

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition :  
of :  
**ANNA SORRENTINO** : **DETERMINATION**  
for Redetermination of a Deficiency or for Refund of : **DTA NO. 831288**  
New York State and New York City Personal Income :  
Taxes under Article 22 of the Tax Law and the :  
Administrative Code of the City of New York for the :  
Year 2020. :

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Petitioner, Anna Sorrentino, filed a petition for redetermination of a deficiency or for refund of New York State and New York City personal income taxes under article 22 of the Tax Law and the Administrative Code of the City of New York for the year 2020.

The Division of Taxation, by its representative, Amanda Hiller, Esq. (Amy Seidenstock, Esq., of counsel), brought a motion on December 14, 2023, seeking to have the petition dismissed, 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). Petitioner, appearing pro se, did not file a response to the Division of Taxation’s motion by January 16, 2024, which date commenced the 90-day period for issuance of this determination.

Based upon the motion papers and all pleadings and documents submitted in connection with this matter, Kevin R. Law, Administrative Law Judge, renders the following determination.

***ISSUE***

Whether petitioner filed a timely petition with the Division of Tax Appeals following the issuance of a conciliation order.

***FINDINGS OF FACT***

1. The Division of Taxation's (Division's) Bureau of Conciliation and Mediation Services (BCMS) issued a conciliation order, CMS No. 000336581 (conciliation order), dated January 20, 2023, to petitioner, Anna Sorrentino, at an address in Howard Beach, New York. The conciliation order sustained a December 2, 2021 personal income tax notice of disallowance for the tax year 2020.

2. On May 2, 2023, petitioner filed a petition with the Division of Tax Appeals in protest of the conciliation order. The envelope in which the petition was mailed bears a United States Postal Service postmark, dated May 2, 2023.

3. In support of its motion and to show proof of proper mailing of the conciliation order, the Division provided the following documents: (i) an affirmation of Amy Seidenstock, Esq., an attorney in the Office of Counsel of the Division, dated December 12, 2023; (ii) an affidavit, dated October 17, 2023, of Joseph DiGaudio, Assistant Director of BCMS; (iii) a "Certified Record for Manual Mail - CMS - 37 - BCMS Order" (CMR) postmarked January 20, 2023; (iv) a copy of the request for a conciliation conference, dated February 9, 2022, wherein petitioner listed her Howard Beach, New York, address; (v) a copy of the conciliation order, cover letter and cover sheet, dated January 20, 2023; and (vi) an affidavit, dated October 26, 2023, of Susan Ramundo, manager of the Division's mail room. The Howard Beach, New York, address was petitioner's last known address at the time the conciliation order was issued.

4. The affidavit of Joseph DiGaudio sets forth the Division's general practice and procedure for preparing and mailing conciliation orders. The procedure culminates in the mailing of the conciliation orders by United States Postal Service (USPS), via certified mail, and confirmation of such mailing through receipt by BCMS of a postmarked copy of the CMR.

5. The BCMS Data Management Services Unit prepares and forwards the conciliation orders and the accompanying cover letters, predated with the intended date of mailing, to the conciliation conferee for signature. The conciliation conferee, in turn, signs and forwards the orders and cover letters to a BCMS clerk assigned to process the conciliation orders.

6. 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 Unit). 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.

7. The AFP Unit also produces a computer-generated CMR entitled "Certified Record for Manual Mail." The CMR is a listing of taxpayers to whom conciliation orders are sent by certified mail on a particular day. The certified control numbers are recorded on the CMR under the heading "Certified No." The BCMS numbers are recorded on the CMR under the heading "Reference No." 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.

8. The clerk's regular duties include associating each cover sheet, cover letter, and conciliation order. The clerk verifies the names and addresses of taxpayers 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 through which the BCMS return address, certified control number, bar code, and name and address of the taxpayer appear.

9. The "Total Pieces and Amounts" is indicated on the last page of the CMR. It is the general office practice that the BCMS clerk stamps "MAIL ROOM: RETURN LISTING TO:

BCMS BLDG 9 RM 180 ATT: CONFERENCE UNIT” on the bottom left corner of the CMR.

10. 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, “1-20-23” was written in the upper right corner of each page of the CMR.

11. The CMR, along with the envelopes containing the cover sheets, cover letters, and conciliation orders, are picked up from BCMS by an employee of the Division's mail processing center.

12. Mr. DiGaudio attests to the truth and accuracy of the copy of the five-page CMR, which contains a list of the conciliation orders issued by BCMS on January 20, 2023. Each such certified control number is assigned to an item of mail listed on the five pages of the CMR. Specifically, corresponding to each listed certified control number is a reference number or CMS number and the name and address of the addressee.

13. Information regarding the conciliation order issued to petitioner is contained on page one of the CMR. Specifically, corresponding to certified control number 7104 1002 9735 3071 1014 is reference number 000336581, along with the name and last known address of petitioner. Specifically, the Howard Beach, New York, address listed on the CMR is the same address listed on the request for conciliation conference.

14. The affidavit of Susan Ramundo, a manager in the Division's mail room since 2017 and currently an associate administrative analyst, whose duties include the management of the mail processing center staff, attested to the regular procedures followed by her staff in the ordinary course of business of delivering outgoing mail to branch offices of the USPS. She stated that 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 affixes postage and

fee amounts. 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 the Albany, New York, area. A postal employee affixes a postmark and his or her initials or signature to the CMR indicating receipt by the post office.

15. In this particular instance, the postal employee affixed a postmark, dated January 20, 2023, to each page of the five-page CMR. The postal employee wrote the number “60” and initialed page five to indicate the total pieces of mail received at the post office.

16. Ms. Ramundo stated 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 Ms. 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.

17. Based upon her review of the affidavit of Joseph DiGaudio, the exhibits attached thereto and the CMR, Ms. Ramundo avers that on January 20, 2023, an employee of the mail processing center delivered an item of certified mail addressed to petitioner at her Howard Beach, New York, address to a branch of the USPS in the Albany, New York, area in a sealed postpaid envelope for delivery by certified mail. She states that she can also determine that a member of her staff obtained a copy of the CMR delivered to, and accepted by, the post office on January 20, 2023, for the records of BCMS. Ms. Ramundo asserts that the procedures described in her 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 on January 20, 2023.

18. Petitioner did not file a response to the Division's motion.

### ***CONCLUSIONS OF LAW***

A. Tax Law § 170 (3-a) (e) provides, in pertinent part, that a conciliation order shall be binding upon the taxpayer unless the taxpayer petitions for a hearing within 90 days after the conciliation order is issued. A conciliation order is "issued" within the meaning of Tax Law § 170 (3-a) (e) at the time of its mailing to the taxpayer (*see Matter of Wilson*, Tax Appeals Tribunal, July 13, 1989). The Division of Tax Appeals lacks jurisdiction to consider the merits of any petition filed beyond the 90-day time limit (*see Matter of Victory Bagel Time, Inc.*, Tax Appeals Tribunal, September 13, 2012).

B. Where the timeliness of a taxpayer's petition following a conciliation order is in question, the initial inquiry focuses on whether the conciliation order was properly issued (*see Matter of Cato*, Tax Appeals Tribunal, October 27, 2005; *Matter of DeWeese*, Tax Appeals Tribunal, June 20, 2002). BCMS is responsible for providing conciliation conferences and issuing conciliation orders (*see* Tax Law § 170 [3-a]). As noted above, a conciliation order is issued within the meaning of Tax Law § 170 (3-a) (e) at the time of its proper mailing to the taxpayer (*see Matter of Dean*, Tax Appeals Tribunal, July 24, 2014; *Matter of Cato*; *Matter of DeWeese*; *Matter of Wilson*). An order is properly mailed when it is delivered into the custody of the USPS, properly addressed and with the requisite amount of postage affixed (*see Matter of Air Flex Custom Furniture*, Tax Appeals Tribunal, November 25, 1992). When an order is found to have been properly mailed by the Division to the taxpayer's last known address by certified or registered mail, the petitioner bears the burden of proving that a timely protest was filed (*see Matter of Malpica*, Tax Appeals Tribunal, July 19, 1990).

C. The evidence required of the Division, in order to establish proper mailing, is twofold: first, there must be proof of a standard procedure used by the Division for the issuance of orders by one with knowledge of the relevant procedures; and second, there must be proof that the standard procedure was followed in the particular instance in question (*see Matter of Katz*, Tax Appeals Tribunal, November 14, 1991; *Matter of Novar TV & Air Conditioner Sales & Serv.*, Tax Appeals Tribunal, May 23, 1991). The Division may meet its burden of establishing proper mailing by providing evidence of its standard mailing procedures, corroborated by direct testimony or documentary evidence of mailing (*see Matter of Accardo*, Tax Appeals Tribunal, August 12, 1993).

D. Petitioner did not respond to the Division's motion and, thus, has offered no evidence to contest the facts asserted in the DiGaudio and Ramundo affidavits and supporting documents. Accordingly, those facts are deemed admitted (*see Kuehne & Nagel v Baiden*, 36 NY2d 539, 544 [1975]).

E. In this case, the Division has met its burden of establishing proper mailing of the conciliation order with the accompanying cover sheet and cover letter. Specifically, BCMS was required to mail the conciliation order to petitioner's last known address. As indicated by the CMR, and by the affidavits of Joseph DiGaudio and Susan Ramundo, Division employees involved in and possessing knowledge of the process of generating, reviewing and issuing conciliation orders, the Division has offered adequate proof to establish the fact that the order at issue, along with the cover sheet and cover letter, was actually mailed to petitioner by certified mail on January 20, 2023, the date appearing on the CMR. The affidavits described the various stages of producing and mailing orders and attested to the authenticity and accuracy of the copy of the order and the CMR submitted as evidence of actual mailing. These documents

established that the general mailing procedures described in the DiGaudio and Ramundo affidavits were followed with respect to the conciliation order issued to petitioner. Petitioner's name and address, as well as the numerical information on the face of the conciliation order, appear on the CMR, which bears a USPS postmark of January 20, 2023. There are 60 certified control numbers listed on the CMR, and the USPS employee who initialed the CMR indicated, by writing the number "60," that the post office received 60 items for mailing. In short, the Division established that it mailed the conciliation order by certified mail on January 20, 2023 (*see Matter of Auto Parts Ctr.*, Tax Appeals Tribunal, February 9, 1995).

F. In this case, the conciliation order was properly mailed when it was delivered into the custody of the USPS on January 20, 2023, properly addressed to petitioner at her last known address, and with the requisite amount of postage affixed, and it is this date that commenced the 90-day period within which to file a petition. However, the petition was not filed until May 2, 2023, a date that falls beyond 90 days after the issuance of the conciliation order. Accordingly, the petition is untimely, and the Division of Tax Appeals lacks jurisdiction to address it (*see Matter of Lukacs*, Tax Appeals Tribunal, November 8, 2007).

G. The Division of Taxation's motion to dismiss is granted, and the petition of Anna Sorrentino is dismissed.

DATED: Albany, New York  
March 28, 2024

/s/ Kevin R. Law  
ADMINISTRATIVE LAW JUDGE