STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition of **H & H GROCERY & HALAL MEAT, INC.** 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 September 1, 2018 through August 31, 2021.	DETERMINATION DTA NO. 831219

Petitioner, H & H Grocery & Halal Meat, 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 September 1, 2018 through August 31, 2021.

On May 6, 2025, the Division of Taxation, appearing by Amanda Hiller, Esq. (Adam L. Roberts, Esq., of counsel), brought a motion seeking summary determination pursuant to Tax Law § 2006 (6) and section 3000.9 (b) of the Rules of Practice and Procedure of the Tax Appeals Tribunal. Petitioner, appearing pro se, did not file a response by June 9, 2025, which date began the 90-day period for the issuance of this determination.

Based upon the motion papers and all pleadings and documents submitted in connection with this matter, Alexander Chu-Fong, 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, dated July 1, 2022, for the period September 1, 2018 through August 31, 2021, which bears identification number L-056438988 (notice). The notice was addressed to petitioner, H & H Grocery & Halal Meat, Inc., at an address in Brooklyn, New York.

2. In an attachment to the notice, the Division noted that it had a power of attorney "on file for tax matters at issue," and stated that it forwarded a copy of the notice to petitioner's representative as follows:

> "NASIR FAIZI
> NASIR FAIZI, CPA PLLC.
> NASIR FAIZI
> 941 CONEY ISLAND AVE, STORE 5
> BROOKLYN, NY 11230."

3. On November 21, 2022, petitioner protested the notice by filing a request for conciliation conference (request) with the Division's Bureau of Conciliation and Mediation Services (BCMS).

4. On December 9, 2022, BCMS issued a conciliation order dismissing request (conciliation order), bearing CMS No. 000346790, which dismissed petitioner's request as untimely filed, stating:

> "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 July 1, 2022, but the request was not faxed until November 21, 2022, or in excess of 90 days, the request is late filed."

5. On February 6, 2023, petitioner protested the conciliation order by filing a timely petition with the Division of Tax Appeals.

6. To show proper mailing of the notice, the Division, by affirmation of Adam L. Roberts, Esq., an attorney in the Division's Office of Counsel, dated May 6, 2025, submitted the following with its motion papers: (i) an affidavit of Marianna Denier, a Principal Administrative Analyst and the Director of the Division's Management Analysis and Project Services Bureau (MAPS), sworn to on December 5, 2024; (ii) a "CERTIFIED RECORD FOR PRESORT MAIL - ASSESSMENTS RECEIVABLE" (CMR), postmarked July 1, 2022; (iii) a copy of the notice, dated July 1, 2022, along with the corresponding mailing cover sheet addressed to petitioner at the Brooklyn, New York, address; (iv) a copy of the same notice along with a corresponding mailing cover sheet addressed to petitioner's representative at the 941 Coney Island Ave, Store 5, Brooklyn, New York, address; (v) an affidavit of Justin Lombardo, a manager of the Division's mail room, sworn to on December 5, 2024; (vi) petitioner's request, along with the conciliation order; (vii) petitioner's form quarterly ST-100, New York State and local quarterly sales and use tax return, for the period March 1, 2022 through May 31, 2022 (sales tax return), electronically filed on June 15, 2022, listing the same Brooklyn, New York, address for petitioner as is listed on the notice; and (viii) the power of attorney form for petitioner's representative, which was electronically filed with the Division on November 3, 2021.

7. In his affirmation, Mr. Roberts asserts that the Brooklyn, New York, address was petitioner's last known address when the notice was issued. He further asserts that the 941 Coney Island Ave, Store 5, Brooklyn, New York address was petitioner's representative's last known address at the time the notice was issued. Mr. Roberts also provides a power of attorney form, submitted to the Division on November 3, 2021, which indicates petitioner's representative's "[m]ailing address" as the following: "NASIR FAIZI, 941 CONEY ISLAND AVE, STORE 5, BROOKLYN, NY 11230, US."

8. Ms. Denier's affidavit sets forth the Division's general practice and procedures for generating and issuing statutory notices. She has served as the Director of MAPS since July 2022 and as a Principal Administrative Analyst since August 2022. Prior to this position, Ms. Denier was a Supervisor of Administrative Analysis from July 2019 through August 2022. In performing her duties, Ms. Denier has used the Division's electronic Case and Resource Tracking System (CARTS), which generates statutory notices, including notices of determination. As the Director of MAPS, which is responsible for the receipt and storage of CMRs, Ms. Denier is familiar with the Division's past and present procedures as they relate to statutory notices.

9. 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 on the front, and taxpayer assistance information on the back. CARTS also generates any enclosures referenced in the statutory notice. Each notice, with its accompanying mailing cover sheet and any enclosures referenced in the body of the notice, is a discrete unit within the batch of notices.

10. Each batch of statutory notices is accompanied by a CMR. The CMR lists each notice in the order it is generated in the batch. The certified control numbers are listed on the CMR under the heading "CERTIFIED NO." The assessment numbers, Audit Case ID numbers, Case ID numbers, Collection Case ID numbers or Document Locator Numbers (DLN) are listed under the heading "REFERENCE NO." The names and addresses of the recipients are listed under "NAME OF ADDRESSEE, STREET, AND P.O. ADDRESS." Each CMR and associated

batch of statutory notices are forwarded to the mail room together. All pages of the CMR 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 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.

11. The CMR for the batch of statutory notices to be issued on July 1, 2022, including the notice and the copy addressed to petitioner and petitioner's representative herein, consists of 19 cut sheet pages. Each of these pages includes in its upper left corner an initial date that is approximately 10 days in advance of the anticipated mailing date. Appearing in the upper right corner of pages 1 and 19 is the handwritten date "07/01/22." Following the Division's general practice, the initial date on the first and last page of the CMR were manually changed to ensure that the date on the CMR conformed with the actual date on which the statutory notices and the CMR were delivered into the possession of the United States Postal Service (USPS). Each of the pages includes a USPS postmark, dated July 1, 2022. Ms. Denier noted that the attached CMR has been redacted to preserve the confidentiality of information relating to taxpayers who are not involved in this proceeding.

12. Page 6 of the CMR indicates that a notice with certified control number 7104 1002 9730 0595 6209 and reference number L 056438988 was mailed to petitioner at the Brooklyn, New York, address listed on the notice. The corresponding mailing cover sheet, attached to the Denier affidavit with a copy of the notice as exhibit "B," bears the same certified control number and petitioner's name and address as noted. Page 6 also indicates that a notice with certified control number 7104 1002 9730 0595 6193 and the same reference number was mailed to petitioner's representative at the 941 Coney Island Ave, Store 5, Brooklyn, New York, address.

The CMR lists petitioner's representative's name, Nasir Faizi, twice but omits the business name, "Nasir Faizi, CPA PLLC." (***see*** finding of fact 2). The corresponding mailing cover sheet, attached to the Denier affidavit with a copy of the notice as exhibit "B," bears the same certified control number and petitioner's representative's name and address as listed on the CMR, as well as the business name (***id.***).

13. Appearing on page 19 of the CMR is the preprinted heading "TOTAL PIECES AND AMOUNTS," next to which is the preprinted number "198." Immediately beneath this heading is the preprinted heading "TOTAL PIECES RECEIVED AT POST OFFICE." A handwritten number "198" and the initials or signature of a USPS employee appear near this heading. A USPS postmark, dated July 1, 2022, also appears on this page.

14. Ms. Denier states that the notices were mailed to petitioner and petitioner's representative on July 1, 2022, as indicated by the dates on pages 1 and 19 of the CMR, as well as the USPS postmark on all the pages of the CMR.

15. Ms. Denier avers that the procedures followed and described in her affidavit were the normal and regular procedures of the Division on July 1, 2022.

16. The affidavit of Mr. Lombardo, a manager of the Division's mail room since 2017 and currently an Associate Administrative Analyst, whose duties include managing the mail room staff, attested to the mail room's general operations and procedures as they relate to statutory notices. As a manager of the Division's mail room, Mr. Lombardo is knowledgeable regarding past and present office procedures as they relate to statutory notices.

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 into 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 on 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.

19. Mr. Lombardo avers that each page of the CMR contains a postmark, and that a USPS employee initialed or signed page 19 of the CMR. A review of the CMR confirms Mr. Lombardo's assertions and further indicates that a USPS employee wrote the total number of pieces of certified mail on the CMR.

20. Mr. Lombardo attests that, based on his review of the Denier affidavit and attached exhibits and his personal knowledge of the mail room procedures, on July 1, 2022, an employee of the mail room delivered to the USPS one piece of certified mail addressed to petitioner at its Brooklyn, New York, address in a sealed postpaid envelope for delivery by certified mail. Mr. Lombardo also attests that an employee of the mail room delivered to the USPS one piece of

certified mail addressed to petitioner's representative at the 941 Coney Island Ave, Store 5, Brooklyn, New York, address in a sealed postpaid envelope for delivery by certified mail. He also states that the CMR delivered to the USPS on July 1, 2022, was returned to the Division. Mr. Lombardo further attests that the procedures described in his 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 July 1, 2022.

21. Petitioner did not respond to the Division's motion.

CONCLUSIONS OF LAW

A. 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]).

B. Section 3000.9 (c) of the Rules provides that a motion for summary determination is subject to the same provisions as a motion for summary judgment pursuant to CPLR 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, 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, 573 [2d Dept 1989]). "If material facts are in dispute or if different inferences may reasonably be drawn from facts themselves undisputed, a motion for summary judgment

must be denied" (***Supan v Michelfeld***, 97 AD2d 755, 756 [2d Dept 1983], citing ***Moskowitz v Garlock***, 23 AD2d 943, 943-944 [3d Dept 1965]; ***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'" (***Whelan v GTE Sylvania***, 182 AD2d 446, 449 [1st Dept 1992], citing ***Zuckerman v City of New York***, 49 NY2d at 562).

C. 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 (***see*** Tax Law § 1138 [a] [1]). Alternatively, a taxpayer may contest a notice 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]). It is well-established that the 90-day statutory time limit for filing either a petition or a request for a conciliation conference is strictly enforced and that, accordingly, protests filed even one day late are considered untimely (***see e.g. Matter of American Woodcraft***, Tax Appeals Tribunal, May 15, 2003 [petition filed one day late dismissed]). This is because, absent a timely protest, a notice of determination becomes a fixed and final assessment and, consequently, the Division of Tax Appeals is without jurisdiction to consider the substantive merits of the protest (***see Matter of Garitta***, Tax Appeals Tribunal, February 21, 2017).

D. Where, as here, the timeliness of a request for conciliation 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 notice to petitioner's last known address (***see*** Tax Law § 1138 [a] [1]; ***see also Matter of Katz***, Tax Appeals Tribunal, November 14, 1991). Further, while the Tax Law does not specifically provide for service on a taxpayer's representative, the Tax Appeals Tribunal has

held that the 90-day period for filing a protest to a notice issued by the Division is tolled if the taxpayer's representative is not served with the notice (***see Matter of Hulteen***, Tax Appeals Tribunal, September 29, 2022; ***Matter of Nicholson***, Tax Appeals Tribunal, June 12, 2003; ***see also Matter of Brager***, Tax Appeals Tribunal, May 23, 1996).

A statutory notice is issued when it is properly mailed, which occurs when it is delivered into the custody of the USPS (***see Matter of Air Flex Custom Furniture***, Tax Appeals Tribunal, November 25, 1992). To meet its burden, the Division must show proof of a standard procedure used by the Division for the issuance of statutory notices by one with knowledge of the relevant procedures and must also show 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. Where a statutory notice is found to have been properly mailed by the Division, i.e., sent to the taxpayer and its representative at their last known addresses by certified or registered mail, there is presumptive evidence of receipt of the notice by the person to whom it is addressed (***see*** Tax Law §§ 1138 [a] [1]; 1147 [a] [1]). The burden of demonstrating proper mailing in the first instance rests with the Division (***see Matter of United Grocery & Deli Corp.***, Tax Appeals Tribunal, June 13, 2024; ***Matter of New York City Billionaires Constr. Corp***., Tax Appeals Tribunal, October 20, 2011; ***Matter of Ruggerite, Inc. v State Tax Commn.***, 97 AD2d 634, 635 [3d Dept 1983], ***affd*** 64 NY2d 688 [1984]).

F. In this case, the Division has introduced adequate proof of its standard mailing procedures through the affidavits of Ms. Denier and Mr. Lombardo, Division employees involved in and possessing knowledge of the process of generating, reviewing and issuing

(mailing) statutory notices (***see Matter of Victory Bagel Time***, Tax Appeals Tribunal, September 13, 2012).

G. The CMR provides sufficient documentary proof to establish that a notice and a copy of the same, dated July 1, 2022, were mailed as addressed to petitioner and petitioner's representative. The 19-page document lists 198 certified control numbers. Each page of the CMR bears a USPS postmark, dated July 1, 2022. On the last page of the CMR, a postal employee initialed or signed and wrote the number "198" to indicate receipt by the post office of all the pieces of mail listed therein. Hence, the CMR was properly completed and constitutes documentary evidence of both the date and fact of mailing (***see Matter of Rakusin***, Tax Appeals Tribunal, July 26, 2001).

H. The only remaining issue is whether the notices were sent to petitioner and petitioner's representative's last known addresses at the time they were mailed (***see Matter of New York City Billionaires Constr. Corp.***). Tax Law § 1147 (a) (1) requires that the notice be addressed to the person for whom it is intended, as follows:

> "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."

In this case, the Division has submitted the sales tax return filed by petitioner on June 15, 2022, which was the last return filed by petitioner before the issuance of the notice on July 1, 2022. The return lists the same Brooklyn, New York, address as is listed on the notice and this fact is deemed admitted because petitioner presented no evidence to contest it. As set forth above, petitioner did not respond to the Division's motion for summary determination. Therefore, it is deemed that petitioner has conceded that no question of fact requiring a hearing exists (***see Kuehne & Nagel v Baiden***, 36 NY2d 539, 544 [1975]; ***John William Costello Assoc.***

v Standard Metals Corp., 99 AD2d 227, 229 [1st Dept 1984], ***appeal dismissed*** 62 NY2d 942 [1984]). Therefore, the Brooklyn, New York, address is determined to be petitioner's last known address at the time the notice was issued (***see e.g. Matter of United Grocery & Deli Corp.***). As it relates to petitioner's representative, the affirmation of Mr. Roberts and the power of attorney form confirm that the Division sent a copy of the notice to petitioner's representative's last known address at the time the notice was issued. The Division has also satisfied the last known address requirement for petitioner's representative. Accordingly, it is concluded that the Division established that the notice was properly mailed to petitioner and petitioner's representative on July 1, 2022.

I. Petitioner's 90-day period to request a conciliation conference began on July 1, 2022, and it did not file its request until November 21, 2022, or until after such period had already expired. Therefore, as a matter of law, its request was untimely (***see e.g. Matter of Garitta)***.

J. The Division of Taxation's motion for summary determination is granted, the petition of H & H Grocery & Halal Meat, Inc., is denied and the conciliation order dismissing petitioner's request, dated December 9, 2022, is sustained.

DATED: Albany, New York
September 04, 2025

/s/ Alexander Chu-Fong
ADMINISTRATIVE LAW JUDGE