

DIVISION OF TAX APPEALS

In the Matter of the Petitions	:	
of	:	
LAWRENCE FINKELMAN	:	
AND	:	
HIGBIE HEROS & CATERING, INC.	:	ORDER
	:	DTA NOS. 825241
	:	AND 825242
for Revision of Determinations or for Refund of	:	
Sales and Use Taxes under Articles 28 and 29 of the	:	
Tax Law for the Period June 1, 2003 through May 31,	:	
2005, and for the Periods ended February 29, 2008,	:	
March 31, 2008 and August 31, 2008.	:	

Petitioners, Lawrence Finkelman and Higbie Heros & Catering, Inc., filed petitions for revision of determinations or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period June 1, 2003 through May 31, 2005 and for the periods ended February 29, 2008, May 31, 2008, and August 31, 2008.¹

On November 9, 2012, the Division of Tax Appeals issued to petitioners a Notice of Intent to Dismiss Petition pursuant to 20 NYCRR 3000.9(a)(4). On October 3, 2012, November 26, 2012 and January 2, 2013, petitioner Lawrence Finkelman, appearing pro se, submitted letters and attached documents in opposition to dismissal. On January 31, 2013, the Division of

¹ The petition filed with respect to DTA No. 825241 is captioned "Lawrence L. Finkelman" and lists the challenged assessment numbers as L-031757391-7, L-031757390-8 and L-031757389-8. The petition filed with respect to DTA No. 825242 is captioned "Higbie Heros & Catering, Inc. and Lawrence L. Finkelman" and lists the same challenged assessment numbers plus assessment number L-026791232-6. In view of this captioning, and the added assessment number in the latter petition, separate DTA numbers were assigned for each petition and for each captioned petitioner. Notwithstanding this captioning, the "petitioner" in each petition is specified to be Lawrence Finkelman. As set forth more fully in the Findings of Fact, all of the specified assessment identification numbers pertain to assessments issued against Lawrence Finkelman and not against Higbie Heros & Catering, Inc. Accordingly, unless otherwise specified or required by context, the term petitioner shall mean, for both DTA No. 825241 and DTA No. 825242, Lawrence Finkelman.

Taxation, by Amanda Hiller, Esq. (John E. Matthews, Esq., of counsel) submitted affidavits and other documents in support of dismissal. On February 15, 2013, petitioner Lawrence Finkelman submitted a letter and attached documents in opposition to dismissal. Pursuant to 20 NYCRR 3000.5(d) and 3000.9(a)(4), the 90-day period for issuance of this order commenced on March 8, 2013.² After due consideration of the documents and arguments submitted, Dennis M. Galliher, Administrative Law Judge, renders the following order.

ISSUES

I. Whether petitioner filed a timely petition with the Division of Tax Appeals challenging three specific assessments of sales and use taxes numbered L-031757391, L-031757390 and L-031757389.

II. Whether petitioner's challenge to an assessment of sales and use taxes numbered L-026791232 is barred because the same assessment was disposed of in a prior proceeding brought before the Division of Tax Appeals.

FINDINGS OF FACT

DTA No. 825241

1. Petitioner, Lawrence Finkelman, filed a petition with the Division of Tax Appeals challenging three specific assessments of sales and use taxes bearing assessment numbers L-031757391-7, L-031757390-8 and L-031757389-8. The petition lists Mr. Finkelman's address in West Islip, New York. The petition, dated as signed by Mr. Finkelman on September 10, 2012, was sent to the Division of Tax Appeals via United States Postal Service (USPS) certified mail

² On February 7, 2013, petitioner Lawrence Finkelman requested an extension of the time within which to file a reply to the Division of Taxation's submission in support of dismissal. By a responding letter dated February 7, 2013, that request was granted and the due date for Mr. Finkelman's reply was extended until March 7, 2013.

on the same date, and was received thereafter on September 13, 2012. This petition was assigned DTA (Division of Tax Appeals) No. 825241.

2. The foregoing petition included copies of the statutory notices of determination concerning the foregoing assessments. Each notice of determination is dated April 16, 2009 on its face, each carries the same West Islip, New York, address for Mr. Finkelman as is set forth on the petition, and each specifies that it was issued against Mr. Finkelman as an officer or person responsible to collect and remit taxes on behalf of Higbie Heros & Catering, Inc., as follows:

Assessment ID Number	Tax Period Ended	Amount of Tax
L-031757389-8	August 31, 2008	\$511.69
L-031757390-8	May 31, 2008	\$4,484.72
L-031757391-7	February 29, 2008	\$2,500.00

Each of the notices also assessed penalty and interest, and listed reductions for any credits or payments, so as to arrive at the “current balance due” as of the date of the notices.

3. The foregoing petition also included a Consolidated Statement of Tax Liabilities, dated January 19, 2012 and pertaining to petitioner. This statement reflects the foregoing three assessments in its Section A, as well as one additional assessment in its Section B. The latter sales tax assessment bears assessment ID number L-026791232-6, pertains to the period ended May 31, 2005, and reflects a zero balance due. As noted, this assessment number is not included among those specified as challenged in the petition assigned DTA No. 825241, and a Notice of Determination for this assessment was not attached to or included as part of the petition (*see* Finding of Fact 13).

4. The Notice of Intent to Dismiss Petition states that the foregoing three notices of determination carry issuance dates of April 16, 2009, but that the petition challenging the same

was not filed until September 10, 2012, or some 1,243 days later. Thus, the Notice of Intent states that the petition appears to be untimely on its face and subject to dismissal for lack of jurisdiction.

5. To show proof of proper mailing of the three notices of determination on April 16, 2009, the Division of Taxation (Division) provided the following: (i) an affidavit, dated January 24, 2013, of John E. Matthews, Esq.; (ii) an affidavit, dated January 10, 2013, of Bruce Peltier, the Principal Mail and Supply Supervisor in the Division's Mail Processing Center; (iii) an affidavit, dated January 7, 2013, of Daniel A. Maney, a manager of the Division's Refunds, Deposits, Overpayments and Control Units, including the Case and Resource Tracking System (CARTS) Control Unit; (iv) the "Certified Record for Presort Mail -- Assessments Receivable" (CMR) for April 16, 2009; (v) copies of the notices of determination in question; and (vi) a "Responsible Person Questionnaire" pertaining to petitioner.

6. The affidavit of Daniel A. Maney sets forth the Division's general practice and procedure for processing statutory notices, including notices of determination, for issuance to taxpayers. This process starts with the CARTS generation of a batch of notices and any accompanying enclosures referenced within the body of each such notice within the batch. Each notice is predated with its anticipated mailing date and is assigned a separate certified control number. A separate one-page "mailing cover sheet" (Form DTF-997) is generated for each notice and includes the taxpayer's name, mailing address, the Division's return mailing address, and the certified control number and certified control number bar code for each notice. CARTS also generates a CMR listing those taxpayers within the batch to whom notices are being sent on a particular day. The CMR lists each notice in the order that the notices are generated within the

batch. The certified control numbers are recorded on the CMR under the heading “CERTIFIED NO,” and the assessment numbers are recorded under the heading “REFERENCE NO.”

Additional headings are provided for postage and fee amounts.

7. The CMR for the batch of notices allegedly issued on April 16, 2009, including the three notices concerning petitioner, consists of 36 cut sheet pages. The pages are numbered consecutively in the upper right corner. Each of the pages contains 11 entries, except for the final page (page 36), which contains 7 entries, for a total of 392 such entries. The upper left corner of each page of the CMR lists the date and time of its printing by year, day of the year, and military time of that day, here “20090961700.” This date is approximately 10 days before the anticipated date of mailing of the notices so as to allow sufficient lead time for the notices to be manually reviewed and processed for postage and fees. The preprinted date is hand changed, in the upper left corner of the first page of the CMR, to reflect the actual date of mailing of the notices when they are delivered into the custody of the United States Postal Service (USPS), as described hereinafter. This change is made by personnel in the Division’s Mail Processing Center specifically to conform the preprinted date to the date of actual mailing.

8. In this instance, certified control numbers 7104 1002 9730 1312 6090, 7104 1002 9370 1312 6106, and 7104 1002 9730 1312 6113 match to reference numbers (i.e., assessment numbers) L-031757389, L-031757390, and L-031757391, respectively. This information appears on page 15 of the 36-page CMR pertaining to these mailings. The date “4/16/09” is handwritten in the upper left corner of the first page of the CMR. Petitioner’s address is the same West Islip, New York, address in each instance, and that address matches petitioner’s address as set forth on the Responsible Person Questionnaire submitted by the Division, as well

as petitioner's address as listed on the petitions filed herein and on numerous other documents and pieces of correspondence filed in these matters.

9. The affidavit of Bruce Peltier describes the standard mailing procedures in the Division's Mail Processing Center (Center). The process there starts when the batch of notices and its accompanying CMR are deposited in the "Outgoing Certified Mail" basket in the Division's Mail Processing Center. A member of the staff there, in turn, operates a machine that puts each notice and the associated documents into a windowed envelope so that the addresses and certified number from the Mailing Cover Sheet show through the windows. That staff member then weighs and seals each envelope and places postage and fee amounts on such envelopes. A mail processing clerk then checks the information on the envelopes for the first and last pieces of certified mail listed on the CMR against the information contained on the CMR, and then performs a random review of up to 30 pieces of certified mail listed on the CMR by checking those envelopes against the information contained on the CMR.

10. Following the foregoing review, a member of the Mail Processing Center staff delivers the sealed, stamped envelopes to an Albany, New York, area branch office of the USPS. A USPS employee then affixes a postmark and his or her initials or signature to the CMR indicating receipt by the USPS of the mail listed on the CMR and of the CMR itself. The USPS employee, as requested by the Mail Processing Center, will also either circle the number of pieces received or indicate such number received by writing the number of pieces on the CMR. The CMR may be left overnight with the USPS to enable sufficient time for the USPS employees to process the mail and make the appropriate notations on the CMR as requested. The CMR is then picked up at the particular USPS branch office on the following day by a member of the Mail Processing

Center staff for delivery to and retention by the CARTS Control Unit in the ordinary course of its regular procedures.

11. Review of the CMR in this case reveals that a USPS employee initialed each page of the CMR, handwrote and circled the number “392” on the last page of the CMR to indicate the number of pieces of mail received by the USPS, and affixed the postmark of the Colonie Center branch office of the USPS, dated April 16, 2009 to each page of the CMR, all in accordance with the usual procedures requested by the Division’s Mail Processing Center.

12. The facts set forth above in Findings of Fact 6 through 11 were, as noted, established through the affidavits of Daniel A. Maney and Bruce Peltier. Mr. Maney’s affidavit avers that he is and was fully familiar with the Division’s present and past office procedures concerning the generation and processing of notices of determination for shipment to the Division’s Mail Processing Center. Mr. Peltier’s affidavit avers that he has been a supervisor in the Division’s Registry Unit since 1999, and that he is “currently a Principal Mail and Supply Supervisor [and he is] fully familiar with the operations and procedures of the Mail Processing Center.” His regular duties as a Principal Mail and Supply Supervisor in the Registry Unit “include the supervision of Mail Processing Center staff including the staff that delivers outgoing mail to branch offices of the United States Post Office.”

DTA No. 825242

13. Petitioner also filed a second petition challenging the foregoing three assessments plus one additional assessment bearing assessment number L-026791232. This petition was filed on the same date and in the same manner as the petition assigned DTA No. 825241 (*see* Finding of Fact 1). Though captioned to include both Higbie Heros & Catering, Inc., and Lawrence Finkelman, the body of the petition specifies Lawrence Finkelman as the petitioner and lists the

same West Islip, New York, address for Mr. Finkelman as appears on all of the documents pertaining to Mr. Finkelman (*see* Finding of Fact 1; Footnote 1). This petition was assigned DTA No. 825242.³

14. The record reveals that assessment number L-026791232 was previously the subject of a petition filed by petitioner and, ultimately, disposed of by way of a Stipulation for Discontinuance of Proceeding entered into between petitioner and the Division. Specifically, upon receipt of a petition on or about June 8, 2010, assessment number L-026791232 was assigned DTA No. 823653, and that petition was forwarded to the Division for preparation of an answer. That matter pertained to sales and use taxes assessed against petitioner per assessment number L-026791232, for the period June 1, 2003 through May 31, 2005.⁴ DTA No. 823653 was closed by agreement between petitioner and the Division of Taxation, as memorialized in a Stipulation for Discontinuance of Proceeding, executed by petitioner Lawrence Finkelman, on May 6, 2011, and by the Division, on May 12, 2011. The stipulation listed the amount of tax,

³ Included among the documents attached to the foregoing petition were three notices and demands for payment of tax due. These notices, or bills, are addressed to Higbie Heros & Catering, Inc., as the taxpayer. They indicate the underlying assessment numbers as L-030067675-5, L-030563843-1, and L-030825860-8, reflect issuance dates of May 19, 2008, August 12, 2008 and October 27, 2008, respectively, and state that the assessments were for Higbie's failure to have paid the full amount due on the returns filed for the specified periods and for late filing for the period ended August 31, 2008. The notices and demands reflect the same tax periods and the same amounts of tax due as are shown on the notices of determination issued to petitioner Lawrence Finkelman (*see* Finding of Fact 2). It would appear that the corporate assessments underlying these notices and demands are the basis for the three notices of determination issued against Lawrence Finkelman and holding him derivatively responsible for the taxes assessed against the corporate entity Higbie Heros & Catering, Inc. Neither the petition nor the record contain any statutory notices of determination pertaining to the corporate entity.

⁴ A June 8, 2010 letter from the Petition Intake Unit of the Division of Tax Appeals to petitioner acknowledged receipt of this prior petition and deemed the same to be in proper form based upon a timely petition previously submitted in 2007 by the corporate entity Higbie Heros & Catering, Inc. The petition for the corporate entity, pertaining to assessment number L-026769967 and assessing sales and use taxes due for the period June 1, 2003 through May 31, 2005, was assigned DTA No. 823184. This corporate matter, from which derivative liability was apparently assessed against petitioner for the same period via assessment number 026791232 (i.e., DTA No. 823653), was closed by agreement between that corporate petitioner and the Division of Taxation, as memorialized in a Stipulation for Discontinuance of Proceeding executed by the Division and by petitioner Lawrence Finkelman on behalf of the corporate petitioner, dated September 22, 2008, and confirmed by an Order of Discontinuance dated October 9, 2008.

penalty and interest due as zero and recited, in relevant part, that “[DTA # 823653] having been resolved, it is hereby stipulated and agreed by and between the parties herein that such proceeding be and the same is discontinued, *with prejudice . . .*” (emphasis added). This Stipulation of Discontinuance was confirmed in accordance with its terms by an Order of Discontinuance dated June 9, 2011.

SUMMARY OF PETITIONERS’ POSITION

DTA NOS. 825241 & 825242

15. Petitioner’s precise argument is somewhat difficult to discern. However, the thrust of petitioner’s challenge appears to be that during its audit of Higbie Heros & Catering, Inc., for the period June 1, 2003 through May 31, 2005, the Division incorrectly concluded that petitioner was a person responsible to collect and remit taxes on behalf of that corporate entity and incorrectly issued assessment number L-026791232 against him on that basis. Petitioner apparently asserts that the zero liability settlement of DTA No. 823653 (*see* Finding of Fact 14) confirms this alleged error. Petitioner goes on to maintain that such allegedly erroneous conclusion as to his status as a responsible person was based on “forged documents,” and was “fraudulently withheld” thereafter from various personnel within the Division. According to petitioner, these circumstances led to the issuance of the three assessments challenged in this matter. Petitioner seems to contend that such notices of determination would and should not have been issued but for this alleged purposeful failure of communication within the Division. In connection with this position, petitioner would seem to argue not only that the settlement of DTA No. 823653 bears out his status as not responsible for the period June 1, 2003 through May 31, 2005, but would extend forward to subsequent periods so as to preclude any assertion that he was a person responsible to collect and remit taxes on behalf of Higbie Heros & Catering, Inc.

16. With respect to assessment number L-026791232, petitioner claims that he would not have agreed to the Stipulation for Discontinuance (notwithstanding its zero balance due result) had he known that he might be the subject of additional assessments for subsequent periods. On this basis, and in view of his allegations set forth above, petitioner seeks to have the assessment covered by the Stipulation of Discontinuance and the Order of Discontinuance entered with respect thereto (DTA No. 823653) set aside and the underlying original assessment reopened.

17. With respect to the three assessments numbered L-031757389-8, L-031757390-8 and L-031757391-7, petitioner did not provide any evidence that timely petitions challenging the same were filed. Rather, petitioner offered the allegation that he never received the notices of determination and was unaware of their existence until levy and collection notices and activity commenced in or about May of 2010.

SUMMARY OF THE DIVISION'S POSITION

DTA No. 825241

18. The Division maintains that the proof provided supports the conclusion that the three assessments numbered L-031757389, L-031757390 and L-031757391 were properly issued to petitioner on April 16, 2009, that no protest against such assessments was filed as required within 90 days thereafter, and that the subject petition with respect to such assessments, assigned DTA No. 825241, must be dismissed for lack of jurisdiction.

DTA No. 825242

19. The Division maintains that the assessment numbered L-026791232 was challenged in a prior petition and was disposed of, as described, in a prior proceeding before the Division of Tax Appeals. Thus, the Division asserts that this second challenge to the same assessment is properly subject to dismissal.

CONCLUSIONS OF LAW

A. A Notice of Intent to Dismiss Petition (20 NYCRR 3000.9[a][4]) is functionally equivalent to a Motion for Summary Determination (20 NYCRR 3000.9[b]), and the same standard of review is applicable to each (*Matter of Victory Bagel Time*, Tax Appeals Tribunal, September 13, 2012; *Matter of Tufariello*, Tax Appeals Tribunal, July 7, 2011). Thus, a motion for summary determination, or dismissal under a notice of intent to dismiss petition, shall be granted:

if, upon all the papers and proof submitted, the administrative law judge finds that it has been established sufficiently that no material and triable issue of fact is presented and that the administrative law judge can, therefore, as a matter of law, issue a determination in favor of any party (20 NYCRR 3000.9[b][1]).

DTA No. 825241

B. There is a 90-day statutory time limit, measured from the issuance of a statutory notice such as a Notice of Determination, for filing a petition for a hearing with the Division of Tax Appeals (Tax Law § 1138[a][1]). The deadlines for filing petitions are strictly enforced (*see e.g. Matter of Maro Luncheonette*, Tax Appeals Tribunal, February 1, 1996), and the Division of Tax Appeals lacks jurisdiction to consider the merits of any petition filed beyond such 90-day statutory time limit (*see Matter of Sak Smoke Shop*, Tax Appeals Tribunal, January 6, 1989; *Matter of DeWeese*, Tax Appeals Tribunal, June 20, 2002). Where, as here, the timeliness of a petition is at issue, the initial inquiry is whether the Division has carried its burden of demonstrating proper issuance of the statutory notice by mailing the same, by certified or registered mail, to petitioner's last known address (Tax Law § 1138[a][1]; *see Matter of Katz*, Tax Appeals Tribunal, November 14, 1991; *Matter of Novar TV & Air Conditioner Sales & Serv.*, Tax Appeals Tribunal, May 23, 1991). A notice is issued when it is properly mailed, and

it is properly mailed when it is delivered into the custody of the USPS (*Matter of Air Flex Custom Furniture*, Tax Appeals Tribunal, November 25, 1992). The Division may meet its burden by providing evidence of its standard mailing procedure, corroborated by direct testimony or documentary evidence of mailing (*see Matter of Accardo*, Tax Appeals Tribunal, August 12, 1993). To prove the fact and the date of mailing of a given notice, the Division must make the following showing:

first, there must be proof of a standard procedure used by the Division for the issuance of the statutory notice by one with knowledge of the relevant procedures; and, second, there must be proof that the standard procedure was followed in the particular instance in question (*Matter of United Water New York, Inc.*, Tax Appeals Tribunal, April 1, 2004; *see Matter of Katz*).

C. When a statutory notice is found to have been properly mailed by the Division, i.e., sent to the taxpayer (and his representative, if any) at his last known address by certified or registered mail, the petitioner in turn bears the burden of proving that a timely protest was filed (*Matter of Malpica*, Tax Appeals Tribunal, July 19, 1990). However, as noted, the burden of demonstrating proper mailing in the first instance rests with the Division (*id*; *see also Matter of Ruggerite, Inc. v. State Tax Commission*, 97 AD2d 634 [1983], *affd* 64 NY2d 688 [1984]).

D. In this case, the Division has introduced adequate proof of its standard mailing procedures through the affidavits of Mr. Maney and Mr. Peltier, Division employees involved in and possessing knowledge of the process of generating and issuing statutory notices (*see Matter of Victory Bagel Time*). Further, the Division has also presented sufficient documentary proof, i.e., the CMR, to establish that the three notices of determination at issue in DTA No. 825241 were mailed by certified mail addressed to petitioner on April 16, 2009. That is, the documents establish that the general mailing procedures described in the affidavits were followed with respect to the notices issued to petitioner. Petitioner's name and address, as well as the

numerical information on the three notices, appear on and correspond to such information as set forth on the CMR, each page of which bears a USPS date stamp of April 16, 2009 and the initials of the USPS employee. There are 392 certified mail control numbers listed on the CMR for April 16, 2009, and the USPS employee who initialed the CMR indicated, by writing and circling the number “392” near such initials, that 392 items were received for mailing. The CMR has thus been properly completed and therefore constitutes highly probative documentary evidence of both the date and fact of mailing (*see Matter of Rakusin*, Tax Appeals Tribunal, July 26, 2001; *Matter of Auto Parts Center*, Tax Appeals Tribunal, February 9, 1995).

E. The three notices were properly mailed, as above, when they were delivered into the custody of the USPS on April 16, 2009, and it is this date that triggered the 90-day period within which a protest had to have been filed. In turn, 90 days after the April 16, 2009 date of mailing of the notices was July 16, 2009, and in order to be considered timely, petitioner’s protest had to have been filed on or before such date. Petitioner’s protest was not filed until it was sent to the Division of Tax Appeals by USPS Certified Mail on September 10, 2012, or 1,243 days beyond the statutory period within which a timely protest had to have been filed, and thus was not timely filed. In response to the Notice of Intent to Dismiss Petition, petitioner has offered only a general denial of receipt of the subject notices of determination, and no proof to establish that a timely protest was filed. Mere denial of receipt is insufficient to rebut the presumption that a properly mailed notice of determination was delivered or offered for delivery in the normal course of the mail (*Matter of New York City Billionaires Construction Corp.*, Tax Appeals Tribunal, October 20, 2011; *see Matter of T. J. Gulf v. New York State Tax Commn.*, 124 AD2d 314 [1986]; *Matter of Azzato*, Tax Appeals Tribunal, May 19, 2011; *Matter of Malpica*). Therefore, as a matter of law, there is no jurisdiction to address the merits of petitioner’s protest (*Matter of Sak*

Smoke Shop), and the petition assigned DTA No. 825241 is properly subject to dismissal (*Matter of Lukacs*, Tax Appeals Tribunal, November 8, 2007).

DTA No. 825242

F. Pursuant to subdivision eighteenth of section 171 of the Tax Law, the Commissioner of Taxation and Finance shall:

Have authority to enter into a written agreement with any person, relating to the liability of such person (or of the person for whom he acts) in respect of any tax or fee imposed by the tax law or by a law enacted pursuant to the authority of the tax law or article two-E of the general city law, *which agreement shall be final and conclusive*, and except upon a showing of fraud, malfeasance, or misrepresentation of a material fact: (a) the case shall not be reopened as to the matters agreed upon or the agreement modified, by any officer, employee, or agent of this state, and (b) in any suit, action, or proceeding, such agreement, or any determination, assessment, collection, payment, cancellation, abatement, refund or credit made in accordance therewith, shall not be annulled, modified, set aside or disregarded . . .” (emphasis added).

G. The stipulation for discontinuance pertaining to assessment number L-026791232 (i.e., DTA No. 823653) was an agreement entered into by the Division pursuant to the authority of subdivision eighteenth of section 171 of the Tax Law. The Tax Appeals Tribunal has held that while it may be appropriate to reopen a closed matter in extraordinary circumstances, the need for finality of proceedings requires “a strict view of attempts by either petitioners or the Division to reopen or to reargue matters which have been closed” (*Matter of D & C Glass Corp.*, Tax Appeals Tribunal, June 11, 1992). As stated in *Matter of Felix Indus.* (Tax Appeals Tribunal, July 22, 1993), the grounds set forth in subdivision eighteenth of section 171 of the Tax Law must be considered to be the sole grounds for a stipulation for discontinuance to be annulled, modified, set aside or disregarded. As stated in *Felix*: “[e]rror by one or both of the parties is not a ground for reopening or modifying such an agreement” (*Matter of Felix Indus.*).

H. Petitioner has provided various unsubstantiated allegations as to the propriety of all of the assessments set forth as challenged herein (*see* Findings of Fact 15 and 16). Petitioner has also proposed the accompanying theory that if the Division concluded he was not a responsible person on behalf of a particular entity for a given prior tax period, he may not be assessed as such for any subsequent periods. Such allegations and theory provide no basis upon which the assessment numbered L-026791232, having been petitioned previously and properly disposed of by stipulation between the parties, with prejudice (*see* Finding of Fact 14) may be reopened. Accordingly, the petition assigned DTA No. 825242 is properly subject to dismissal.

I. The petitions of Lawrence Finkelman and Higbie Heros & Catering, Inc., are hereby dismissed.

DATED: Albany, New York
May 16, 2013

/s/ Dennis M. Galliher
ADMINISTRATIVE LAW JUDGE