

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition :
of :
SOO YOUNG LEE :
For Revision of Determinations or for Refund of Sales : **DECISION**
and Use Taxes under Articles 28 and 29 of the Tax : **DTA NO. 830098**
Law for the periods December 1, 2017 through May :
31, 2018, September 1, 2018 through February 28, :
2019, and September 1, 2019 through November 30, :
2019.

Petitioner, Soo Young Lee, filed an exception to the determination of the Administrative Law Judge issued on September 29, 2022. Petitioner appeared by Isaac Sternheim & Co. (Isaac Sternheim, CPA). The Division of Taxation appeared by Amanda Hiller, Esq. (Eric Gee, Esq., of counsel). Petitioner did not file a brief in support of the exception. The Division of Taxation filed a letter brief in opposition. Petitioner did not file a reply brief. Petitioner's request for oral argument was denied. The six-month period for the issuance of this decision began on December 15, 2022, the due date for petitioner's reply brief.

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

ISSUE

Whether petitioner filed a timely request for conciliation conference with the Bureau of Conciliation and Mediation Services following the issuance of notices of determination.

FINDINGS OF FACT

We find the facts as determined by the Administrative Law Judge. Those facts appear

below.

1. Petitioner, Soo Young Lee, filed a 2018 New York nonresident and part-year resident income tax return, form IT-203 (2018 return) on April 15, 2019, providing an address in Edgewater, New Jersey.

2. The Division of Taxation (Division) issued to petitioner two notices of estimated determination, each dated January 30, 2020, asserting that petitioner is a responsible person for BLKSQ LLC. Assessment notice number L-051195076 asserted \$750.00 in estimated tax, plus interest and penalties for the tax period September 1, 2018 through November 30, 2018. Assessment notice number L-051195075 asserted \$750.00 in estimated tax, plus interest and penalties, for the tax period December 1, 2018 through February 28, 2019.

3. The Division issued to petitioner two notices of determination, each dated May 4, 2020, asserting that petitioner is a responsible person for Baba W14 Corp. Assessment notice number L-051435697 asserted \$8,034.36 in tax, plus interest and penalties, for the tax period March 1, 2018 through May 31, 2018. Assessment notice number L-051435698 asserted \$3,529.50 in tax, plus interest and penalties, for the tax period December 1, 2017 through February 28, 2018.

4. The Division issued to petitioner a notice of estimated determination, dated May 22, 2020, and bearing assessment notice number L-051449436 for estimated tax of \$15,738.13, plus interest and penalty. Petitioner was assessed as a responsible person of Mr Wooh LLC, for the tax period September 1, 2019 through November 30, 2019.

5. All of the notices were addressed to petitioner at the same Edgewater, New Jersey, address as was listed on the 2018 return.

6. On September 10, 2020, petitioner filed a request for conciliation conference with the Division's Bureau of Conciliation and Mediation Services (BCMS) in protest of the notices. Petitioner provided the same Edgewater, New Jersey, address on her request as was on the notices.

7. On October 2, 2020, BCMS issued a conciliation order dismissing request (conciliation order) to petitioner. The conciliation order determined that petitioner's protest of the notices was untimely and stated, in part:

“The Tax Law requires that a request be filed within 90 days from the date of the statutory notice. Since the notice(s) was [sic] issued on 1/30/2020; 5/4/2020 and 5/22/2020, but the request was not mailed until September 10, 2020, or in excess of 90 days, the request is late filed.”

8. Petitioner filed a timely petition with the Division of Tax Appeals in protest of the conciliation order on October 13, 2020 and an amended petition on or about January 7, 2021. In the amended petition, petitioner asserted that she never received the original assessments; that she was never an officer of the entities; and that they were started fraudulently in her name.

9. On June 7, 2022, the Division filed a motion seeking the dismissal of the petition, or, in the alternative, granting summary determination pursuant to sections 3000.5 and 3000.9 (a) and (b) of the Rules of Practice and Procedure of the Tax Appeals Tribunal (Rules). In support of the motion and to show proof of proper mailing of the notices, the Division provided the following documents: (i) an affirmation of Eric Gee, an attorney in the Office of Counsel of the Division, dated June 7, 2022; (ii) three affidavits of Deena Picard, a Data Processing Fiscal Systems Auditor 3 and the Acting Director of the Management Analysis and Project Services Bureau (MAPS), all sworn to on March 19, 2021; (iii) a “Certified Record for Presort Mail – Assessments Receivable” (CMR) postmarked January 30, 2020 (CMR 1); (iv) a “Certified Record for Presort Mail – Assessments Receivable” postmarked May 4, 2020 (CMR 2); (v) a

“Certified Record for Presort Mail – Assessments Receivable” postmarked May 22, 2020 (CMR 3); (vi) three affidavits of Susan Saccocio, a manager of the Division’s mail room, sworn to on March 25, 2021; (vii) copies of the notices mailed to petitioner with the associated mailing cover sheets; (viii) a copy of the first page of petitioner’s request for conciliation conference dated September 9, 2020; (ix) a copy of the conciliation order dismissing request issued by BCMS on October 2, 2020; (x) a copy of a consolidated statement of tax liabilities dated August 19, 2020 listing the notices as subject to collection; and (xi) a copy of petitioner’s 2018 return.

10. Mr. Gee asserts in his affirmation that petitioner’s 2018 return was filed on April 15, 2019, and that this was the last return filed before the Division issued the notices. He also avers that the notices were issued to petitioner’s last known address in Edgewater, New Jersey.

11. Deena Picard has been the Acting Director of the Division’s Management Analysis and Project Services Bureau (MAPS) since May 2017. She is also a Data Processing Fiscal Systems Auditor 3 and has held that position since February 2006. In performing her duties for both positions, Ms. Picard has used the Division’s electronic Case and Resource Tracking System (CARTS), which generates statutory notices, including notices of determination and notices of estimated determination. As the Acting Director of MAPS, which is responsible for the receipt and storage of CMRs, Ms. Picard is familiar with the Division’s past and present procedures as they relate to statutory notices. Ms. Picard’s affidavits set forth the Division’s general practices and procedures for generating and issuing statutory notices. The procedures are identical in each affidavit.

12. Statutory notices generated from CARTS are predated with the anticipated date of mailing and each notice is assigned a certified control number. The certified control number of each notice is listed on a separate one-page mailing cover sheet that is generated by CARTS for

each notice. The mailing cover sheet also bears a bar code, the recipient's mailing address and the Division's return address. CARTS also generates any enclosures referenced in the statutory notice. Each notice, with accompanying mailing cover sheet and any enclosures referenced in the body of the notice, is a discrete unit within the batch of notices.

13. Each batch of notices is accompanied by a CMR. The CMR lists each notice in the order the notices are generated in the batch. The certified control number is listed on the CMR under the heading entitled "Certified No." The statutory notice 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." Each CMR and associated batch of statutory notices are forwarded to the mail room together.

14. All pages of each of the three CMRs are banded together when the documents are delivered to the Division's mail room and remain so when returned to the Division after mailing. The pages of the CMRs stay banded together unless otherwise ordered.

15. 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 page of the CMR to the actual date of mailing. The page numbers of the CMRs run consecutively, starting with "Page 1," and are noted in the upper right corner of each page.

16. Susan Saccocio, a manager in the Division's mail room, describes the mail room's general operations and procedures in her affidavit as they relate to statutory notices. Ms. Saccocio has been a manager in the mail room since 2017. As a mail room manager, Ms. Saccocio is knowledgeable regarding past and present office procedures as they relate to statutory notices. Ms. Saccocio's official title is Associate Administrative Analyst, and her

duties include managing the staff that delivers mail to branch offices of the United States Post Office.

17. The mail room receives statutory notices that are ready for mailing in an “Outgoing Certified Mail” area. The mail room also receives the corresponding CMR for each batch of notices. A staff member receives the notices and mailing cover sheets and operates a machine that puts each notice and mailing cover sheet in a windowed envelope. That staff member then weighs, seals, and places postage on each envelope. A clerk then checks the first and last pieces of certified mail against the information contained on the CMR. A clerk will also perform a random review of up to 30 pieces of certified mail listed on the CMR by checking those envelopes against the information listed on the CMR. A staff member then delivers the envelopes and the CMR to one of the various USPS branches located in the Albany, New York, area.

18. A USPS employee affixes a postmark and writes his or her initials or signature on the CMR, indicating receipt by the post office of the mail listed on the CMR and of the CMR itself. The mail room also requests that the USPS either circle the total number of pieces received or indicate the total number of pieces received by writing the number on the CMR. The CMR is picked up at the USPS the following day by a member of the mail room staff and is delivered to other Division personnel for storage and retention. The CMR retrieved from the USPS is the Division’s record of receipt by the USPS for the pieces of certified mail listed thereon.

January 30, 2020 Notices

19. CMR 1, for the notices issued by the Division on January 30, 2020, including the notices at issue herein, consists of 24 pages. Each page consists of 11 entries with the exception of page 24, which contains five entries. Ms. Picard notes that the copy of CMR 1 that is attached

to her affidavit has been redacted to preserve the confidentiality of information relating to taxpayers who are not involved in this proceeding.

20. The actual mailing date as handwritten on the first and last page of CMR 1 was “1/30/20.” This was done to ensure that the date on CMR 1 conformed with the actual date that the statutory notices and CMR 1 were delivered into the possession of the USPS.

21. A USPS representative affixed a postmark, dated January 30, 2020, to each page of CMR 1. All of the postmarks included the following language: “USPS Colonie Center Albany NY 12205.” A USPS representative wrote “258” on page 24 next to the heading “Total Pieces Received at Post Office,” and initialed or signed the page.

22. Page 1 of CMR 1 indicates that notice L-051195075 with certified control number 7104 1002 9730 0082 6552, and notice L-051195076 with certified control number 7104 1002 9730 0082 6569 were mailed to petitioner at her Edgewater, New Jersey, address. The corresponding mailing cover sheets, attached to the Picard affidavit with the notices as exhibit “B,” bear these certified control numbers, petitioner’s name, and her address as stated above.

23. Ms. Picard avers that the procedures followed and described in her affidavit were the normal and regular procedures of the Division on January 30, 2020.

24. Ms. Saccocio avers that each page of the CMR in exhibit “A” of the Picard affidavit contains a postmark, and that a USPS employee initialed or signed page 24 of CMR 1 and wrote the total number of pieces of certified mail. A review of CMR 1 confirms this assertion.

25. Based on her review of the affidavit of Ms. Picard and the exhibits attached thereto, including CMR 1, and her personal knowledge of the procedures of the mail room, Ms. Saccocio stated that on January 30, 2020, an employee of the mail room delivered two pieces of certified mail addressed petitioner at her Edgewater, New Jersey, address in sealed postpaid envelopes for

delivery. She also stated CMR 1 was delivered to the USPS on January 30, 2020 and returned to the Division. Ms. Saccocio attested that the procedures described in her affidavit were the regular procedures followed by the mail room staff in the ordinary course of business when handling items sent by certified mail and that these procedures were followed in mailing the pieces of certified mail on January 30, 2020.

May 4, 2020 Notices

26. CMR 2 for the notices issued by the Division on May 4, 2020, including the notices at issue herein, consists of 37 pages. Each page consists of 11 entries with the exception of page 37, which contains four entries. Ms. Picard notes that the copy of CMR 2 that is attached to her affidavit regarding these notices has been redacted to preserve the confidentiality of information relating to taxpayers who are not involved in this proceeding.

27. The actual mailing date as handwritten on the first and last page of CMR 2 was "5/4." This was done to ensure that the date on CMR 2 conformed with the actual date that the statutory notices and CMR 2 were delivered into the possession of the USPS.

28. A USPS representative affixed a postmark, dated May 4, 2020, to each page of CMR 2. All of the postmarks included the following language: "USPS Colonie Center Albany NY 12205." A USPS representative wrote "400" on page 37 next to the heading "Total Pieces Received at Post Office," and initialed or signed the page.

29. Page 1 of CMR 2 indicates that notice L-051435697 with certified control number 7104 1002 9730 0144 0214, and notice L-051435698 with certified control number 7104 1002 9730 0144 0221 were mailed to petitioner at her Edgewater, New Jersey, address. The corresponding mailing cover sheets, attached to the Picard affidavit with the notices as exhibit "B," bear these certified control numbers, petitioner's name, and her address as stated above.

30. Ms. Picard avers that the procedures followed and described in her affidavit were the normal and regular procedures of the Division on May 4, 2020.

31. Ms. Saccocio avers that each page of CMR 2 in exhibit "A" of the Picard affidavit contains a postmark, and that a USPS employee initialed or signed page 37 of CMR 2 and wrote the total number of pieces of certified mail. A review of CMR 2 confirms this assertion.

32. Based on her review of the affidavit of Ms. Picard and the exhibits attached thereto, including CMR 2, and her personal knowledge of the procedures of the mail room, Ms. Saccocio stated that on May 4, 2020, an employee of the mail room delivered two pieces of certified mail addressed petitioner at her Edgewater, New Jersey, address in sealed postpaid envelopes for delivery. She also stated CMR 2 delivered to the USPS on May 4, 2020 was returned to the Division. Ms. Saccocio attested that the procedures described in her affidavit were the regular procedures followed by the mail room staff in the ordinary course of business when handling items sent by certified mail and that these procedures were followed in mailing the pieces of certified mail on May 4, 2020.

May 22, 2020 Notice

33. CMR 3 for the notices issued by the Division on May 22, 2020, including the notice issued herein, consists of 61 pages. Each page consists of 11 entries with the exception of page 61, which contains no entries. Ms. Picard notes that the copy of CMR 3 that is attached to her affidavit has been redacted to preserve the confidentiality of information relating to taxpayers who are not involved in this proceeding.

34. The actual mailing date as handwritten on the first and last page of CMR 3 was "5/22/20." This was done to ensure that the date on CMR 3 conformed with the actual date that the statutory notices and CMR 3 were delivered into the possession of the USPS.

35. A USPS representative affixed a postmark, dated May 22, 2020, to each page of CMR 3. All of the postmarks included the following language: “Colonie Center Albany NY 12205.” A USPS representative wrote “660” on page 61 next to the heading “Total Pieces Received at Post Office,” and initialed or signed the page.

36. Page 2 of CMR 3 indicates that notice L-051449436 with certified control number 7104 1002 9730 0148 8926 was mailed to petitioner at her Edgewater, New Jersey, address. The corresponding mailing cover sheet, attached to the Picard affidavit with the notice as exhibit “B,” bears this certified control number, petitioner’s name, and her address as stated above.

37. Ms. Picard avers that the procedures followed and described in her affidavit were the normal and regular procedures of the Division on May 22, 2020.

38. Ms. Saccocio avers that each page of CMR 3 in exhibit “A” of the Picard affidavit contains a postmark, and that a USPS employee initialed or signed page 61 of CMR 3 and wrote the total number of pieces of certified mail. A review of CMR 3 confirms this assertion.

39. Based on her review of the affidavit of Ms. Picard and the exhibits attached thereto, including CMR 3, and her personal knowledge of the procedures of the mail room, Ms. Saccocio stated that on May 22, 2020, an employee of the mail room delivered a piece of certified mail addressed to petitioner at her Edgewater, New Jersey, address in a sealed postpaid envelope for delivery. She also stated CMR 3 delivered to the USPS on May 22, 2020 was returned to the Division. Ms. Saccocio attested that the procedures described in her affidavit were the regular procedures followed by the mail room staff in the ordinary course of business when handling items sent by certified mail and that these procedures were followed in mailing the pieces of certified mail on May 22, 2020.

40. In response to the motion, petitioner submitted an unsworn captioned document entitled “Petitioner’s Affidavit,” that was signed by her representative. In the document, Mr. Sternheim asserts that petitioner was the victim of identity theft by her ex-boyfriend who operated several businesses using her name. He states that “[a]ll mail regarding the businesses was seized by [the ex-boyfriend] before she was able to see the documents.” Because of this, she was unable to respond to any assessments or file any appeals within the 90-day period allowed for appeal because she never saw the original assessments issued against her. Mr. Sternheim also asserts that the same issue existed with the Internal Revenue Service (IRS). However, upon receiving evidence of identity theft, the IRS cancelled the assessment. Petitioner claims that she did not discover the existence of the assessments until after her ex-boyfriend passed away from COVID-19. Petitioner’s ex-boyfriend’s attorney notified her that he had been retained to dispute the assessments because the boyfriend, who had been running the businesses, informed the attorney that petitioner was not involved in the businesses. Petitioner requested that the Division’s motion be dismissed and that the matter be heard by the Division of Tax Appeals on the issue of timeliness and as to whether or not petitioner was liable for the taxes owed by the businesses.

THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE

The Administrative Law Judge first determined that a motion for summary determination was the proper procedure for relief under the present circumstances. She observed that such a motion should be granted if it has been sufficiently established that no material and triable issue of fact is presented, and that, as a matter of law, a determination should be issued in the Division’s favor.

Next, the Administrative Law Judge observed that where the timeliness of a taxpayer's request for conciliation conference is in question, the Division must first demonstrate the fact and date of the mailing of the relevant statutory notice or notices to the taxpayer's last known address. The Administrative Law Judge noted that the Division can meet this burden by showing that it has a standard mailing procedure for the issuance of such notices by one with knowledge of the relevant procedures and that the procedure was followed in this instance. The Administrative Law Judge found that the Division met its burden in this case and determined that the Division properly mailed the subject notices of determination on January 30, 2020, May 4, 2020, and May 22, 2020, respectively. The Administrative Law Judge noted that such proper mailing gives rise to a rebuttable presumption of receipt. She also determined that the unsworn statement submitted by petitioner's representative was insufficient to rebut the presumption. The Administrative Law Judge thus concluded that petitioner's request for conciliation conference was untimely filed. Accordingly, she granted the motion for summary determination and denied the petition.

ARGUMENTS ON EXCEPTION

Petitioner continues to assert that she was the victim of identity theft perpetrated by her former boyfriend and that this same individual stole her mail before she could see the subject notices. Petitioner contends that she filed a police report with respect to the identity theft and that email communications exist in which her former boyfriend admits that petitioner had no connection to the businesses. Petitioner asserts that such documents were submitted to the Division. Petitioner further asserts that the Internal Revenue Service cancelled assessments against petitioner following an investigation. Petitioner contends that this is adequate proof that

she did not see the assessments. She further contends that she should at least have the opportunity to testify that she never saw the assessments.

The Division agrees with the Administrative Law Judge's determination that it carried its burden of demonstrating proper mailing of the statutory notices at issue and that petitioner failed to rebut the presumption of receipt. The Division thus agrees with the Administrative Law Judge's conclusion that petitioner's request for conciliation conference was untimely.

OPINION

We affirm the determination of the Administrative Law Judge.

As the petition in this matter was filed within 90 days of the issuance of the conciliation order, the Division of Tax Appeals has jurisdiction over the petition (*see* Tax Law §§ 170 [3-a], 2006 [4]). As the Administrative Law Judge correctly concluded, a summary determination motion is the proper procedure for an accelerated determination under such circumstances (*see* 20 NYCRR 3000.9). Such a motion "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]).

A summary determination motion is subject to the same rules as a summary judgment motion under CPLR 3212 (20 NYCRR 3000.9 [c]). "The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case" (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985], citing *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). 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, 441 [1968];

Museums at Stony Brook v Village of Patchogue Fire Dept., 146 AD2d 572 [2d Dept 1989]).

“If material facts are in dispute, or if contrary inferences may be drawn reasonably from undisputed facts,” then a full trial is warranted and the case should not be decided on a motion (*Gerard v Inglese*, 11 AD2d 381, 382 [2d Dept 1960]). “To defeat a motion for summary judgment, the opponent must . . . produce ‘evidentiary proof in admissible form sufficient to require a trial of material questions of fact on which he rests his claim’ and ‘mere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient’” (*Whelan v GTE Sylvania*, 182 AD2d 446, 449 [1st Dept 1992], citing *Zuckerman*).

A taxpayer may protest a notice of determination by filing a petition for a hearing with the Division of Tax Appeals within 90 days from date of mailing of such notice (*see* Tax Law § 1138 [a] [1]) or by filing a request for a conciliation conference with BCMS “if the time to petition for such a hearing has not elapsed” (Tax Law § 170 [3-a] [a]). This 90-day statutory time limit for filing either a petition or a request for a conciliation conference is strictly enforced (*see e.g. Matter of American Woodcraft*, Tax Appeals Tribunal, May 15, 2003; *Matter of Maro Luncheonette*, Tax Appeals Tribunal, February 1, 1996). Absent a timely protest, a notice of determination becomes an assessment and, consequently, the Division of Tax Appeals is without 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).

Where the timeliness of the filing of a petition or request for BCMS conference is at issue, the initial inquiry is whether the Division has carried its burden of demonstrating the fact and date of mailing of the relevant statutory notice to petitioner’s last known address (*see Matter of Feliciano*, Tax Appeals Tribunal, August 24, 2017; *Matter of Katz*, Tax Appeals Tribunal, November 14, 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). To meet its burden, the Division must show proof of a standard mailing procedure used by the Division for the issuance of statutory notices by one with knowledge of the relevant procedures and proof that the standard procedure was followed in this particular instance (*see Matter of New York City Billionaires Constr. Corp.*, Tax Appeals Tribunal, October 20, 2011; *Matter of Katz*; *Matter of Novar TV & Air Conditioner Sales & Serv.*, Tax Appeals Tribunal, May 23, 1991).

We agree with the Administrative Law Judge that the Division's proof establishes that notices of determination were properly mailed by USPS certified mail to petitioner's last known address on January 30, 2020, May 4, 2020, and May 22, 2020, respectively. The relevant CMRs were properly completed and therefore constitute highly probative documentary evidence of both the date and fact of mailing (*see Matter of Rakusin*, Tax Appeals Tribunal, July 26, 2001). Additionally, the affidavits submitted by the Division adequately describe the Division's general mailing procedure as well as the relevant CMRs and also show that the general mailing procedure was followed in this case (*see Matter of DeWeese*, Tax Appeals Tribunal, June 20, 2002). Further, the address on the various mailing cover sheets and CMRs matches the address on petitioner's 2019 personal income tax return, thus satisfying the "last known address" requirement. The Division has thus established proper mailing of the subject notices on the dates claimed.

Proper mailing of a notice of determination is presumptive evidence of the receipt by the taxpayer (Tax Law § 1147 [a] [1]). The taxpayer may rebut the presumption, but such rebuttal "must consist of more than a mere denial of receipt" (*Matter of T. J. Gulf v New York State Tax Commn.*, 124 AD2d 314, 315 [3d Dept 1986]).

Petitioner's response to the Division's motion, although entitled "Petitioner's Affidavit," is an unsworn statement made by her representative (*see* finding of fact 40). As the statement is unsworn and provides no foundation for the representative's knowledge of the factual assertions made therein, it lacks any evidentiary value. As noted, unsubstantiated allegations or assertions are insufficient to defeat a motion for summary determination (*Whelan v GTE Sylvania*, 182 AD2d at 449). The statement of petitioner's representative is thus tantamount to a mere denial of receipt and, as noted, such a denial fails to rebut the presumption of receipt arising from the Division's proof of proper mailing.

As to petitioner's claim that a police report and email communications were provided to the Division, we note that no such documents are in the record. As to petitioner's claim that she was not involved in the operation of the businesses that generated the liability at issue, given the untimeliness of her protest, we lack authority to consider this substantive claim.

Petitioner's request for conciliation conference with respect to the notices at issue was filed on September 10, 2020, beyond the 90-day period of limitations for the filing of such a request and was therefore untimely (*see* Tax Law §§ 170 [3-a] [b]; 681 [b]). Accordingly, BCMS properly dismissed petitioner's request by the October 2, 2020 conciliation order.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Soo Young Lee is denied;
2. The determination of the Administrative Law Judge is affirmed;
3. The petition of Soo Young Lee is denied; and
4. The conciliation order, dated October 2, 2020, is sustained.

Dated: Albany, New York
May 18, 2023

/s/ Anthony Giardina
Anthony Giardina
President

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

/s/ Cynthia M. Monaco
Cynthia M. Monaco
Commissioner