STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
FRANK M. GRILLO	:	DECISION DTA NO. 823237
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 December 1, 2003 through May 31, 2005.	:	

Petitioner, Frank M. Grillo, filed an exception to the order of the Administrative Law Judge issued on November 3, 2011. Petitioner appeared by Richard W. Bell, LLC (Richard W. Bell, Esq., of counsel). The Division of Taxation appeared by Mark Volk, Esq. (Clifford M. Peterson, Esq., of counsel).

Petitioner filed a brief in support of his exception. The Division of Taxation filed a brief in opposition. Petitioner filed a reply brief. Petitioner's request for oral argument was denied.

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

ISSUE

Whether petitioner is entitled to an award of costs pursuant to Tax Law § 3030.

FINDINGS OF FACT

We find the facts as determined by the Administrative Law Judge. These facts are set forth below.

The Division of Taxation (Division) issued to petitioner a Notice of Determination dated

March 2, 2007 assessing sales and use taxes due for the sales tax quarterly periods spanning December 1, 2003 through May 31, 2005 in the amount of $646,823.97, plus penalty and interest. This Notice advised that petitioner was being assessed as an officer or person responsible for the payment of taxes determined to be due from Trinsic Communications, Inc., pursuant to Tax Law §§ 1138(a); 1131(1) and 1133. The foregoing Notice was issued to petitioner at 601 S. Harbour Island Blvd., Tampa, Florida 33602-5735.

Trinsic, Inc., originally known as Z-Tel Technologies, Inc., was organized on March 19, 1998 under the laws of the State of Delaware. Trinsic, Inc. provided circuit-switched local and long-distance telephone services in 49 states and the District of Columbia. It is undisputed that the address to which the Notice pertaining to petitioner was issued was also the primary business address for Trinsic, Inc., and this address is set forth on the original Certificate of Incorporation as filed with the Secretary of State of Delaware with respect to Trinsic, Inc.

Trinsic, Inc. provided its services through a number of wholly-owned affiliates and two principal operating entities, Trinsic Communications, Inc. and Touch 1 Communications, Inc. (Touch 1), an Alabama corporation purchased by Trinsic, Inc., in 2000. While each of these principal operating entities (as well as the other affiliates wholly-owned by Trinsic, Inc.) was a separately created and distinct entity under state law, the communication services business conducted by these entities was managed from the publically traded entity Trinsic, Inc. as if these entities were one business enterprise with each executive officer reporting on his functional responsibilities to the chief executive officer of Trinsic, Inc. Trinsic, Inc. leased offices at the above-noted Tampa, Florida address as its principal executive offices, leased offices in Atlanta, Georgia, as its principal engineering offices and facility, and also owned offices in Atmore,

Alabama, by virtue of its ownership of Touch 1. Both of Trinsic, Inc.'s principal operating entities (i.e., Trinsic Communications, Inc. and Touch 1) utilized these offices and facilities.[1]

In January 1995, petitioner moved to Jackson, Mississippi, to serve as vice-president of marketing for LDDS, a long distance telephone company. His business address was initially 515 Amite Street, Jackson, Mississippi, and later was 100 WorldCom Drive, Clinton, Mississippi. Petitioner initially resided at 110 Woodland Hills Blvd., Madison, Mississippi, and thereafter resided at 4141 Crane Blvd., Jackson, Mississippi.[2] In September 2000, petitioner served as senior vice-president of global business markets for MCI WorldCom, LDDS's successor company, where he was responsible for global marketing strategy. Petitioner continued to reside in Jackson, Mississippi, and continued to work at 100 WorldCom Drive, Clinton, Mississippi.

In April 2003, petitioner joined Trinsic, Inc. (Trinsic) as its senior vice-president–business group, and from that point until August 2004, petitioner was solely responsible for Trinsic's business sales and marketing. Petitioner's official business address was at Trinsic's Tampa, Florida, principal executive offices. However, he continued to reside in Jackson, Mississippi, and he worked primarily out of Trinsic's Atmore, Alabama offices, since he lived near that Trinsic facility. At this same point in time, one Horace Davis served as Trinsic's chief financial officer and treasurer. Mr. Davis had previously served as the chief financial officer for Touch 1 and after its acquisition by Trinsic, he served from January 2001 to June 2001 as Trinsic's senior vice-president of budgeting and financial planning. From June 2001 to July 2005, Mr. Davis served as Trinsic's chief financial officer and treasurer. He, like

[1] References herein to Trinsic, Inc., its two principal operating entities and to its other wholly-owned affiliates will be by the generic term Trinsic, unless otherwise specifically noted or required by context.

[2] The record does not disclose any prior address information for petitioner.

petitioner, worked primarily out of Trinsic's Atmore, Alabama offices, since he also lived near that facility.

On August 24, 2004, Trinsic's board of directors appointed Mr. Davis as acting chief executive officer and executive vice-president. At the same time Trinsic's by-laws were amended to eliminate the requirement that the company have a "president" but could instead utilize the phrase "or chief executive officer" wherever the by-laws referred to "president." Mr. Davis retained his duties as chief financial officer. On the same August 24, 2004 date, Trinsic's board of directors appointed petitioner as Trinsic's acting chief operating officer. These appointments followed the resignations of Trinsic's previous chairman, president and chief executive officer, and its previous senior vice-president and chief technology officer. From August 2004 until August 2005, petitioner continued to work primarily from Trinsic's Atmore, Alabama offices, and held the positions of acting chief operating officer and vice-president-business services.

Effective September 30, 2005, Trinsic reported that petitioner had resigned to pursue other opportunities. Petitioner actually began employment in August 2005 with Cypress Communications, Inc., in Atlanta, Georgia. Trinsic did not appoint a replacement chief operating officer in petitioner's stead, but rather Mr. Davis assumed petitioner's duties. Petitioner continued to reside in Jackson, Mississippi, until July 2007, at which time he moved to 155 Avery Street, Atlanta, Georgia.

Before, during and after the foregoing time frame, the telecommunications industry, in general, and Trinsic, in particular, faced significant changes and challenges. In Trinsic's case, there was a continued decline in business. In February 2007, Trinsic and its affiliates, including

its two principal operating entities, Trinsic Communications, Inc. and Touch 1, filed for protection under Chapter 11 of the United States Bankruptcy Code. The bankruptcy petition was filed in the Bankruptcy Court for the Southern District of Alabama, because although Trinsic officially maintained its headquarters in Tampa, Florida, it operated a de facto corporate base in Atmore, Alabama.

In connection with the bankruptcy action, Trinsic, operating as a debtor-in-possession during the Chapter 11 bankruptcy reorganization, entered into an Asset Purchase Agreement with Tide Acquisition Corporation for the purchase of substantially all of Trinsic's operating assets. On March 23, 2007, the Bankruptcy Court entered its order approving the sale pursuant to the Asset Purchase Agreement, and the transaction closed thereafter when all requisite regulatory approvals were obtained. On April 9, 2007, Trinsic filed a motion to convert its Chapter 11 reorganization proceeding to a Chapter 7 liquidation proceeding, which motion was granted by order of the Bankruptcy Court on April 24, 2007.

On October 5, 2007, petitioner submitted a Plan of Reorganization to the Bankruptcy Court to resolve his personal bankruptcy filing. On May 15, 2008, the Bankruptcy Court in petitioner's personal bankruptcy case issued an Agreed Order Confirming Plan, pursuant to which petitioner was required to make monthly court-determined payments to his creditors in the amount of $7,500.00, plus all after-tax proceeds from petitioner's bonuses, with a balloon payment of the remainder of the amounts owed to his creditors due on May 15, 2013.

As noted, on March 2, 2007, the Division issued a Notice of Determination addressed to petitioner at Trinsic's Tampa, Florida, address. On June 10, 2009, petitioner received from the Division a recorded message on his mobile phone voice mail referencing a tax liability about

which the Division had been attempting to contact petitioner. Petitioner returned the call the next day and, in that call, provided to the Division his Georgia address, to wit, 155 Avery Dr. NE, Atlanta, Georgia 30309-2700. A few days thereafter, during the week of June 15, 2009, petitioner received from the Division a copy of the Notice. The envelope in which the copy of the Notice was contained was addressed to petitioner at the Atlanta, Georgia address, while the copy of the Notice itself was addressed to him at the Tampa, Florida, address. Petitioner avers that he was unaware of the existence of the Notice prior to his receipt of the copy in June 2009.

Petitioner filed a petition challenging the Notice on September 12, 2009 (i.e., within 90 days after actual receipt of the copy of the Notice). The petition was initially rejected as untimely, based upon the premise that it had been filed more than two years after the date of issuance of the Notice. Accordingly, a Notice of Intent to Dismiss Petition was issued by the Division of Tax Appeals. By a letter dated October 26, 2009, the Division of Taxation's Office of Counsel advised that a timely petition had been filed with respect to an associated assessment issued against the corporation (Trinsic), and that petitioner's protest was therefore also properly considered timely filed (***see*** Tax Law § 1138[a][2][B]). In turn, the Notice of Intent to Dismiss Petition was rescinded, and the petition was forwarded to the Division's Office of Counsel for the filing of an answer thereto.

Petitioner's case was calendared for hearing before the Division of Tax Appeals on November 3 and 4, 2010. In turn, however, the parties entered into a negotiated Closing Agreement that resolved all issues upon petitioner's payment of $17,283.42. The parties' Closing Agreement was executed as dated on November 17, 2010 (by petitioner) and December 13, 2010 (by the Division), and on April 28, 2011, an Order of Discontinuance was issued finally

determining the above-captioned matter in accordance with the terms of such Closing Agreement. Since the Closing Agreement did not provide for an agreement between the parties as to which (if either) was the prevailing party, petitioner retained the option to make application to the Division of Tax Appeals for costs and fees.

Petitioner's May 31, 2011 application seeks an award of costs in the amount of $44,623.25, consisting specifically of the following items:

a) $44,525.00 for attorneys fees paid to Richard W. Bell, based on a total of 137.00 hours of professional services rendered at the rate of $325.00 per hour.

b) $98.25 for expenses including mailing costs and Pacer charges (obtaining documents filed in connection with Trinsic's bankruptcy proceedings).

In support of these fees and expenses, petitioner's counsel provided a copy of the itemized invoice for his services, as detailed on the Timekeeper system, reflecting the date of each service, the ABA code for the service provided, the amount of time spent (hours or portion thereof), the dollar amount charged, and a journal entry type of description of the service provided or expense billed. As part of his affidavit in support, petitioner also provided information specifying his net worth as approximately negative $525,000.00 (assets of less than $25,000.00 and liabilities in excess of $550,000.00). He noted his ongoing court-determined monthly payment obligation of $7,500.00 (representing the amount of his disposable income as determined by the Bankruptcy Court) plus all post-tax bonus amounts he may receive, and that he owns a car valued at less than $4,000.00 and has zero equity in other assets including his home.

The audit of Trinsic, from which the assessment against petitioner was derived, commenced in May 2005, shortly before petitioner left his employment with Trinsic. As part of the Division's audit, the auditor requested the completion of a responsible party questionnaire for

a number of Trinsic's executive officers, including petitioner. The information to be provided on this questionnaire includes home address information. Neither Trinsic nor its counsel at the time provided such information or a completed questionnaire with respect to petitioner, despite several requests therefor. In addition, the auditor attempted to find petitioner's home address by searching the database LexisNexis, the result of which search revealed 16 different addresses for petitioner's name and social security number. The auditor was unable to further narrow this information. The auditor also noted that there were no New York State resident or nonresident personal income tax returns, or any other New York State returns or applications filed by petitioner from which the auditor might have found petitioner's home address. Finally, the auditor noted that prior Division audits of Trinsic did not reveal petitioner's home address, and that petitioner was not in the Division's Taxpayer Indicative Data (TID) system.[3]

Trinsic's federal corporation income tax return (Form 1120) for 2004 listed the company's Tampa, Florida principal executive office address as petitioner's address. This return lists addresses for certain other Trinsic officers, including Mr. Davis, which differed from Trinsic's Tampa, Florida principal executive office address, and presumably represented those officers' personal addresses.[4] Ultimately, the Division issued the subject Notice to petitioner at the noted Tampa, Florida, principal executive office address of petitioner's former employer, Trinsic, upon the belief that this was the best available address that could be uncovered for

---

[3] ***See Matter of Estate of Karayannides*** (Tax Appeals Tribunal, March 13, 1997).

[4] Pursuant to State Administrative Procedure Act § 306 (4), notice is taken of the Determination issued in ***Matter of Horace Davis III*** (Division of Tax Appeals, October 12, 2010), wherein the parties to that proceeding stipulated that the Florida address utilized by the Division in mailing certain notices of determination to Mr. Davis as a responsible officer of Trinsic was Mr. Davis's personal address, notwithstanding that Mr. Davis, like petitioner, apparently worked primarily out of Trinsic's Atmore, Alabama, offices since he "lived near that facility."

petitioner after exhausting the foregoing efforts to determine petitioner's home address.

Schedule E of Trinsic, Inc.'s 2004 Form 1120 listed petitioner's title as president and listed petitioner as the highest paid officer of Trinsic, Inc. The aforementioned LexisNexis search listed petitioner's titles with Trinsic as chairman, chief operating officer, director, officer P/D and president. Securities and Exchange Commission Form 8-K shows various documents to be executed therein by petitioner as president.

To confirm the date and manner of mailing the Notice in question to petitioner, the Division provided affidavits together with the certified mailing log pertaining to the subject Notice. Review of these documents confirms that the Notice, addressed to petitioner at the Tampa, Florida, address as described, was issued by certified mail on March 2, 2007 in accordance with the Division's regular process for mailing such notices. Petitioner raises no challenge to the fact of such mailing, but rather specifically challenges the propriety of the address to which the Notice was mailed.

THE ORDER OF THE ADMINISTRATIVE LAW JUDGE

The Administrative Law Judge reviewed the requirements to make an application for costs under Tax Law § 3030. The Administrative Law Judge determined that petitioner was eligible to bring the cost application because petitioner established that he had substantially prevailed on the amount in controversy and that his net worth was less than two million dollars. The Administrative Law Judge noted that petitioner challenged the manner in which the Division issued the Notice. Accordingly, the Administrative Law Judge determined that, in order to negate petitioner's prevailing party status, the Division was required to establish that it properly issued the subject Notice.

After reviewing the record, the Administrative Law Judge determined that the Division established substantial justification for sending the Notice to the Trinsic address. The Administrative Law Judge found that the Division had no notice of petitioner's home address and that it conducted a diligent search for such address. The Administrative Law Judge found that, ultimately, the search was unfruitful because it produced 16 potential home addresses for petitioner. The Administrative Law Judge determined that under these circumstances, the Division's use of the Trinsic address was consistent with the requirement that notices be mailed to "such address as may be obtainable" under Tax Law § 1147 (a) (1).

Accordingly, the Administrative Law Judge held that petitioner was not entitled to be considered the prevailing party for the purposes of Tax Law § 3030 because the Division established substantial justification for its position in this proceeding.

ARGUMENTS ON EXCEPTION

On exception, petitioner does not argue that the Administrative Law Judge misconstrued the issue. Rather, he contends that the Administrative Law Judge incorrectly determined that the Division was substantially justified in sending the subject Notice to the Trinsic business address.

Petitioner's argument is substantially similar to the argument raised before the Administrative Law Judge. Petitioner contends that the Division lacked a reasonable basis for sending the subject Notice to the address of another taxpayer. Although it was petitioner's former business address, petitioner contends that it would be improper for the Division to presume delivery because the business was in bankruptcy. Petitioner also contends that the use of the Trinsic business address does not qualify as an "obtainable" address for petitioner because it was the address of another taxpayer. Further, petitioner argues the Division erred in sending

the Notice to the Trinsic address, even if it conducted a diligent but unfruitful search for petitioner's personal mailing address. Petitioner also contends that the complexity of the matter justifies its request for reimbursement above the statutory rate.

The Division argues that the Administrative Law Judge properly determined that it was substantially justified in issuing the subject Notice. The Division notes that, although the underlying merits of the case were not at issue, the Administrative Law Judge did conclude that there was substantial justification for determining that petitioner was, in fact, a responsible party for Trinsic. The Division further notes that the Administrative Law Judge properly determined that the cases cited by petitioner do not support his position. The Division also contends that this case lacks special circumstances that would justify a fee above the statutory rate.

OPINION

We sustain the order of the Administrative Law Judge.

As stated by the Court of Appeals,

> "Tax Law § 3030 was enacted to provide taxpayers with additional rights and equitable relief under the Taxpayer Bill of Rights Act of 1997 (Governor's Program Bill Mem, Bill Jacket, L 1997, ch 577). Section 3030 permits a discretionary award of attorney's fees to the prevailing party in a proceeding in which the Commissioner is a party and which involves the determination, collection or refund of any tax (Tax Law § 3030[a]). A prevailing party is not entitled to recovery of attorney's fees if the Commissioner satisfies his burden of proving, by a preponderance of the evidence, that his position was substantially justified (Tax Law § 3030 [c] [5] [B])" (***City of New York v State of New York***, 94 NY2d 577, 598 [2000]).

The Legislature modeled Tax Law § 3030 after Internal Revenue Code § 7430. Therefore, it is appropriate to use both New York and Federal jurisprudence as guidance in applying this statute (***see Matter of Levin v Gallman***, 42 NY2d 32 [1977]).

Tax Law § 3030 (a) provides, generally, as follows:

> "In any administrative or court proceeding which is brought by or against the commissioner in connection with the determination, collection, or refund of any tax, the prevailing party may be awarded a judgment or settlement for:
>
> (1) reasonable administrative costs incurred in connection with such administrative proceeding within the department, and
>
> (2) reasonable litigation costs incurred in connection with such court proceeding."

A prevailing party is entitled to reasonable administrative costs, which include reasonable fees paid in connection with the administrative proceeding, but incurred after the issuance of the notice or other document giving rise to the taxpayer's right to a hearing (Tax Law § 3030 [c] [2] [B]). The statute provides that fees for the services of an individual who is authorized to practice before the Division of Tax Appeals are treated as fees for the services of an attorney (Tax Law § 3030 [c] [2] [B] [3]), with the dollar amount of such fees capped at $75.00 per hour, unless there are special factors that justify a higher amount (Tax Law § 3030 [c] [1] [B] [iii]).

A prevailing party is defined by the statute as follows:

> "[A]ny party in any proceeding to which [Tax Law § 3030 (a)] applies (other than the commissioner or any creditor of the taxpayer involved):
>
> (i) who (I) has substantially prevailed with respect to the amount in controversy, or (II) has substantially prevailed with respect to the most significant issue or set of issues presented, and
>
> (ii) who (I) within thirty days of final judgment in the action, submits to the court an application for fees and other expenses which shows that the party is a prevailing party and is eligible to receive an award under this section, and the amount sought, including an itemized statement from an attorney or expert witness representing or appearing in behalf of the party stating the actual time expended and the rate at which fees and other expenses were computed . . . and (II) is an individual whose net worth did not exceed two million dollars at the time the civil action was filed . . .
>
> (B) Exception if the commissioner establishes that the commissioner's position was substantially justified.

> (i) General rule. A party shall not be treated as the prevailing party in a proceeding to which subdivision (a) of this section applies if the commissioner establishes that the position of the commissioner in the proceeding was substantially justified.
>
> (ii) Burden of proof. The commissioner shall have the burden of proof of establishing that the commissioner's position in a proceeding referred to in subdivision (a) of this section was substantially justified, in which event, a party shall not be treated as a prevailing party.
>
> (iii) Presumption. For purposes of clause (i) of this subparagraph, the position of the commissioner shall be presumed not to be substantially justified if the department, inter alia, did not follow its applicable published guidance in the administrative proceeding. Such presumption may be rebutted . . .
>
> (C) Determination as to prevailing party. Any determination under this paragraph as to whether a party is a prevailing party shall be made by agreement of the parties or (i) in the case where the final determination with respect to tax is made at the administrative level, by the division of tax appeals, or (ii) in the case where such final determination is made by a court, the court" (Tax Law § 3030 [c] [5]).

The Administrative Law Judge determined that petitioner met the requirements imposed by Tax Law § 3030 (c) (5) (A). The Division did not raise a credible challenge to this point. Therefore, the sole issue on exception is whether the Administrative Law Judge properly determined that the Division met the exception provided by Tax Law § 3030 (c) (5) (B) by proving that its position in this case was substantially justified.

In order to prove substantial justification, the Division must show that its position "had a reasonable basis both in fact and law" (***see Powers v Commissioner***, 100 TC 457, 470 [1993]; ***see also Pierce v Underwood***, 487 US 552 [1988]). While the cancellation of a notice may be considered (***Heasley v Commissioner***, 967 F2d 116 [1992]), this determination must also consider "all the facts and circumstances" surrounding the case, not solely the final outcome (***Phillips v Commissioner***, 851 F2d 1492, 1499 [1988]). The Division has met its burden when it has shown that the issuance of the Notice was "justified to a degree that could satisfy a

reasonable person" (***Pierce*** at 565).

Although petitioner does not challenge the underlying merits of the Notice, we note that the corporate tax returns and the listing on the LexisNexis database support the Division's position that petitioner was a responsible party for Trinsic. Petitioner failed to raise a credible challenge to these underlying facts. As such, we conclude that the Division was substantially justified in issuing the subject Notice to petitioner. The remaining question, raised by petitioner, is whether the Division was substantially justified in mailing the Notice to petitioner's business address.

Tax Law § 1138 (a) (1) and § 1147 (a) (1) govern the issuance of a notice for the assessment of sales and use tax liability against an individual. Tax Law § 1138 (a) (1) provides:

> "A notice of determination shall be *mailed* by certified or registered mail to the person or persons liable for the collection or payment of the tax *at his last known address in or out of this state* . . . After ninety days from the *mailing* of a notice of determination, such notice shall be an assessment of the amount of tax specified in such notice, together with the interest, additions to tax and penalties stated in such notice, except only for any such tax or other amounts as to which the taxpayer has within such ninety day period applied to the division of tax appeals for a hearing, or unless the commissioner of his own motion shall redetermine the same" (emphasis added).

Tax Law § 1147 (a) (1) provides:

> "Any notice authorized or required under the provisions of this article may be given by mailing the same to the person for whom it is intended in a postpaid envelope addressed to such person at the address given in the last return filed by him pursuant to the provisions of this article or in any application made by him or, if no return has been filed or application made, then to such address as may be obtainable. 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 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 mailing of such notice."

The record indicates that Trinsic never provided a responsible party questionnaire with

respect to petitioner, and that petitioner did not file any New York State return or application that indicated petitioner's home address. A LexisNexis search for petitioner's address revealed 16 different addresses for petitioner's name and social security number. However, Trinsic's Form 1120 for 2004 listed the company's office in Tampa, Florida as petitioner's address. The Division determined that using the business address was the best obtainable address for petitioner. The record establishes that the Notice was mailed according to the Division's standard mailing procedures.

We find that the Division established substantial justification for mailing the Notice to the Tampa, Florida address. This is not a case where the Division had knowledge of petitioner's personal address but ignored it (***but c.f. Matter of Nelloquet Rest.***, Tax Appeals Tribunal, March 14, 1996 [wherein the Division knew the taxpayer's home address but elected to mail the notice to the business address]). Herein, the Division was never provided with any return, application or documentation indicating petitioner's home mailing address. The record contains no evidence that petitioner ever advised the Division of his personal address in Mississippi or his subsequent move to Atlanta, Georgia. These facts distinguish this case from the relevant authority cited by petitioner on the mailing issue (***see e.g. Matter of Nelloquet Rest.***).

In this case, it was appropriate for the Division to utilize "such address as may be obtainable" for petitioner (Tax Law § 1147 [a] [1]). The record contains official documents that list that the business address of Trinsic in Tampa, Florida as petitioner's contact address. In conducting its due diligence, the Division preformed a LexisNexis search, which produced 16 possible addresses for petitioner's name and social security number. The Division was presented with two options: either send the Notice to all 16 possible addresses for petitioner, or send the

Notice to petitioner's address as listed on Trinsic's Form 1120, as well as other documentation in the record. Under these circumstances, it appears that mailing to the business address was reasonable and consistent with the requirement that the Notice be sent to "such address as may be obtainable" for petitioner (Tax Law § 1147 [a] [1]). Accordingly, we conclude that the Division was substantially justified in sending the subject Notice to the address listed on Trinsic's Form 1120.

We are unpersuaded by petitioner's arguments to the foregoing. Petitioner contends that the Division should have either extended its search or sent a Notice to each of the 16 addresses. The record clearly indicates that the Division conducted a reasonable, diligent, but unfruitful search for petitioner's address. And, while we sympathize with petitioner's situation, we find it unreasonable to expect the Division to send a Notice to all possible 16 home addresses for petitioner. There is no basis in either law or fact that would compel or support petitioner's position.

We conclude that petitioner's remaining arguments are either lacking in merit or properly addressed by the Administrative Law Judge.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Frank M. Grillo is denied;

2. The order of the Administrative Law Judge is sustained; and

3. The application for costs of Frank M. Grillo is dismissed with prejudice.

DATED: Albany, New York
August 23, 2012

/s/ James H. Tully, Jr.
James H. Tully, Jr.
President

/s/ Charles H. Nesbitt
Charles H. Nesbitt
Commissioner