

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
TIAN YI, INC. : DETERMINATION
for Revision of a Determination or for Refund of Sales : DTA NO. 827448
and Use Taxes under Articles 28 and 29 of the Tax Law :
for the Period December 1, 2008 through August 31, 2011. :
:

Petitioner, Tian Yi, Inc., filed a petition for revision of a determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period December 1, 2008 through August 31, 2011.

On July 28, 2016, the Division of Taxation, by its representative, Amanda Hiller, Esq. (Osborne K. Jack, Esq., of counsel), filed a motion seeking dismissal of the petition or, in the alternative, summary determination in its favor pursuant to 20 NYCRR 3000.5, 3000.9(a)(1) and (b). Petitioner, appearing by Kenneth K. Ho, Esq., filed a response to the Division of Taxation's motion by the due date, after being granted an extension of time to respond, of September 26, 2016, which date commenced the 90-day period for the issuance of this determination. After due consideration of the affidavits, documents and arguments presented, Daniel J. Ranalli, Administrative Law Judge, renders the following determination.

ISSUE

Whether petitioner filed a timely Request for Conciliation Conference with the Bureau of Conciliation and Mediation Services following the issuance of a Notice of Determination.

FINDINGS OF FACT

1. The subject of the motion of the Division of Taxation (Division) is the timeliness of petitioner's protest of a Notice of Determination (Assessment No. L-038972246-4), dated January 7, 2013, issued to petitioner at a Brooklyn, New York, address, asserting sales and use taxes due in the amount of \$98,403.47, plus penalty and interest, for a total of \$182,909.16, for the period December 1, 2008 through August 31, 2011.

2. The Notice of Determination stated the following:

"We have estimated the amount of tax under section 1138 of the Tax Law. The estimation of tax due may include consideration of any records submitted for audit. You may challenge this Notice through a hearing process by filing a Request for Conciliation Conference or a Petition for a Division of Tax Appeals hearing by 04/07/13."

3. Petitioner filed a Request for Conciliation Conference (Request) with the Division's Bureau of Conciliation and Mediation Services (BCMS) concerning sales tax for the periods "12/01/2008 to 08/31/2011."¹ The basis for petitioner's Request is set forth, as follows:

"We had provided all the documentations [sic] during the initial audit time. Auditor Dov Pleat confirmed to us that there is [sic] no problems with our sales tax for the audit period for 12/1/2008 to 08/31/2011. At the time for the audit periods, the economy had had a bad time nationwide. Brooklyn, New York was no exception. Put everything aside, we do not believe that we owe any sales tax liabilities as assessed by the Department of Taxation and Finance. Besides, my representatives Kenneth K. Ho, CPA and Kenneth K. Ho, Esq. have contacted the Department by phone calls, faxes and letters. Unfortunately, the Department failed to timely respond to my representative to amicably solve the issue. Now a tax lien has been filed against me in person and the business. This is unfair."

The Request is dated September 28, 2015, and is date-stamped as received by BCMS on October 16, 2015.

¹ Petitioner's Request references a notice dated August 23, 2013. A document bearing this date was submitted as part of the Division's record, and bore the title "Response to Taxpayer Inquiry," and made reference to Assessment ID No. L-038972246-4.

4. BCMS issued a Conciliation Order Dismissing Request (CMS No. 268277) to petitioner dated November 6, 2015. The order determined that petitioner's protest of the subject notices of determination 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 issued on January 7, 2013, but the request was not mailed until October 13, 2015, or in excess of 90 days, the request is late filed.”

5. Petitioner filed a timely petition with the Division of Tax Appeals in protest of the conciliation order on January 22, 2016.

6. To show proof of proper mailing of the January 7, 2013 Notice of Determination, the Division provided, along with the July 28, 2016 affidavit of Osborne K. Jack, Esq., the following with its motion papers: i) an affidavit, dated May 20, 2016, of Mary Ellen Nagengast, a Tax Audit Administrator 1 and the Director of the Management Analysis and Project Services Bureau (MAPS) of the Division (since October 2005), who is familiar with the Case and Resource Tracking System (CARTS) and past and present procedures for generating statutory notices; (ii) an affidavit, dated May 24, 2016, of Bruce Peltier, a mail room supervisor in the Division's Mail Processing Center (since March 1999); (iii) the “New York State Department of Taxation and Finance Certified Record for Presort Mail-Assessments Receivable” (CMR) date-stamped January 7, 2013; (iv) a copy of petitioner's Notice of Determination, dated January 7, 2013, as described in Finding of Fact 1, with a mailing cover sheet showing petitioner's Brooklyn, New York, address and certified no. 7104 1002 9730 1442 9008; (v) the petition filed with the Division of Tax Appeals bearing a postmark of January 22, 2016, and date-stamped as received by the Division of Tax Appeals on January 25, 2016; (vi) the Division's answer to the petition dated March 30, 2016; (vii) a Response to Taxpayer Inquiry from the Division dated August 23, 2013; (viii) a copy of

petitioner's Request for Conciliation Conference dated September 28, 2015, protesting Notice No. L-038972246-4; (ix) a copy of the Conciliation Order described in Finding of Fact 3; (x) a copy of petitioner's Form DTF-17, Application to Register for a Sales Tax Certificate of Authority, dated-stamped as filed with the Division on March 28, 2008, bearing petitioner's Brooklyn, New York, address; (xi) a copy of petitioner's form ST-100, New York state and Local Quarterly Sales and Use Tax Return for the period September 1, 2010 to November 30, 2010, bearing petitioner's Brooklyn, New York, address and dated December 7, 2010; and (xii) a copy of petitioner's form ST-100, New York State and Local Quarterly Sales and Use Tax Return for the period September 1, 2012 to November 30, 2012, filed on December 20, 2012, indicating that petitioner's business address had not changed.

7. The affidavit of Mary Ellen Nagengast sets forth the Division's general practice and procedure for processing statutory notices. Ms. Nagengast receives from the Case and Resource Tracking System (CARTS) the computer-generated CMR and the corresponding notices. The notices are predated with the anticipated date of mailing and assigned a certified control number. CARTS also generates any enclosures referenced within the body of each notice. Each batch of statutory notices is accompanied by a CMR, listing each statutory notice being mailed, with a certified control number assigned to each, and specified under the heading entitled "CERTIFIED NO." 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."

Each page of the CMR lists an initial date that is approximately 10 days in advance of the anticipated date of mailing, allowing for a manual review of the notices prior to mailing.

Following the Division's general practice, this date was manually changed on the first and last

pages of the CMR in the present case to reflect the actual mailing date of the notice pertinent to this matter, i.e., “1/7/13.”

8. According to the Nagengast affidavit, the CMR consists of 14 cut sheet pages and lists 146 certified control numbers along with corresponding assessment numbers, names and addresses. In addition, Ms. Nagengast stated that all pages of the CMR are banded together when the documents are delivered into possession of the U.S. Postal Service (USPS) and remain so when returned to her office unless it is ordered otherwise. The page numbers of the CMR run consecutively, starting with “PAGE: 1,” and are noted in the upper right corner of each page. Ms. Nagengast notes that portions of the CMR that are attached to her affidavit have been redacted to preserve the confidentiality of information relating to taxpayers who are not involved in this proceeding. She also stated that the USPS representative affixed a U.S. postmark to each page of the CMR, wrote “146” on page 14, circled the number and initialed the same page.

Page 5 of the CMR indicates that a statutory notice with certified control number 7104 1002 9730 1442 9008, and reference no. L 038972246, was mailed to petitioner at the Brooklyn, New York, address listed on the subject notice.

9. The affidavit of Bruce Peltier, a mail room supervisor, describes the mail room’s general operations and procedures. The mail room receives the notices in an area designated for “Outgoing Certified Mail.” A staff member operates a machine that puts each notice and the associated documents into a windowed envelope so the addresses and certified number from the Mailing Cover Sheet show through the windows. That staff member then weighs, seals and places 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. A staff member

then delivers the envelopes and the CMR to one of the various USPS branches located in the Albany, New York, area. A USPS employee affixes a postmark and also places his or her signature or initials on the CMR, indicating receipt by the post office. The Mail Processing Center further requests that the USPS employee either circle the total number of pieces received or indicate the total number of pieces received by writing the number on the last page of the CMR.

10. On the CMR dated January 7, 2013, Mr. Peltier noted that the USPS employee initialed page 14 of the CMR and affixed a postmark dated January 7, 2013, to each page of the CMR. In addition, the USPS employee complied with the request to circle or write the number the number of pieces to verify such number by writing the number "146" on the last page under the heading "Total Pieces Received at Post Office." Based upon his review, Mr. Peltier attested to the fact that petitioner's name and his address as set forth on the statutory notices would have been displayed in the window of the envelope.

11. According to the Nagengast and Peltier affidavits, the subject Notice of Determination was mailed to petitioner on January 7, 2013, as claimed, to its Brooklyn, New York, address.

12. Petitioner's response to the motion included several affidavits, the highlights of which are set forth below:

a.) Petitioner's president, Rui Chen, submitted an affidavit. He received the Notice of Determination in issue on or about January 7, 2013. He immediately contacted his attorney, Kenneth Ho, and within two weeks of receipt of the notice, met with Steven Yang, CPA, an employee of Mr. Ho, to discuss the matter. The two identified an audit issue in dispute and while in Mr. Chen's presence, Mr. Yang called the auditor, Dov Pleat, and left a message. Despite numerous calls to the Division's auditor between that time and mid-March 2013, petitioner's representatives could not prompt a return call from Mr. Pleat. In late March 2013, Mr. Ho's office

spoke with Leon Drucker, the auditor's supervisor, who urged them to continue to try and reach Mr. Pleat, but that if there was additional material to support petitioner's position, it should be communicated to the Division so that it could be considered in the revision of any tax due.

Over the next several months, there were repeated calls to the Division, and an affidavit was supplied by petitioner's landlord, Li Na Lin, explaining that the utility bills (which were being used in the audit and overestimated petitioner's portion) covered the entire building.

The exchange of information continued through 2013 and 2014, and resulted in a tax warrant being issued against petitioner in 2015. Mr. Pleat failed to return petitioner's calls during 2013 and 2014, and Mr. Drucker informed petitioner that the failure to return calls was in part due to illness, hospitalization and his eventual retirement. After receipt of the tax warrant, petitioner filed to request a conciliation conference.

The balance of the affidavit dealt with substantive issues, the sales tax claimed to be due and owing, and the submission of voluminous documents that petitioner offered to support its position.

b.) Yanting Guo, Esq., an employee of Kenneth Ho, Esq., submitted an affidavit based upon her personal knowledge or review of petitioner's file maintained by Mr. Ho. Prior to the issuance of the Notice of Determination in issue, Ms. Guo had been working with Steven Yang, also an employee of Mr. Ho, on petitioner's matter since August, 2012. Between August 2012 and January 2013, Mr. Yang and Ms. Guo repeatedly called the Division's auditor, Dov Pleat, who often did not answer his phone or return their calls. She resorted to calling Leon Drucker, Mr. Pleat's supervisor, who referred them back to Mr. Pleat.

Ms. Guo also stated that upon receipt of the Notice of Determination, she met with petitioner and Steven Yang, and they called at that time, and were unable to reach him and did not receive a return call. In late March, 2013, Ms. Guo spoke with Mr. Drucker who suggested if there was

additional information available to support petitioner's position, it should be communicated to the Division, so that it could be considered in a revision of taxes due and owing. Over the next two years, the voluminous exhibits that were attached to the affidavit of Rui Chen were assembled and forwarded in raw or in summary form to the Division. At all times Ms. Guo was led to believe that matter had been reopened and the Division was reconsidering the materials submitted.

c.) Kenneth K. Ho, Esq., petitioner's attorney, also submitted an affidavit in support of petitioner's position. He attests to being fully familiar with the facts and circumstances of the case, with the source of information being his own knowledge and the file maintained by his office concerning petitioner. Mr. Ho argues that there is no law that dictates that a final determination of tax may not be reopened, particularly in a case such as this, where there is evidence that the auditor made an error. In such cases, the Division has consistently and repeatedly reconsidered the case and in his experience, invariably altered the assessment in favor of the taxpayer. He also confirmed that the supervising auditor, Mr. Drucker, told petitioner to tender any evidence it wanted considered, and never indicated it would not be further reviewed. The balance of the affidavit dealt primarily with the evidence submitted and the merits of petitioner's position.

13. Petitioner's response to the motion included the following facts:

a.) A private email from the law office of Peter Chiu dated September 13, 2012, referenced petitioner's president and revised additional tax due amounts from \$98,000.00 to \$71,420.73, with a reduction in a penalty amount from \$50,000.00 to zero.

b.) Petitioner's current representative, Kenneth K. Ho, Esq., sent a facsimile marked "URGENT!!!" to the Division's auditor, Dov Pleat, on October 22, 2012, indicating Mr. Ho's representation of petitioner on the matter dealing with the audit period December 1, 2008 through

August 31, 2011, "Audit Case # X173639989" and "ID Number 364629039," and requesting that Mr. Pleat contact him as soon as possible to discuss the case.

c.) The Division issued a Statement of Proposed Audit Change for Sales and Use Tax (Statement) dated October 25, 2012, to petitioner at its Brooklyn, New York, address, referencing ID number 364629039 and Case Number X173639989 01. The Division's contact person was Dov Pleat, the audit period covered was December 1, 2008 through August 31, 2011, and the tax amount was \$98,403.47. On the bottom half of the Statement was the following instruction:

"If you fail to **either agree or disagree** with this *Statement of Proposed Audit Change* by 11/26/12, Form DTF-963, Notice of Determination will be issued.

* * *

If you disagree with this statement, please fill out the contact information below and return one copy of this statement and a precise explanation of your disagreement, by 11/26/2012."

Petitioner's representative, Kenneth Ho, included his name and phone number, indicating that "further discussion needed otherwise we will be forced to take appeal procedure," under the section where disagreement was instructed to be stated. An envelope was enclosed with the Statement to return the document to the Division.²

d.) The Division issued a Response to Taxpayer Inquiry³ to petitioner at its Brooklyn, New York, address, dated August 23, 2013. It referenced Protest ID K-139083350-2 and Assessment ID L-038972246-4. It stated in pertinent part, the following:

"This is in reply to your recent inquiry about the above assessment(s).

² The Division introduced the signed Statement with its evidence. It is inferred from this submission that petitioner's representative returned the document to the Division in a timely manner, since it was not otherwise characterized.

³ The correspondence by petitioner that prompted this response does not appear in the record.

The assessment was based on the finding a of an audit by our district office. They issued a Statement of Audit Changes which gave you the opportunity to supply additional information pertinent to your case.

* * *

Please refer to the attached Computation Summary Section for a breakdown of the amount now due on the above assessments(s).

This matter is considered closed.”

e.) Petitioner’s representative, Kenneth Ho, Esq., issued correspondence to the Division, to the attention of Leon Drucker, dated February 26, 2014, indicating his representation of petitioner, the fact that petitioner does not agree with the tax liabilities imposed against it in collection case ID E-038972246-CL04-3, and petitioner’s intention to reserve its right to appeal.

f.) Petitioner’s representative again corresponded with the Division in a letter dated April 25, 2014, reiterating the same facts as in e.) above, referring to his letter dated February 26, 2014, and stating that up to that point, petitioner had not received any written response from the Division.

14. Petitioner’s response to the motion also included the following documents:

a.) Copies of Sales Tax web-filed confirmations for the periods March 1, 2011 through May 31, 2011 and June 1, 2011 through August 31, 2011.

b.) Copies of sales tax returns for the sales tax quarters from September 1, 2008 through February 28, 2011.

c.) The affidavit of Lin Na Line regarding the utilities at petitioner’s Brooklyn, New York, business address.

d.) A warrant against petitioner’s president, Rui Chen, dated March 19, 2014, and a warrant docketed against petitioner dated July 14, 2015.

e.) Copies of federal and New York corporate returns for petitioner's business for 2008 through 2011, issued by a paid preparer.

f.) Copies of select tax returns filed by petitioner concerning wage withholding, unemployment insurance and commuter transportation.

g.) Business checking account statements from HSBC.

h.) Copies of cancelled checks.

i.) Sales invoices from petitioner's business commencing March 2008, for years 2008 through 2011, and January and February, 2012.

CONCLUSIONS OF LAW

A. The Division of Taxation has made a motion to dismiss, or alternatively, a motion for summary determination, as to the issue of the timeliness of petitioner's request for a conciliation conference. A motion to dismiss the petition may be granted, as pertinent in this matter, if the Division of Tax Appeals lacks jurisdiction of the subject matter of the petition (20 NYCRR 3000.9[a][1][ii]). As the petition in this matter was filed within 90 days of the conciliation order, the Division of Tax Appeals has jurisdiction over the petition and, accordingly, a motion for summary determination under 20 NYCRR 3000.9(b) is the proper vehicle to consider the timeliness of petitioner's request for conciliation conference. This determination shall address the instant motion as such.

B. A motion for summary determination may 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]).

Section 3000.9(c) of the Rules of Practice and Procedure of the Tax Appeals Tribunal provides

that a motion for summary determination is subject to the same provisions as a motion for summary judgment pursuant to Civil Practice Law and Rules § 3212. “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 [1980]). 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]; *Museums at Stony Brook v Village of Patchogue Fire Dept.*, 146 AD2d 572 [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 [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’” (*Whelan v. GTE Sylvania*, 182 AD2d 446 [1992] *citing Zuckerman*).

C. A taxpayer may file a petition for a hearing before the Division of Tax Appeals, or alternatively, Request for Conciliation Conference with the BCMS, seeking revision of a determination within 90 days of the mailing of a Notice of Determination (*see* Tax Law §§ 1138[a][1]; 170[3-a][a]). If a taxpayer fails to timely protest such a notice, the Division of Tax Appeals has no jurisdiction over the matter and is precluded from hearing the merits of the case (*see Matter of Sak Smoke Shop*, Tax Appeals Tribunal, January 6, 1989).

D. Where, as here, the timeliness of a petitioner’s protest is at issue, the initial inquiry is whether the Division has carried its burden of demonstrating the fact and date of the mailing to

petitioner's last known address (*see Matter of Katz*, Tax Appeals Tribunal, November 14, 1991). The evidence required of the Division in order to establish proper mailing is two-fold: first, there must be proof of a standard procedure used by the Division for the issuance of notices by one with knowledge of the relevant procedures; and, second, there must be proof that the standard procedure was followed in this particular instance (*see Matter of Katz; Matter of Novar TV & Air Conditioner Sales & Serv.*, Tax Appeals Tribunal, May 23, 1991).

E. In this case, the Division has introduced 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. As to whether such procedures were followed in this instance, a properly completed CMR is highly probative evidence of the mailing of a statutory notice to the address and on the date indicated thereon (*see Matter of Rakusin*, Tax Appeals Tribunal, July 26, 2001). The facts concerning the CMR indicate that the proper mailing procedures were followed in this case. Accordingly, the Division has presented sufficient documentary proof to establish that the subject Notice of Deficiency was mailed as addressed to petitioner on the date claimed.

F. Tax Law § 1138(a)(1) requires that a Notice of Determination "shall be mailed by certified or registered mail to the person or persons liable for the collection or payment of the tax at his last known address in or out of this state." On the same point, Tax Law § 1147(a)(1) provides that a Notice of Determination shall be mailed by certified or registered mail to the person for whom it is intended "at the address given in the last return filed by him pursuant to the provisions of [Article 28] or in any application made by him or, if no return has been filed or application made, then to such address as may be obtainable." The mailing of such notice "shall be presumptive evidence of the receipt of the same by the person to whom addressed."

Here, the record shows that petitioner's Brooklyn, New York address as listed on the Quarterly Form ST-100, filed by petitioner for the period ended November 30, 2010, was the same address that appears on the subject assessment. According to the Division's records, this was the last return filed by petitioner that shows petitioner's address. The Division also introduced into evidence petitioner's Quarterly Form St-100 for the period ended November 30, 2012, filed on December 20, 2012. Although this return does not show an address, petitioner indicated that its business address had not changed by checking a box on the form. The address is also consistent with petitioner's original Application to Register for Sales Tax Certificate of Authority, filed in 2008. Finally, petitioner does not dispute that the address used is the correct one. Based on the foregoing, through the submission of documents and affidavits, the Division has met its burden of establishing proper mailing of the Notice of Determination to petitioner's last known address.

G. Petitioner sets forth the sequence of contact with the Division's auditor from August 2012, until a tax warrant was issued against petitioner's president in March 2014, and against petitioner in July 2015. Petitioner's representative sent a facsimile marked "urgent" to the Division's auditor on October 22, 2012, requesting a discussion about the matter and identified it as Audit Case number X173639989. On October 25, 2012 a Statement of Proposed Changes was issued and petitioner's representative indicated disagreement with the results in writing, requested further discussion and returned the form to the Division. The Statement clearly identifies the audit period in issue and the tax amount assessed as associated with petitioner and Case Number X173639989 01. Thereafter, the Notice of Determination was issued on January 7, 2013, and petitioner was required to challenge it by April 7, 2013. Petitioner and its representatives contacted the Division soon after its receipt of the Notice of Determination, and

encountered a repeated inability to speak with the auditor concerning the matter, and a systematic pattern of failure to have its calls answered or returned over the course of many months.

Petitioner continued to have contact with the Division's supervisor before and after petitioner received A Response to Taxpayer Inquiry, dated August 23, 2013, and petitioner was encouraged to continue to remit documentation in support of its position, despite the fact that the correspondence characterized the matter as closed. In February and April 2014, petitioner's representatives again set forth petitioner's protest and disagreement of the tax liabilities as determined by the Division. On or about July 14, 2015, a warrant was filed against petitioner concerning Assessment ID L-038972246-4 for the period ending August 31, 2011. Thereafter, petitioner filed a Request for Conciliation Conference, albeit late as measured from the notice, on or about October 13, 2015.

H. Petitioner repeatedly professed disagreement with the assessment in issue, identifying the audit period and tax amount assessed against it, both in writing and verbally. However, all of petitioner's protests, both in writing and verbally, were made either before the Notice of Determination was issued or after the time period for filing a request for conference or petition for hearing had expired. The critical time period in this case began on January 7, 2013, the date the Notice of Determination was issued, and ended on April 7, 2013, the date by which a protest of the notice was required to be filed. At no time during this 90-day time period did petitioner file any written document that could be construed to be a petition for hearing or request for conference. The documents filed with the Division in February 2014 were over 10 months late. As to the documents filed after the issuance of the Statement of Proposed Audit Change but prior to the issuance of the Notice of Determination, it is well settled that a petition filed in response to a statement of proposed audit change, but before issuance of a notice of determination cannot

function as a petition of the notice of determination (*Matter of West Mountain Corp. v. Dept. of Taxation and Finance*, 105 AD2d 989 [1984], *affd* 64 NY2d 991 [1985]). The Tax Appeals Tribunal has held that where a petition is filed before a notice of determination has been issued, “[r]eview by the Division of Tax Appeals would be premature and meaningless if the Division of Taxation’s assessment was only a proposed one, subject to change under the internal procedures within the Division of Taxation” (*Matter of Yeghukian*, Tax Appeals Tribunal, March 22, 1990).

Without a request for conference or petition for hearing filed within the statutory period, the Division of Tax Appeals has no jurisdiction to hear the merits of the case.

J. The Division’s motion for summary determination is granted and the petition of Tian Yi, Inc., is denied.

DATED: Albany, New York
December 22, 2016

/s/ Daniel J. Ranalli
ADMINISTRATIVE LAW JUDGE