

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition :

of :

SAAJID GILANI :

DECISION
DTA NO. 827087

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, 2011 through February 28, 2014. :

Petitioner, Saajid Gilani, filed an exception to the determination of the Administrative Law Judge issued on September 22, 2016. Petitioner appeared pro se. The Division of Taxation appeared by Amanda Hiller, Esq. (Frank Nuara, Esq., of counsel).

Petitioner filed a letter brief in support of his exception. The Division of Taxation filed a letter brief in opposition. Petitioner did not file a reply brief. Oral argument was not requested. The six-month period for issuance of this decision began on April, 17, 2017, the date that petitioner's reply brief was due.

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

ISSUE

Whether petitioner timely filed a petition with the Division of Tax Appeals following the issuance of a notice of determination.

FINDINGS OF FACT

We find the facts as determined by the Administrative Law Judge in his determination dated September 22, 2016, except findings of fact 1, 2, 3, 4, 5 and 6 which we have modified for clarity. We have renumbered findings of fact 6 and 8 through 16 of the determination as findings of fact 22 through 31 below. We have excluded finding of fact 7 of the determination which merely incorporated the findings of facts of the order issued by the Administrative Law Judge on March 10, 2016 by reference. We have also included findings of fact 6 through 21 of that order, which have retained their original numbering below. We excluded finding of fact 22 of the order as it merely restated the arguments of petitioner in opposition to the motion. As so modified and renumbered, such consolidated facts are set forth below.

1. The Manhattan Restaurant, Inc. (the restaurant) was subject to a sales tax audit for the period June 1, 2011 through February 28, 2014. Following the audit of the restaurant, petitioner, Saajid Gilani, was assessed sales and use taxes of \$85,913.32 plus penalty and interest as a responsible officer or responsible person of the restaurant.

2. The restaurant filed a request for a conciliation conference with the Bureau of Conciliation and Mediation Services (BCMS) regarding a notice of determination that had been issued to it and, in response, BCMS mailed a letter to petitioner, dated August 28, 2014. The letter stated that because the restaurant filed a request for a conciliation conference, the notice of determination L-041766656, issued to petitioner as a responsible person of the restaurant, was considered to be protested as well. As a result, BCMS stated that it would schedule a joint conciliation conference for the restaurant and petitioner.

3. On March 20, 2015 BCMS issued a conciliation order (CMS No. 263157) to petitioner stating that although a notice of the conciliation conference was mailed to petitioner on October

6, 2014, petitioner did not appear at the November 13, 2014 conciliation conference.

Accordingly, the conciliation conferee sustained notice of determination L-041766656 and dismissed the matter based upon the determination reached in the restaurant's BCMS conference.

The letter accompanying the conciliation order explained that if there was a reasonable excuse for petitioner's non-appearance, petitioner had 30 days to request that the conciliation order be vacated. Petitioner did not take advantage of this procedural avenue.¹

4. Petitioner filed a petition dated June 19, 2015 with the Division of Tax Appeals by United States Postal Service (USPS) first class mail. The USPS postage-paid stamp on the envelope containing the petition is dated July 2, 2015. The Division of Tax Appeals marked the petition as received on July 6, 2015.

5. On November 6, 2015, the Supervising Administrative Law Judge issued to petitioner a notice of intent to dismiss petition, which proposed dismissing the petition because it was filed more than 90 days subsequent to the issuance of the conciliation order. The parties were given until January 21, 2016 to respond to the notice of intent to dismiss petition.

6. In response to the notice of intent to dismiss petition and to show proof of proper mailing of the conciliation order dated March 20, 2015, the Division of Taxation (Division) submitted, among other documents: (i) the affidavit of Jennifer L. Hink-Brennan, Esq., an attorney employed in the Office of Counsel of the Division, dated January 14, 2016; (ii) the affidavit of Robert Farrelly, Assistant Supervisor of Tax Conferences of BCMS, dated December 17, 2015; (iii) a "Certified Record for Presort Mail - BCMS Cert Letter" (CMR) postmarked March 20, 2015; (iv) a copy of the conciliation order, cover letter and cover sheet, dated March

¹ The restaurant also filed a petition with the Division of Tax Appeals. By determination dated March 10, 2016, the restaurant's petition was dismissed as untimely filed.

20, 2015, and a copy of the three-windowed mailing envelope; (v) an affidavit, dated January 6, 2016, of Bruce Peltier, Principal Mail and Supply Supervisor in the Division's mail room; (vi) petitioner's 2012 New York State personal income tax return, showing petitioner's address in Princeton, New Jersey; and (vii) a copy of notice of determination L-041766656.

7. The affidavit of Robert Farrelly sets forth the Division's general procedure for preparing and mailing conciliation orders. This procedure culminates in the mailing of the orders by USPS certified mail and confirmation of the mailing through BCMS's receipt of a postmarked copy of the CMR.

8. To commence this procedure, the BCMS Data Management Services Unit prepares the conciliation order and the accompanying cover letter, predated with the intended date of mailing, and forwards both to the conciliation conferee for signature, who in turn, forwards the order and cover letter to a BCMS clerk assigned to process the conciliation orders.

9. The name, mailing address, order date and BCMS number for each conciliation order to be issued are electronically sent to the Division's Advanced Function Printing Unit (AFP). For each mailing, the AFP Unit assigns a certified control number and produces a cover sheet that indicates the BCMS return address, date of mailing, taxpayer's name, mailing address, BCMS number, certified control number, and certified control number bar code.

10. The AFP Unit also produces a computer-generated CMR. The CMR is a listing of taxpayers and representatives to whom conciliation orders are sent by certified mail on a particular day. The certified control numbers are recorded on the CMR under the heading "Certified No." The BCMS numbers are recorded on the CMR under the heading "Reference No." and are preceded by three zeros. The AFP Unit prints the CMR and cover sheets using a

printer located in BCMS and these documents are delivered to the BCMS clerk assigned to process conciliation orders.

11. The clerk, as part of her regular duties, associates each cover sheet, conciliation order, and cover letter. The clerk verifies the names and addresses of taxpayers and taxpayers' representatives with the information listed on the CMR and on the cover sheet. The clerk then folds and places the cover sheet, cover letter, and conciliation order into a three-windowed envelope where the BCMS return address, certified control number, bar code, and name and address of the taxpayer appear.

12. The "Total Pieces and Amounts" is indicated on the last page of the CMR. Also on the last page of the CMR, the BCMS clerk stamps "Mailroom: Return Listing To: BCMS Bldg 9 Rm 180 Att: Conference Unit."

13. The BCMS clerk also writes the date of mailing of the conciliation orders listed on the CMR at the top of the pages of the CMR. In this case "3/20/15" is written in the upper right corner of pages 1 through 3 of the CMR. Each page of the CMR also contains a USPS postmark indicating the date of March 20, 2015.

14. The CMR, along with the envelopes containing the cover sheets, cover letters, and conciliation orders, is picked up in BCMS by an employee of the Division's Mail Processing Center. The Division's Mail Processing Center employee delivers the CMR along with the envelopes containing the cover sheets, cover letters and conciliation orders to the USPS.

15. Mr. Farrelly attested to the truth and accuracy of the copy of the three-page CMR relevant to this matter, which contains a list of the conciliation orders issued by the Division on March 20, 2015. This CMR lists 25 computer-printed certified control numbers. Each certified control number is assigned to an item of mail listed on the three pages of the CMR. Specifically,

corresponding to each listed certified control number is a reference/CMS number and the names and addresses of the addressees. There are no deletions from the list.

16. Information regarding the conciliation order issued to petitioner is contained on page one of the CMR. Specifically, corresponding to certified control number 7104 1002 9730 0424 1214 is reference/CMS number 000263157, along with petitioner's name and a Princeton, New Jersey, address that is identical to the address on petitioner's 2012 New York State personal income tax return, which was the last return filed by petitioner with the Division prior to the issuance of the conciliation order.

17. The cover sheet bearing petitioner's name and the Princeton, New Jersey, address appearing on petitioner's 2012 New York State personal income tax return and on the CMR shows the same certified control number as that listed on the CMR for petitioner's entry. Additionally, the cover sheet bears the same CMS number as that listed on the CMR and the conciliation order.

18. The Division also submitted the affidavit of Bruce Peltier, Principal Mail and Supply Clerk in the Division's Mail Processing Center. This affidavit attests to the regular procedures followed by his staff in the ordinary course of business of delivering outgoing mail to branch offices of the USPS. More specifically, after a conciliation order is placed in the "Outgoing Certified Mail" basket in the Mail Processing Center, a member of the staff weighs and seals each envelope and places postage and fee amounts on the envelopes. A clerk then counts the envelopes and verifies the names and certified control numbers against the information contained on the CMR. Thereafter, a member of the staff delivers the stamped envelopes to a branch of the USPS in Albany, New York. A postal employee affixes a postmark and his or her initials or signature to the CMR indicating receipt by the post office.

19. In this particular instance, the postal employee affixed a postmark dated March 20, 2015 to, and also wrote his or her signature or initials on, each page of the three-page CMR. The Mail Processing Center further requests that the USPS employees either circle the total number of pieces received or indicate the total number of pieces received by writing the number on the CMR. A review of the March 20, 2015 CMR indicates that the USPS employee complied with this request by writing the number "25" to indicate the number received as well as circling the preprinted number "25" corresponding to the heading "Total Pieces and Amounts."

20. Mr. Peltier's affidavit states that the CMR is the Division's record of receipt, by the USPS, for pieces of certified mail. In the ordinary course of business and pursuant to the practices and procedures of the Division's Mail Processing Center, the CMR is picked up at the post office by a member of Mr. Peltier's staff on the following day after its initial delivery and is then delivered to the originating office, in this case BCMS. The CMR is maintained by BCMS in the regular course of business.

21. Based upon his review of the affidavit of Robert Farrelly, the exhibits attached thereto and the CMR, Mr. Peltier avers that on March 20, 2015, an employee of the Mail Processing Center delivered an item of certified mail addressed to petitioner at his Princeton, New Jersey, address to a branch of the USPS in Albany, New York, in sealed postpaid envelopes for delivery by certified mail. He states that he can also determine that a member of his staff obtained a copy of the CMR delivered to and accepted by the post office on March 20, 2015 for the records of BCMS. Mr. Peltier asserts that the procedures described in his affidavit are the regular procedures followed by the Mail Processing Center in the ordinary course of business when handling items to be sent by certified mail and that these procedures were followed in mailing the piece of certified mail to petitioner.

22. Following the submission of documents and arguments, the Administrative Law Judge issued an order dated March 10, 2016 determining that petitioner did not timely file a petition with the Division of Tax Appeals following the issuance of the March 20, 2015 conciliation order. Nonetheless, the Administrative Law Judge ordered that the November 6, 2015 notice of intent to dismiss petition should be rescinded pending the issuance of an additional notice of intent to dismiss petition regarding the timeliness of the petition as measured from the date of the notice of determination to the date of filing of the petition.

23. On April 8, 2016, the Supervising Administrative Law Judge issued to petitioner an additional notice of intent to dismiss petition with respect to the timeliness of the petition as measured from the issuance of the notice of determination. This notice of intent to dismiss petition indicates that because the notice of determination was issued on August 8, 2014 and the petition was not filed until July 2, 2015, or 328 days later, the petition was untimely.

24. In response to the issuance of the notice of intent to dismiss petition dated April 8, 2016, the Division submitted, among other documents: (i) an affidavit, dated May 27, 2016, of Mary Ellen Nagengast, a Tax Audit Administrator 1 and Director of the Division's Management Analysis and Project Services Bureau (MAPS); (ii) a "Certified Record for Presort Mail - Assessments Receivable" (CMR) postmarked August 8, 2014; and (iii) an affidavit, dated May 31, 2016, of Bruce Peltier, Stores and Operations Supervisor in the Division's mail room.

25. In order to prove that the notice of determination was sent to petitioner's last known address, the Division submitted a copy of petitioner's 2012 New York State personal income tax return, which was the last return filed by petitioner with the Division prior to the issuance of the notice of determination. The address on said return matches the address contained on the notice of determination and that listed for petitioner on the petition filed in this matter.

26. The affidavit of Mary Ellen Nagengast, who has been in her current position since October 2005, sets forth the Division's general practice and procedure for processing statutory notices. Ms. Nagengast is the Director of MAPS, which is responsible for the receipt and storage of CMRs, and is familiar with the Division's Case and Resource Tracking System (CARTS) and the Division's past and present procedures as they relate to statutory notices. Statutory notices are generated from CARTS and are predated with the anticipated date of mailing. Each page of the CMR lists an initial date that is approximately 10 days in advance of the anticipated date of mailing. Following the Division's general practice, this date is manually changed on the first and last pages of the CMR, in this case to August 8, 2014. In addition, as described by Ms. Nagengast, generally all pages of the CMR are banded together when the documents are delivered into possession of the USPS and remain so when returned to the Division. The pages of the CMR stay banded together unless otherwise ordered. The page numbers of the CMR run consecutively, starting with "PAGE: 1," and are noted in the upper right corner of each page.

27. All notices are assigned a certified control number. The certified control number of each notice is listed on a separate one-page mailing cover sheet, which also bears a bar code, the mailing address and the departmental return address on the front, and taxpayer assistance information on the back. The certified control numbers are also listed on the CMR under the heading entitled "Certified No." The CMR lists each notice in the order the notices are generated in the batch. The assessment numbers are listed under the heading "Reference No." The names and addresses of the recipients are listed under "Name of Addressee, Street, and PO Address."

28. The August 8, 2014 CMR consists of 29 pages and lists 310 computer-printed certified control numbers along with corresponding assessment numbers, names and addresses. Each page of the CMR includes 11 such entries with the exception of page 29, which contains two

such entries. Portions of the CMR not relevant to this matter have been redacted to preserve the confidentiality of information relating to other taxpayers.

29. Page 2 of the CMR indicates that the notice of determination assigned certified control number 7104 1002 9730 0272 0391 and assessment number L-041766656 was mailed to petitioner at the Princeton, New Jersey, address listed thereon. The corresponding mailing cover sheet for the notice bears this certified control number and petitioner's name and address as noted.

30. The affidavit of Bruce Peltier, a supervisor in the mail room since 1999 and currently Principal Mail and Supply Clerk, describes the mail room's general operations and procedures. The mail room receives the notices and places them in an "outgoing certified mail" area. Mr. Peltier confirms that a mailing cover sheet precedes each notice. A staff member retrieves the notices and mailing cover sheets and operates a machine that puts each notice and mailing cover sheet into a windowed envelope. Staff members then weigh, seal and place postage on each envelope. The first and last pieces listed on the CMR are checked against the information contained on the CMR. A clerk then performs a random review of 30 or fewer pieces listed on the CMR by checking those envelopes against the information contained on the CMR. The CMR has been stamped "Post Office hand write total # of pieces and initial. Do not stamp over written areas." A staff member then delivers the envelopes and the CMR to one of the various USPS branches located in the Albany, New York, area. In this case, the USPS employee initialed and affixed a USPS postmark dated August 8, 2014 to each page of the CMR. The mail room further requests that the USPS either circle the total number of pieces received or indicate the total number received by writing the number on the CMR. A review of the CMR indicates that the

USPS employee complied with this request by circling the preprinted number “310” appearing on the line stating “total pieces and amounts” to indicate the number received.

31. According to the Peltier affidavit, a copy of the notice was mailed on the date indicated as claimed.

THE ORDER AND DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE

The Administrative Law Judge issued an order on March 10, 2016 on the issue of whether to dismiss petitioner’s protest of the conciliation order issued on March 20, 2015. This order followed a notice of intent to dismiss petition issued by the Supervising Administrative Law Judge on November 6, 2015.

The Administrative Law Judge began his analysis by describing the 90-day time limit for filing a request with BCMS following issuance of a statutory notice. The Administrative Law Judge noted that in the absence of a timely petition, the Division of Tax Appeals is without jurisdiction to consider the merits of a protest of a statutory notice and explained that the Division of Tax Appeals issued the notice of intent to dismiss petition since it appeared that the petition was filed after the expiration of the 90-day statutory period.

The Administrative Law Judge next set forth the standard for determining the timeliness of a protest against a notice or conciliation order. He noted that where the timeliness of a petition is at issue, the initial inquiry is whether the Division has carried its burden of demonstrating proper mailing to petitioner’s last known address. In order to meet its burden, the Division must show proof of a standard procedure used to issue conciliation orders or notices and that such procedure was followed in this instance.

The Administrative Law Judge found that the Division met this burden through the affidavits of its employees and the submission of a properly completed CMR. He found that the

mail cover sheet, cover letter, CMR, and affidavits of the Division's employees involved in and possessing knowledge of the process of generating and issuing conciliation orders established the Division's standard mailing procedure and showed that such procedure was followed in this instance. He noted that a properly completed CMR represented highly probative documentary evidence of both the date and fact of mailing to the petitioner's last known address on March 20, 2015. Because petitioner's protest of the conciliation order bore a postmark of July 2, 2015, the Administrative Law Judge concluded that the petition in this matter was filed beyond the 90-day statutory period and was untimely.

Despite the Administrative Law Judge's finding that the petition was untimely as measured from the issuance of the conciliation order, he ordered that the notice of intent to dismiss petition issued on November 6, 2015 be rescinded. The Administrative Law Judge explained that petitioner's entry into the formal appeals process was not by virtue of his filing a request for a conciliation conference, but arose rather as a matter of law following the restaurant's filing of its request for a conciliation conference. The Administrative Law Judge reasoned that the statute that deems an entity's request for a conciliation conference to include persons responsible for the collection and payment of the sales tax should not be used to preclude a petitioner from participating equally with the entity in the formal appeals process. The Administrative Law Judge concluded that this would be the result if petitioner were denied an opportunity to challenge the Division on the question of whether it properly mailed the notice of determination to him as a responsible person.

The Administrative Law Judge thus rescinded the November 6, 2015 notice of intent to dismiss petition pending the issuance of an additional notice of intent to dismiss petition taking into consideration the date of the issuance of the underlying notice of determination on August 8,

2014. An additional notice of intent to dismiss petition was issued on April 8, 2016 and the parties were given until June 23, 2016 to respond. The Administrative Law Judge issued a determination on September 22, 2016 on the issue of whether petitioner timely filed a petition with the Division of Tax Appeals following the issuance of the notice of determination.

The Administrative Law Judge commenced his determination by again noting the statute providing for a 90-day time limit for filing a petition with the Division of Tax Appeals. He reiterated that where the timeliness of a petition is at issue, the initial inquiry is whether the Division has carried its burden of demonstrating proper mailing to petitioner's last known address. In order to meet its burden, the Division must show proof of a standard procedure used to issue statutory notices and that such procedure was followed in this instance.

Next, the Administrative Law Judge considered the evidence offered by the Division in support of the notice of intent to dismiss the petition issued on April 8, 2016. He found that the mailing cover sheet, cover letter, CMR and affidavits of the Division employees involved in generating and issuing notices of determination established the Division's standard mailing procedure and that such procedure was followed in this case. He noted that the CMR had been properly completed and thus constituted highly probative documentary evidence of both the date and fact of mailing.

The Administrative Law Judge next turned to petitioner's argument that he never received the notice of determination. The Administrative Law Judge observed that petitioner offered nothing to counter the Division's evidence showing that the notice of determination was issued to petitioner on August 8, 2014. He further noted that mere denial of receipt of a statutory notice is insufficient to rebut the presumption of receipt of a properly mailed notice of determination. The Administrative Law Judge concluded that because the petition was filed more than 90 days

subsequent to issuance of the notice of determination, the Division of Tax Appeals had no jurisdiction over petitioner's protest. As such, the Administrative Law Judge dismissed the petition.

SUMMARY OF ARGUMENTS ON EXCEPTION

Petitioner argues that he filed a timely petition in protest of the conciliation order issued to the restaurant on March 20, 2015. He argues that he personally did not receive a notice of determination as a responsible person for the restaurant. Further, for the first time on exception, he argues that the statute of limitations for assessment for the audit periods included in the notice of deficiency had expired. He also argues for the first time on exception that the Division violated the secrecy provisions of the Tax Law in providing his last New York personal income tax return filed with its papers in support of the notice of intent to dismiss petition.

The Division urges us to affirm the determination of the Administrative Law Judge. It states that it has provided ample proof in support of the notice of intent to dismiss petition that petitioner's protest of the notice of determination was untimely. It posits that all assessments of sales tax occurred within the allowable statutory periods for assessment. Finally, it argues that the secrecy provisions of the Tax Law did not apply to its submission of petitioner's last filing with the Division as part of its proof of proper mailing of the notice here at issue.

OPINION

We note that the Administrative Law Judge's order and determination were issued following the Division of Tax Appeals' issuance of two notices of intent to dismiss petition pursuant to section 3000.9 (a) (4) of our Rules of Practice and Procedure (Rules) (20 NYCRR 3000.9 [a] [4]). As we have previously held, the standard of review for a notice of intent to

dismiss petition is the same as that for a summary determination motion (*Matter of Victory Bagel Time*, Tax Appeals Tribunal, September 13, 2012).

Our Rules provide that a motion for summary determination “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” (20 NYCRR 3000.9 [b] [1]).

As we previously noted in *Matter of United Water New York, Inc.*:

“Inasmuch as summary judgment is the procedural equivalent of a trial, it should be denied if there is any doubt as to the existence of a triable issue or where the material issue of fact is ‘arguable’” (*Glick & Dolleck v Tri-Pac Export Corp.*, 22 NY2d 439 [1968]). If material facts are in dispute, or if contrary inferences may be reasonably drawn from undisputed facts, then a full trial is warranted and the case should not be decided on a motion (*see Gerard v Inglese*, 11 AD2d 381 [1960]). Upon such a motion, it is not for the court ‘to resolve issues of fact or determine matters of credibility but merely to determine whether such issues exist’ (*Daliendo v Johnson*, 147 AD2d 312 [1989]).” (*Matter of United Water New York, Inc.*, Tax Appeals Tribunal, April 1, 2004).

Where the timeliness of a taxpayer’s protest is in question, the initial inquiry is whether the Division has met its burden of demonstrating the fact and date of mailing of the relevant statutory notice, by certified or registered mail, to the taxpayer’s last known address (*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 statutory notice is mailed when it is delivered into the custody of the USPS (*Matter of Air Flex Custom Furniture*, Tax Appeals Tribunal, November 25, 1992). This means that the Division must show proof of a standard mailing procedure by one with knowledge of the relevant procedures and proof that such procedure was followed in the particular instance in question (*Matter of United Water New York, Inc.*; *Matter of New York City Billionaires Constr. Corp.*, Tax Appeals Tribunal, October 20, 2011). The Division may meet its burden by producing affidavits from individuals with the requisite knowledge of mailing procedures and a properly completed CMR (*see e.g. Matter of Western*

Aries Constr., Tax Appeals Tribunal, March 3, 2011; *Matter of DeWeese*, Tax Appeals Tribunal, June 20, 2002).

We find that the Division has borne its burden of showing proper mailing of the conciliation order issued on March 20, 2015. A taxpayer has 90 days following issuance of a conciliation order to file his protest with the Division of Tax Appeals (Tax Law § 170 [3-a] [e]; 20 NYCRR 4000.5 [c] [4]). Where timeliness of a protest of a conciliation order is at issue, the Division bears the initial burden of showing proper mailing of the conciliation order by showing the fact and date of mailing of the same (*Matter of Katz*). We agree that the Division bore this burden through the affidavits of its employees, Robert Farrelly and Bruce Peltier, and the attached CMR submitted in response to the notice of intent to dismiss petition issued on November 6, 2015. The Farrelly and Peltier affidavits together with the mail cover sheet and CMR establish the Division's standard mailing procedure for conciliation orders and that such a procedure was followed in this instance. As noted above, a properly completed CMR constitutes highly probative evidence of the fact and date of mailing (*Matter of Rakusin*; *Matter of Montesanto*). The mail cover sheet bears petitioner's name and the same address as that appearing on petitioner's 2012 New York State personal income tax return and the petition in this matter. That mail cover sheet also bears the same certified control number corresponding to the entry for petitioner on the CMR. The CMR bears the other indicia of acceptance of the articles listed thereon by the USPS, namely the postmark on each page thereof bearing the date March 20, 2015, the confirmation of the number of pieces of mail received and acknowledgment of receipt of those pieces of mail by a USPS employee initialing the last page. As the Division has shown proper mailing of the conciliation order on March 20, 2015, that is the date that the 90-day statutory time period for filing a protest thereof began to run (Tax Law § 170 [3-a] [e]).

We also agree that the Division has borne its burden of showing proper mailing of the notice of determination here at issue by introducing adequate proof of its standard mailing procedures through the affidavits of Ms. Nagengast and Mr. Peltier, Division employees involved in and possessing knowledge of the process of generating and issuing notices of determination. We agree with the Division that the Administrative Law Judge correctly determined that the CMR corresponding to the notice of determination has been properly completed and therefore constitutes highly probative evidence of both the fact and date of mailing (*see Matter of Rakusin*, Tax Appeals Tribunal, July 26, 2001; *Matter of Montesanto*, Tax Appeals Tribunal, March 31, 1994). The CMR lists the certified mail control number and petitioner's name and his address, which is identical to the address listed on his 2012 New York personal income tax return filed with the Division. Furthermore, the CMR bears USPS postmarks dated August 8, 2014 on each page. Petitioner's name, address, reference number corresponding to the assessment number of the notice of determination here at issue and its associated certified control number appear on page 2 of the CMR. There are 310 pieces of mail listed on the CMR, which number was circled on page 29 thereof, indicating the total number of pieces of certified mail received. Lastly, the USPS employee receiving the items of mail listed on the CMR initialed the last page of the same to indicate receipt by the post office of all 310 pieces of mail listed thereon in accordance with the Division's standard mailing procedure. We thus conclude that the Division has presented sufficient documentary proof to establish that a copy of the subject notice of determination was mailed as addressed to petitioner on August 8, 2014.

We have considered petitioner's argument that he did not receive the notice of determination at issue, thus implying that his petition should be deemed timely. However, we must reject this argument. This is because there is a statutory presumption of receipt of a notice

of determination by the person to whom it is mailed (Tax Law § 1147 [a] [1]). Here, the Division has demonstrated proper mailing of the notice of determination at issue through the affidavits of its employees familiar with its mailing procedures and a properly completed CMR. Petitioner's mere denial of receipt of the notice of determination is not sufficient to overcome the presumption of receipt of the notice (*Matter of T.J. Gulf v New York State Tax Commn.*, 124 AD2d 314 [3d Dept 1986]).

A petition must be timely filed in order for the Division of Tax Appeals to have jurisdiction to consider the merits of the protest (*see Matter of Lukacs*, Tax Appeals Tribunal, November 8, 2007; *Matter of Sak Smoke Shop*, Tax Appeals Tribunal, January 6, 1989). When delivered by US mail, the USPS postmark on a petition's envelope is the date a petition is deemed filed (*see* Tax Law § 1147 [a] [2]; 20 NYCRR 3000.22). As the envelope containing the petition herein bore a postmark of July 2, 2015, we concur with the Administrative Law Judge that petitioner's protest was filed on that date and was thus untimely, as it was not filed within the 90-day statutory periods following the issuances of the conciliation order or notice of determination.² We note that statutory deadlines for filing petitions are strictly enforced (*see Matter of Liaquat Ali, Inc.*, Tax Appeals Tribunal, January 22, 2015). This is because the Division of Tax Appeals lacks jurisdiction over fixed and final liabilities (*see* Tax Law § 1138 [a] [1]). Thus, we must deny petitioner's exception to the Administrative Law Judge's determination dismissing his protest of the notice of determination and conciliation order.

We decline to reach petitioner's substantive arguments regarding his tax liability as the Division of Tax Appeals lacks jurisdiction over his petition because it was untimely filed.

² Even if we accepted petitioner's asserted filing date (June 19, 2015) as the filing date of the petition herein, such date would fall beyond the 90-day statutory periods following the issuance of either the conciliation order (March 20, 2015) or the notice of determination (August 8, 2014).

However, even if the Division of Tax Appeals had jurisdiction over the petition, this Tribunal lacks jurisdiction to consider whether a violation of the tax information secrecy provisions of Tax Law § 1146 (a) occurred (*see Matter of Coram Diner and Kostas Hionas*, Tax Appeals Tribunal, March 12, 2015; *see also Matter of Bankers Trust New York*, Tax Appeals Tribunal, March 14, 1996). This is because our jurisdiction is limited by our authorizing statute (*see* Tax Law § 2008; *Matter of Scharff*, Tax Appeals Tribunal, October 4, 1990, *revd on other grounds sub nom Matter of New York State Dept. of Taxation & Fin. v Tax Appeals Trib.*, 151 Misc 2d 326 [Sup Ct, Albany County 1991, Keniry, J.]). We cannot extend our authority to disputes that have not been specifically delegated to us (*Matter of Hooper*, Tax Appeals Tribunal, July 1, 2010). In any event, the Division of Taxation is a division of the Department of Taxation and Finance, which can make a disclosure on its own behalf in an action under the Tax Law (*see* Tax Law §§ 170 [2]; 1146 [a]).

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Saajid Gilani is denied;
2. The determination of the Administrative Law Judge is affirmed;
3. The petition of Saajid Gilani is dismissed; and
4. The conciliation order sustaining the notice of determination is sustained.

DATED: Albany, New York
October 12, 2017

/s/ Roberta Moseley Nero
Roberta Moseley Nero
President

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

/s/ Anthony Giardina
Anthony Giardina
Commissioner