appeals.[3]

A petition for a hearing before the Division of Tax Appeals referring to notice of determination number S880804706C (the notice issued on August 4, 1988) was received by the Division of Tax Appeals on August 5, 1991. This was signed by Stewart Buxbaum, C.P.A., as petitioner's representative. A power of attorney dated June 1, 1991 was attached in favor of Mr. Buxbaum and Mr. James Tully, Jr., an attorney.

This petition states (among other things) that "the taxpayer's representative, Leonard Klinghoffer, never received a conciliation order" at his last known address of 7004 Boulevard East, Guttenberg, New Jersey and so the time to file a petition should still be open.

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[2] We added the certified mail numbers and addresses to this finding of fact to more fully reflect the record.

[3] The original finding of fact "8(g)" of the Administrative Law Judge's determination read as follows:

> "[h]ow and when petitioner or Mr. Klinghoffer learned of the Conciliation Order is not clear from the record. Since the Division has not put this in issue, it must be assumed it was within 90 days of the filing of the petition with the Division of Tax Appeals."

The answer of the Division denies that Mr. Klinghoffer was petitioner's representative and that his last known address was 7004 Boulevard East.

OPINION

The Administrative Law Judge determined that the request for conference was valid notwithstanding the reference to S880804708C ("8C") instead of S880804706C ("6C"), the correct notice.

The Administrative Law Judge determined that while Mr. Klinghoffer did not file a proper power of attorney with the BCMS he did file a notice of appearance. Thus, the BCMS was required to mail to Mr. Klinghoffer a copy of the Conciliation Order. The Administrative Law Judge determined that the Division did not prove proper mailing of the order and, thus, could not benefit from the presumption of mailing in Tax Law § 1147(a)(1). The Administrative Law Judge faulted the sufficiency of the affidavits introduced to prove office practice stating that:

> "[t]he proof . . . is made by affidavits which, of course, might be tailored to each particular case rather than by reference to a regulation or an audit manual similar to the Internal Revenue Service's Audit Manual . . . . Also there is no evidence that the particular order alleged to be mailed has been endorsed with the certified mail number which will be on the envelope . . . there is no evidence of any practice of endorsing the certified mail record with the name or initials of the clerks who actually performed the duties" (Determination, conclusion of law "D[3]").

The Administrative Law Judge also found the postmark and the receiving clerk's name on the certified mail record to be illegible and noted the failure of the Division to obtain a return receipt. The Administrative Law Judge determined that petitioner's petition for hearing was timely filed.

On exception, the Division asserts that the request for conference was good only for the notice listed on the request, i.e., S880804708C, ("8C"); thus, the Administrative Law Judge erred in determining that the request for conciliation conference was effective for notice S880804706C ("6C") which was not listed on the request. In support of its position, the Division states that since:

> "it is the statutory notice of tax due that is the 'point of controversy' for hearings before the Division of Tax Appeals, a petition which omits a particular notice number cannot be amended, after the 90 days has expired, to include the omitted notice number. Matter of Shnozz'z Inc. et al., Tax Appeals Tribunal, February 22, 1991" (Division's Rider for Exception, p. 2).

The Division goes on to assert that:

> "[t]he fact that a conciliation conference was granted does not confer jurisdiction on this case if it does not otherwise exist. A defect in subject matter jurisdiction is not waivable by any party, and the reasons why the jurisdictional requirements are not satisfied are irrelevant. Matter of Central Avenue Automotive Services, Inc. et al, Tax Appeals Tribunal, August 22, 1991" (Division's Rider for Exception, p. 2).

On exception, the Division asserts that the Administrative Law Judge erred in concluding that Executive Law § 168 is applicable.

> "Analysis of the applicable statutory and regulatory provisions and the relevant case law shows that the obligation to send copies to a party's representative arises only when that representative has filed a proper notice of appearance in a qualifying proceeding. As stated above, Mr. Klinghoffer did not, and could not without a proper power of attorney, file a notice of appearance with BCMS. Furthermore, a conciliation conference does not meet the definitions of a 'proceeding' set forth in Executive Law §168(2)(b) and 20 NYCRR §600.2" (Division's Rider for Exception, p. 3).

The Division also excepts to the Administrative Law Judge's conclusions of law concerning the proof of mailing as follows:

> "9. Conclusion of Law D(1):
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> "Also in error are the conclusions that the Division did not properly mail the Conciliation Order to Mr. Klinghoffer, and that the Division must prove receipt by Mr. Klinghoffer of this Order. These conclusions by the ALJ fly in the face of the presumption of receipt granted by Tax Law §1147(a)(1), and apparently result from the ALJ's personal view of what the Division should have to prove in timeliness cases.
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> "10. Conclusion of Law D(2):
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> "To the extent that this paragraph indicates that the Division must prove mailing by obtaining a return receipt from the Post Office, it is without legal authority. Nowhere in the Tax Law is there found any requirement for the Division to obtain any kind of a mailing receipt, as proof of proper mailing of a notice. Indeed, the Legislature specifically relieved the Division of any such obligation by including in §1147(a)(1) a presumption of receipt for such notices.
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> "11. Conclusion of Law D(3):

> "(a) The ALJ is clearly in error in stating that the Division must prove receipt of the Conciliation Order by petitioner. She admitted at hearing that she received it.
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> "(b) The ALJ's holdings with respect to the sufficiency of the evidence of mailing provided by the Division are contrary to legal precedent in this area and are not based on any stated requirements of law. Affidavits showing proper mailing are clearly sufficient evidence for this purpose, there is no requirement for the clerk preparing the item being mailed to endorse the certified article number on the same or to endorse his or her name or initials on the CMR, there is no requirement that New York follow the alleged federal practices described by the ALJ, and there certainly is no requirement for the Division to obtain a return receipt for the subject mailing.
>
> "(c) The postmark and name entry found on the CMR are in compliance with the requirements set forth by the Tribunal for this type of document. Especially when considered in conjunction with the accompanying affidavits, it is clear that this evidence proves that the Division has regular office procedures for mailing Conciliation Orders, and that those procedures were followed in this case. Accordingly, the Division has proven proper mailing of the Conciliation Order in issue to both petitioner and Mr. Klinghoffer (Division's Rider for Exception, pp. 3-4).

Finally, the Division asserts that Mr. Klinghoffer did not prove that he never received the Conciliation Order.

The Division asks us to conclude that petitioner did not timely file a petition for hearing.

On exception, petitioner asserts that the determination of the Administrative Law Judge is correct. Specifically, petitioner asserts that the Division considered Mr. Klinghoffer as petitioner's "duly appointed representative" and as such was required to send him, at his last known address, copies of any documents issued to petitioner. Petitioner asserts that Mr. Klinghoffer informed the conferee of his new address at the conference. Petitioner asserts that the Division failed to mail to Mr. Klinghoffer a copy of the Conciliation Order. Petitioner concludes that this failure "obviously prejudiced [petitioner] and prevented her from protesting the order" (Petitioner's Brief in Opposition to Exception, pp. 8-9).

We deal first with the Division's assertion that petitioner did not file a valid request for conference because the request for conciliation conference referenced "8C" not "6C."

We reject the Division's assertion.

While we are not privy to the internal proceedings before the BCMS, it appears clear that the Bureau recognized the error on petitioner's request for conference and made the common

sense judgment that the request was for "6C" not "8C."[4] Further, there is no question that the conference was conducted on "6C" and resulted in the issuance of the Conciliation Order which references "6C" (see, Division's Answer, ¶ [9]). Finally, the petition for hearing bringing the controversy before the Division of Tax Appeals references "6C," the proper notice. Under these circumstances, we find that the Division was aware of the notice being protested and was in no way prejudiced by petitioner's error (see, Matter of Pepsico, Inc. v. Bouchard, 102 AD2d 1000, 477 NYS2d 892 [notice misstating the period for which tax assessed not invalid since taxpayer not prejudiced]; Matter of Cheakdkaipejchara, Tax Appeals Tribunal, April 23, 1992 [failure by division to indicate on statutory notice that tax was estimated did not invalidate the assessment since petitioner was not prejudiced]; Matter of Tops, Inc., Tax Appeals Tribunal, November 22, 1989 [two sales tax quarters incorrectly listed on the statutory notice did not render it invalid]).

We deal next with the Division's assertions that it was under no obligation to mail the Conciliation Order to Mr. Klinghoffer since he was not a properly authorized representative of petitioner.[5]

If the Division's assertion is correct, then BCMS should have defaulted petitioner (see, 20 NYCRR 4000.2 and 2390.1). The facts show that that is not what happened. Instead, a conciliation conference was held and, as the Division asserts, a copy of the Conciliation Order resulting from the conference was mailed to Mr. Klinghoffer, as well as to petitioner. In short, BCMS treated Mr. Klinghoffer as petitioner's duly authorized representative. Under the circumstances -- particularly the facts that petitioner does not disavow Mr. Klinghoffer as her representative (see, e.g., Matter of Coliseum Palace, Tax Appeals Tribunal, November 17, 1988) and the Division did not timely raise the issue, i.e., while the matter was still before the

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[4]The Division's regulations require a "written request" for the conciliation conference which must be accompanied by a copy of the statutory notice being protested. Petitioner used a petition for hearing form as its written request and presumably attached a copy of the proper statutory notice to it which may account for the actions of BCMS.

[5]We will not deal with the Division's unsubstantiated assertion that a conciliation conference proceeding is not a "proceeding" covered by section 168 except to point out that the assertion appears inconsistent with the Division's own regulations (see, 20 NYCRR 2390.2 and 2390.3).

Division (see, Matter of Jenkins Covington, Tax Appeals Tribunal, November 21, 1991), we reject the Division's assertion that Mr. Klinghoffer was not petitioner's duly authorized representative.

We deal next with the core issue of whether petitioner's petition for hearing was timely filed. We reverse the determination of the Administrative Law Judge.

Tax Law § 170(3-a) provides that a conciliation order is binding on the parties unless the petitioner files a petition for hearing with the Division of Tax Appeals within 90 days after the order is issued. The order is issued at the time of its mailing to the taxpayer (Matter of Wilson, Tax Appeals Tribunal, July 13, 1989). When addressing a proof of mailing issue, the Division may prove the fact and date of mailing by establishing the use of a standard mailing procedure for conciliation orders by a person with knowledge of such procedures, and by introducing the evidence that this procedure was used in connection with the mailing of the order in this case (see, Matter of Accardo, Tax Appeals Tribunal, August 12, 1993; Matter of Bryant Tool & Supply, Tax Appeals Tribunal, July 30, 1992; Matter of Katz, Tax Appeals Tribunal, November 14, 1991; Matter of Novar TV & Air Conditioner Sales & Serv., Tax Appeals Tribunal, May 23, 1991; see also, Matter of MacLean v. Procaccino, 53 AD2d 965, 386 NYS2d 111; Cataldo v. Commissioner, 60 TC 522, affd 499 F2d 550, 74-2 USTC ¶ 9533).

The facts here show that the Division has met its burden. Specifically:

> "[t]he custom and practice in the mailing of conciliation orders has been described for the record in two affidavits, one from the Supervisor of Tax Conferences and the other from the Principal Mail Clerk. These can be paraphrased as follows: The word processing unit of BCMS when preparing a conciliation order and envelope also prepares a "certified mail record" ("CMR") to record the mailing of certified mail. This lists for each day the name and address of each addressee and the amounts of postage and fees which will be paid. Both the order and the CMR are sent to a clerk who verifies the addresses on the envelopes with the CMR. She also assigns and affixes a "certified control number" to each envelope and lists it on the CMR. (This number, judging from the CMR in evidence, has nine digits preceded by a "P." Such a number appears on each certified mail receipt issued by the U.S. Postal Service [PS Form 3800] and which is attached to each envelope.) The clerk carries the envelopes and CMR to the Department's mail room. A mail room clerk verifies the number of envelopes against the number listed on the CMR. He also verifies the addresses on the envelopes against those on the CMR. The clerk then delivers the envelopes and CMR to the Roessleville Branch of

the Albany, New York Post Office. The next day a clerk goes to the Post Office and picks up the CMR, date stamped by the Post Office. Both affidavits affirm that, based on the CMR for September 8, 1989, the Conciliation Order here in question was in fact mailed as the Division alleges. The affidavit of the Supervisor of Tax Conferences states also that while conciliation orders are sent by certified mail, "BCMS does not ordinarily request certified mail return receipts . . . ."

"(e) The mailing record submitted is as follows:

"The caption lists the name and address of BCMS and its identity, CMR "conciliation orders issued September 8, 1989". It lists in table form for each item sent the certified number, the name and address of the addressee, the postage, the fees and has a space for remarks. Across the bottom are spaces for the number of pieces listed, the number of pieces received by the Post Office and for the name of the Post Office's receiving employee. The numbers written in are "15." The name written in is illegible though it appears distinctive enough to be recognizable by the signer himself. The page submitted in evidence bears an imprint, apparently from a stamp, of "Sept 8 1989." If there is a remaining portion of this stamp, it is much too faint to be read. The CMR also bears a larger stamp of BCMS bearing a date of October 2, 1989" (Determination, finding of fact "8[d] and [e]").

In short, unlike the mailing records in Matter of Clark (Tax Appeals Tribunal, June 18, 1992) and Matter of Katz (supra), referred to by the Administrative Law Judge, the Division's proof that the Conciliation Order was sent by certified mail on September 8, 1989 is the properly completed CMR which is substantively the same as the Postal Form 3877 (see, e.g., Munz v. Commissioner, T.C. Memo 1991-171, 61 TCM 2412, affd 972 F2d 1341 [three-part computer generated form treated in same fashion as Form 3877]). As we discussed in Katz and Clark, a properly completed Form 3877 is highly probative evidence that the notice was sent to the address specified because it contains on one page the name and address of the taxpayer, the taxpayer's representative, the date, postmark and the signature of a Postal Service employee acknowledging receipt. While in this case the copy of the CMR is not of the best quality, it does indicate this information.[6]

[6]While the postmark on the CMR is not fully legible, i.e., only the date is clear, no issue is raised concerning the validity of the postmark as that of the Postal Service. Nor is there any issue concerning the validity of the signature of the Postal Service employee.

We also note that the Administrative Law Judge points out that the office practice described by the Internal Revenue Service in several cases embodies procedures, additional to those carried out by the Division (e.g., Trimble v. Commissioner, T.C. Memo 1989-419, 57 TCM 1256 [having a mail clerk endorse the mailing record]; Barrash v.

Accordingly, we conclude that the Division established September 8, 1989 as the date of the mailing of the Conciliation Order to petitioner and petitioner's representative.

Having proven that it mailed the orders, the Division is entitled to the presumption of receipt under section 1147(a) unless petitioner rebuts the presumption by showing that she did not receive the order. Petitioner stated on the record that she received the order, thus, she obviously has not rebutted the presumption. With regard to Mr. Klinghoffer, his bare assertion that he did not receive the order is insufficient to rebut the presumption of receipt that would arise under section 1147(a) (Matter of T.J. Gulf v. State Tax Commn., 124 AD2d 314, 508 NYS2d 97). It is clear, therefore, that the petition was not timely filed by petitioner.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of the Division of Taxation is granted;

2. The determination of the Administrative Law Judge is reversed; and

3. The petition of Mary Montesanto is dismissed.

DATED: Troy, New York
March 31, 1994

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

/s/Francis R. Koenig
Francis R. Koenig
Commissioner

Commissioner, T.C. Memo 1987-592, 54 TCM 1230, affd 862 F2d 872 [the auditor who generates the notice is identifiable from the records]; and Munz v. Commissioner, supra [the mail clerk who actually posts the notice likewise initials the mail log]). While these additional steps may be helpful in providing a clearer paper trail to verify that the proper procedures have been followed, we find nothing in those cases which casts doubt upon the efficacy of the mailing procedure established by the Division in this case.