

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
HARVINDER SINGH : DETERMINATION
For Revision of a Determination or for Refund of Sales and : DTA NO. 828105
Use Taxes under Articles 28 and 29 of the Tax Law for the :
Period March 1, 2004 to May 31, 2006 and for Review :
of a Notice of Proposed Driver License Suspension :
Referral under Tax Law §171-v. :

Petitioner, Harvinder Singh, 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 March 1, 2004 to May 31, 2006 and for review of a notice of proposed driver license suspension referral under Tax Law §171-v.

On September 13, 2017, the Division of Taxation, by its representative, Amanda Hiller, Esq. (Barry Weinstein, Esq., of counsel), filed a motion seeking dismissal of the petition or summary determination in its favor pursuant to 20 NYCRR 3000.5 and 3000.9 (a) (i) and (b). Accompanying the motion was the affidavit of Barry Weinstein, Esq., dated September 13, 2017, and annexed exhibits supporting the motion. Petitioner, appearing pro se, did not file a response in opposition to the motion. The 90-day period for issuance of the determination commenced on October 16, 2017. After due consideration of the motion papers, attached affidavits and annexed exhibits, and all pleadings and proceedings had herein, Dennis M. Galliher, Administrative Law Judge, renders the following determination.

ISSUES

I. Whether petitioner timely filed either a petition with the Division of Tax Appeals or a request for a conciliation conference following the issuance of a notice of determination.

II. Whether petitioner timely filed a petition with the Division of Tax Appeals following the issuance of a conciliation order sustaining the proposed suspension of his driver's license.

FINDINGS OF FACT

1. On October 8, 2013, petitioner filed a request for conciliation conference (Request) with the Bureau of Conciliation and Mediation Services (BCMS) of the Division of Taxation (Division). The Request is dated as signed by petitioner on October 2, 2013. The envelope in which the Request was filed bears a United States Postal Service (USPS) postmark dated October 8, 2013, and the Request is date-stamped as received by BCMS on October 8, 2013.

2. The Request protested both:

a) a notice of determination, assessment ID L-030740996, assessing sales and use taxes in the amount of \$36,044.26 for the period March 1, 2004 through May 31, 2006, plus interest. The Request lists the "Date of notice" as "08/2/13." The notice of determination itself is dated October 14, 2008 on its face; and

b) the proposed suspension of petitioner's driver's license. The Request lists the "Date of notice" as "10/2/13." The notice of proposed driver license suspension (form DTF-454) has not been made a part of the record, and therefore its issuance date cannot be confirmed. Presumably, the notice of determination referenced in Finding of Fact 2-a formed the basis for the proposed suspension of petitioner's driver's license, to wit, the existence of unpaid and outstanding fixed and final tax liabilities in excess of \$10,000.00 (*see* Tax Law article 8 section 171-v). In any event, petitioner's Request was filed, as noted, on October 8, 2013, a date that is some six days after the October 2, 2013 date upon which the Request itself acknowledges petitioner's receipt of the notice of proposed driver's license suspension.

3. On August 15, 2014, BCMS issued a conciliation order, CMS No. 259287 (BCMS Order), denying petitioner's Request. The BCMS Order is captioned as pertaining to the "Notice of Proposed License Suspension Referral." Unlike the Request, the BCMS Order does not

specifically reference the notice of determination dated October 14, 2008 (*see* Finding of Fact 2-a).

4. Petitioner filed a petition with the Division of Tax Appeals, challenging both the BCMS Order sustaining the proposed suspension of his driver's license, and the underlying notice of determination assessing sales and use taxes. The petition was filed by USPS first class mail, and the USPS postmark stamped on the envelope containing the petition is dated February 28, 2017. The Division of Tax Appeals date-stamped the petition as received on March 3, 2017.¹

The BCMS Order

5. To show proof of proper mailing of the BCMS Order dated August 15, 2014, the Division provided the following: (i) an affidavit, dated September 13, 2017, of Barry Weinstein, Esq.; (ii) an affidavit, dated August 30, 2017, of Robert Farrelly, Supervisor of Tax Conferences of BCMS; (iii) a "Certified Record for Presort Mail – BCMS Cert Letter" (CMR) postmarked August 15, 2014; (iv) a copy of the BCMS Order and cover sheet, dated August 15, 2014 and a copy of the three-windowed mailing envelope; (v) an affidavit, dated August 31, 2017, of Fred Ramundo, Stores and Mail Operations Supervisor in the Division's Mail Processing Center; (vi) petitioner's 2011 New York State Personal Income tax return, showing petitioner's address 47 Lexington Drive in Newburgh, New York; and (vii) a copy of the Division's form DTF-967-E, consolidated statement of tax liabilities including Assessment ID L-030740996.

6. The affidavit of Robert Farrelly sets forth the Division's general procedure for preparing and mailing BCMS conciliation orders. This procedure culminates in the mailing of

¹ There is no issue raised as to the timeliness of petitioner's Request challenging the notice of proposed driver's license suspension (*see* Finding of Fact 2). Rather, the issues presented by the petition concern the timeliness of petitioner's challenge to the BCMS Order sustaining the proposed license suspension, and the timeliness of petitioner's challenge to the underlying notice of determination.

such orders by USPS certified mail and confirmation of the mailing through BCMS's receipt of a postmarked copy of the CMR.

7. 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 conciliation orders.

8. 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.

9. 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 "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.

10. 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.

11. The “Total Pieces and Amount” 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.”

12. 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 “8-15-14” is written in the upper right corner of pages 1 through 4 of the CMR. Each page of the CMR also contains a USPS postmark indicating the date of August 15, 2014.

13. 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.

14. Mr. Farrelly attested to the truth and accuracy of the copy of the 4-page CMR relevant to this matter, which contains a list of the conciliation orders issued by the Division on August 15, 2014. This CMR lists 43 computer-printed certified control numbers. Each certified control number is assigned to an item of mail listed on 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.

15. Information regarding the BCMS Order issued to petitioner is contained on page 4 of the CMR. Specifically, corresponding to certified control number 7104 1002 9730 0274 1105 is reference/CMR number 000259287, along with petitioner’s name and the Newburgh, New York, address that is identical to the address on petitioner’s 2011 New York State personal income tax return, which was the last return filed by petitioner with the Division prior to the issuance of the BCMS Order.

16. The cover sheet bearing petitioner's name and the Newburgh, New York, address appearing on petitioner's 2011 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 BCMS Order.

17. The Division also submitted the affidavit of Fred Ramundo, Stores and Mail Operations Supervisor 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.

18. In this particular instance, the postal employee affixed a postmark dated August 15, 2014 to, and also wrote his or her signature or initials on, each page of the 4-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 August 15, 2014 CMR indicates that the USPS employee complied with

this request by writing the number “43” to indicate the number received as well as circling the preprinted number “43” corresponding to the heading “Total Pieces and Amounts.”²

19. Mr. Ramundo’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. Ramundo’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.

20. Based upon his review of the affidavit of Robert Farrelly, the exhibits attached thereto, and the CMR, Mr. Ramundo avers that on August 15, 2014, an employee of the Mail Processing Center delivered an item of certified mail addressed to petitioner at his Newburgh, New York, address to a branch of the USPS in Albany, New York, in a sealed postpaid envelope 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 August 15, 2014 for the records of BCMS. Mr. Ramundo 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.

The Notice of Determination

21. In addition to the foregoing documents, the Division also submitted: (i) an affidavit, dated August 23, 2017, of Deena Picard, a Data Processing Fiscal Systems Auditor 3 and the

² Paragraph 6 of said affidavit reads, in part, “My knowledge that the postal employee wrote and circled ‘43’ on page 4 for the purpose of indicating that ‘35’ pieces were received at the Post Office...” Upon review of the CMR, there were 43 pieces of mail recorded and noted by the USPS employee as received. This number corresponds to the preprinted number of pieces of mail listed on the CMR, thus supporting the fact that the use of “35” in the affidavit represents merely a typographical error.

Acting Director of the Division's Management Analysis and Project Services Bureau (MAPS); (ii) a "Certified Record for Presort Mail - Assessments Receivable" (CMR) postmarked October 14, 2008; (iii) an affidavit, dated August 31, 2017, of Fred Ramundo, Stores and Mail Operations Supervisor in the Division's Mail Processing Center; and (iv) petitioner's 2007 New York State Personal Income tax return, showing petitioner's address 8 Williamsburg Drive in Newburgh, New York.

22. In order to prove that the notice of determination dated October 14, 2008 was sent to petitioner's last known address on that date, the Division submitted a copy of petitioner's 2007 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.

23. The affidavit of Deena Picard, who has been in her current position since February 2006 and Acting Director since May 2017, sets forth the Division's general practice and procedure for processing statutory notices. Ms. Picard is the Acting 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 to the actual date of mailing, in this case to October 14, 2008. In addition, as described by Ms. Picard, 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.

24. 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."

25. The October 14, 2008 CMR consists of 10 pages and lists 109 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 10, which contains 10 such entries. Portions of the CMR not relevant to this matter have been redacted to preserve the confidentiality of information relating to other taxpayers.³

26. Page 8 of the CMR indicates that the notice of determination assigned certified control number 7104 1002 9730 0863 9307 and assessment number L-030740996 was mailed to petitioner at the Newburgh, New York, address listed thereon. The corresponding mailing cover sheet for the notice bears this same certified control number and petitioner's name and the Newburgh, New York, address that is identical to the address on petitioner's 2007 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.

³ Page 8 of the CMR bears marking that could initially be discerned as either a redaction or deletion of an individual entry. Upon further careful review of the CMR, coupled specifically with the indication by the USPS that all 109 pieces of mail were accounted for as received (See Finding of Fact 26), it is clear that the marking is an additional mark of redaction, rather than deletion of an entry.

27. The affidavit of Fred Ramundo, a supervisor in the mail room since 2013 and currently Stores and Mail Operations Supervisor, 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. Ramundo 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 October 14, 2008 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 "109" appearing on the line stating "total pieces and amounts" to indicate the number received.

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

CONCLUSIONS OF LAW

A. The Tax Appeals Tribunal's Rules of Practice and Procedure (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 noted in *Matter of United Water New York, Inc.* (Tax Appeals Tribunal, April 1, 2004):

“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]).”

B. The petition filed in this matter protested both the BCMS Order, dated August 15, 2014, sustaining the Division’s notice of proposed driver license suspension, and the notice of determination, dated October 14, 2008, assessing sales and use taxes against petitioner (*see* Finding of Fact 4). The subject motion seeks summary determination, with consequent dismissal of both challenges, upon the basis that the petition was untimely as to both challenges. As set forth hereafter, the Division has tendered sufficient proof to eliminate any material and triable issues of fact with respect to either of petitioner’s challenges.

C. 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 carrying with it the right to a hearing 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 procedure 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, together with 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).

The BCMS Order

D. A taxpayer has 90 days following issuance of a BCMS conciliation order within which to file a protest with the Division of Tax Appeals (Tax Law § 170 [3-a] [e]; 20 NYCRR 4000.5 [c] [4]). Where the 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*). Here, the Division has met its burden of showing proper mailing of the BCMS Order at issue on August 15, 2014. The Division met this burden through the affidavits of its employees, Robert Farrelly and Fred Ramundo, and the attached CMR submitted with the subject motion. The Farrelly and Ramundo affidavits, together with the mail cover sheet and CMR, establish both the Division's standard mailing procedure for conciliation orders and the fact that such procedure was followed in this instance. The properly completed CMR constitutes highly probative evidence of the fact and date of mailing (*Matter of Rakusin*, Tax Appeals Tribunal, July 26, 2001; *Matter of Montesanto*, Tax Appeals Tribunal, March 31, 1994). In this case, the mailing cover sheet bears petitioner's name and the same address as that appearing on petitioner's 2011 New York State personal income tax return and on the petition filed in this matter. That mailing cover sheet also bears the certified control number

that corresponds 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 August 15, 2014, 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 BCMS Order on August 15, 2014, that is the date upon which the 90-day statutory time period for filing a protest thereof began to run (Tax Law § 170 [3-a] [e]).

E. A petition challenging a conciliation order 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 filed by US mail, the date of the USPS postmark on the envelope containing the petition is the date on which the petition is deemed filed (*see* Tax Law § 1147 [a] [2]; 20 NYCRR 3000.22). The BCMS Order challenged herein was issued on August 15, 2014. The envelope containing the petition herein bore a postmark of February 28, 2017, and the petitioner's protest was therefore filed on that date. As such, the petition was clearly untimely, as not filed within the 90-day statutory period applicable with respect to challenges of conciliation orders. Thus, the Division of Tax Appeals lacks jurisdiction to consider the merits of the petition insofar as it challenged the BCMS Order sustaining the proposed suspension of petitioner's driver's license.

The Notice of Determination

F. 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 the date of mailing of such notice (Tax Law § 1138 (a) (1)). Alternatively, a taxpayer may protest a notice of determination 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]). Here, the petition challenged both the notice of determination itself, and the BCMS Order, at least insofar as that Order implicitly sustained that notice of determination. To the extent the petition challenged the BCMS Order as sustaining the proposed suspension of petitioner’s driver’s license, that challenge has been determined to have been untimely (*see* Conclusion of Law E). Therefore, the balance of this determination will address the petition insofar as it challenged the BCMS Order to the extent that the Order, at least implicitly, sustained the notice of determination, and to the extent the petition directly challenged the underlying notice of determination.⁴

G. As a starting point, the Division has met its burden of showing proper mailing of the notice of determination at issue. The Division has done so by introducing adequate proof of its standard mailing procedures through the affidavits of Ms. Picard and Mr. Ramundo, Division employees involved in and possessing knowledge of the process of generating and issuing notices of determination, together with evidence that the standard procedure was followed. As above, 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; Matter of Montesanto*). In this regard, the CMR lists the certified mail control number and petitioner’s name and his address, which is identical to the address listed on his 2007 New York personal income tax return filed with the Division. Furthermore, the CMR bears USPS postmarks dated October 14, 2008 on each page. Petitioner’s name, address, reference number correspond to the assessment number of the notice of determination here at issue and its

⁴ One of the foundational predicates for driver’s license suspension is the existence of an outstanding (unpaid) fixed and final tax liability in excess of \$10,000.00 (*see* Tax Law § 171-v [1]). By sustaining the Division’s proposed suspension of petitioner’s driver’s license, the BCMS Order thus implicitly agreed that such foundational predicate existed, and sustained the same.

associated certified control number appear on page 8 of the CMR. There are 109 pieces of mail listed on the CMR, which number was circled on page 10 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 CMR to indicate receipt by the post office of all 109 pieces of mail listed thereon, in accordance with the Division's standard mailing procedure. The Division has thus presented sufficient documentary proof to establish that a copy of the subject notice of determination was mailed as addressed to petitioner on October 14, 2008.

H. A petition or a request for conciliation conference challenging a notice of deficiency 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; Matter of Sak Smoke Shop*). As concluded above, when filed by US mail, the date of the USPS postmark on the envelope containing the petition is the date on which the petition is deemed filed (*see* Tax Law § 1147 [a] [2]; 20 NYCRR 3000.22), and that same rule applies with respect to the filing of a request for a conciliation conference (*see* 20 NYCRR 4000.7 [a] [1] [ii]). The notice of determination challenged herein was issued on October 14, 2008. The envelope containing the BCMS Request bore a USPS postmark dated October 8, 2013 (*see* Finding of Fact 1), and the envelope containing the petition herein bore a postmark dated February 28, 2017 (*see* Finding of Fact 4). Neither of those latter dates fall within the 90-day statutory period applicable with respect to challenges against notices of determination, whether made by the filing of a petition or the filing of a request for a conciliation conference (Tax Law §§ 1138 [a] [1]; 170 [3-a] [a]). Thus, the petition was clearly untimely, and the Division of Tax Appeals lacks jurisdiction to consider the merits of the petition insofar as it directly challenged the notice of determination dated October 14, 2008, or challenged the BCMS Order to the extent the same implicitly sustained the notice of determination.

I. The Division's motion for summary determination is hereby granted, and the petition of Harvinder Singh is dismissed.

DATED: Albany, New York
January 11, 2018

/s/ Dennis M. Galliher
ADMINISTRATIVE LAW JUDGE