

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition :  
of :  
**GREGG M. REUBEN** : ORDER  
 : DTA NO. 827467  
for Redetermination of Deficiencies or for refund of :  
Personal Income Tax under Article 22 of the Tax Law for :  
the Periods ended June 30, 2013, December 31, 2013, :  
March 31, 2014 and June 30, 2014. :  
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Petitioner, Gregg M. Reuben, filed a petition for redetermination of deficiencies or for refund of personal income tax under Article 22 of the Tax Law for the periods ended June 30, 2013, December 31, 2013, March 31, 2014 and June 30, 2014.

On June 27, 2016, the Division of Taxation, by its representative, Amanda Hiller, Esq. (Linda A. Jordan, Esq., of counsel), filed a motion seeking an order dismissing the petition or, in the alternative, granting summary determination of the proceeding pursuant to 20 NYCRR 3000.5, 3000.9(a)(1)(i) and 3000.9(b). Accompanying the motion was the affidavit of Linda A. Jordan, Esq., dated June 24, 2016, and annexed exhibits supporting the motion. On July 14, 2016, petitioner, appearing by Ballou Stoll Bader & Nadler, P.C. (Norman Berkowitz, Esq., of counsel) filed a letter brief in opposition to the motion of the Division of Taxation. The 90-day period for issuance of this order commenced on July 27, 2016 (Tax Law § 3000.5[b]). After due consideration of the motion papers, attached affidavit and annexed exhibits, petitioner's response in opposition, and all pleadings and proceedings had herein, Winifred M. Maloney, Administrative Law Judge, renders the following order.

**ISSUE**

Whether petitioner filed a timely protest following issuance of four notices of deficiency.

**FINDINGS OF FACT**

1. The Division of Taxation (Division) issued to petitioner, Gregg M. Reuben, Notice of Deficiency L-041957386, dated September 30, 2014, which asserted withholding tax penalty in the amount of \$72,007.12 for the tax period ended June 30, 2013. This notice is addressed to “REUBEN-GREGG M 555 W 59TH ST APT 31D NEW YORK NY 10019-1247.” The mailing cover sheet of this notice contains the certified control number 7104 1002 9730 0282 0152.

This notice was issued because petitioner was determined to be an officer or responsible person of Alliance Parking Services, LLC (Alliance Parking), who was liable for a penalty equal to the tax not paid by the corporation pursuant to Tax Law § 685(g).

2. The Division issued to petitioner, at “555 W 59TH ST APT 31D NEW YORK, NY 10019-1247,” three notices of deficiency, each dated December 2, 2014, asserting penalty due for withholding tax as follows:

Assessment ID Number	Tax Period Ended	Penalty
L-042249671	June 30, 2014	\$58,972.38
L-042249672	March 31, 2014	\$73,293.71
L-042249673	December 31, 2013	\$98,527.26

The mailing cover sheets of notices of deficiency L-042249671, L-042249672 and L-042249673 bore certified control numbers 7104 1002 9730 0330 4415, 7104 1002 9730 0330 4422 and 7104 1002 9730 0330 4439, respectively.

Each of these notices of deficiency was issued because petitioner was determined to be an officer or responsible person of Alliance Parking, who was liable for a penalty equal to the tax

not paid by the corporation pursuant to Tax Law § 685(g).

3. Petitioner's representative, Norman R. Berkowitz, Esq., filed a Request for Conciliation Conference (Request) with the Division's Bureau of Conciliation and Mediation Services (BCMS) in protest of notices of deficiency L-041957386, L-042249671, L-042249672, and L-042249673. Mr. Berkowitz hand-dated and signed the Request on December 9, 2015. The reasons given on the Request for protesting the four listed notices included, among others, that the notices were not received by the taxpayer, and that the notices were not mailed in accordance with the Tax Law. Attached to the Request was a "Consolidated Statement of Tax Liabilities" (Form DTF-967) dated October 6, 2015, issued to petitioner, that listed a number of statutory notices including the four notices being protested by the Request. On this Request, petitioner's address is listed as 555 West 59th Street, Apt 31-D, New York, NY 10019. The envelope in which the Request was mailed bears United States Postal Service (USPS) metered stamps dated December 9, 2015.

4. On December 31, 2015, BCMS issued a Conciliation Order Dismissing Request (Dismissal Order) to petitioner. Bearing CMS No. 268840 and referencing notice numbers L-041957386, L-042249671, L-042249672 and L-042249673, the Dismissal Order determined that petitioner's protest 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 September 30, 2014 and December 2, 2014, but the request was not until [sic], or in excess of 90 days, the request is late filed."

5. On February 1, 2016, the Division of Tax Appeals received a petition seeking revision of the four notices of deficiency, L-041957386, L-042249671, L-042249672 and L-042249673. The envelope in which the petition was sent by Certified Mail bears a USPS metered stamp dated

January 28, 2016. There is no dispute that the petition was filed within 90 days after the December 31, 2015 issuance of the Dismissal Order, and constitutes a timely challenge thereto. Petitioner's petition lists his address as 555 West 59th Street, Apt. 31-D, New York, NY 10019. In this petition, it was asserted, among other things, that "[t]he appropriate and required Notices were not served on the Petitioner in accordance with the Tax Law and are therefore invalid and void," and that the Dismissal Order is ineffective and void because it is "imprecise in that the date the Petitioner's Request for a Conciliation Conference was received is missing."

6. In support of the motion and to prove proper and timely mailing of the four notices of deficiency under protest, the Division submitted the following: (i) an affidavit, dated June 24, 2016, of Linda A. Jordan, Esq., the Division's representative; (ii) an affidavit, dated May 20, 2016, of Mary Ellen Nagengast, a Tax Audit Administrator I and Director of the Division's Management Analysis and Project Services Bureau (MAPS); (iii) a "Certified Record for Presort Mail - Assessments Receivable" (CMR) dated September 30, 2014; (iv) an affidavit, dated May 24, 2016, of Bruce Peltier, stores and mail operations supervisor in the Division's mail room; (v) a Notice of Deficiency, dated September 30, 2014, and the accompanying mailing cover sheet; (vi) a second affidavit, dated May 20, 2016, of Mary Ellen Nagengast; (vii) a second CMR dated December 2, 2014; (viii) a second affidavit, dated May 24, 2016, of Bruce Peltier; (ix) three notices of deficiency, each dated December 2, 2014, and corresponding mailing cover sheets; (x) a copy of petitioner's Request for Conciliation Conference, dated December 9, 2015 with the accompanying cover letter of petitioner's representative; (xi) a copy of the Dismissal Order, dated December 31, 2015; (xii) a copy of petitioner's New York State Resident Income Tax Return for the year 2012, which was electronically filed on or about October 9, 2013; (xiii) a copy of petitioner's New York State Resident Income Tax Return for the year 2013, which was

electronically filed on or about October 2, 2014; and (xiv) the Division's "e-MPIRE" printout documents related to petitioner.

7. As noted, the Division submitted four affidavits pertaining to the mailing of the subject statutory notices. The affidavit of Mary Ellen Nagengast, who has been in her current position since October 2005, sets forth the Division's general practice and procedure for processing statutory notices. Ms. Nagengast is the 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.

8. Statutory notices are generated from CARTS and 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 was manually changed on the first and last pages of the CMR in the present case to the actual mailing date of "9/30/14." It is also the Division's general practice that all pages of the CMR are banded together when the documents are delivered into the possession of the USPS and remain so when returned to its office. 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.

9. 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 taxpayer mailing address and the Departmental return address on the front, and taxpayer assistance information on the back. The certified control number is also listed on the CMR under the heading "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 P.O. Address.”

10. The September 30, 2014 CMR relevant to Notice of Deficiency L-041957386 consists of 20 pages and lists 217 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 20, which contains eight entries. Portions of the CMR not relevant to this matter have been redacted to preserve the confidentiality of information relating to other taxpayers. A USPS employee initialed or signed and affixed a postmark dated September 30, 2014 of the Colonie Center, New York branch of the USPS to each page of the CMR and wrote and circled the number “217” on page 20 next to the heading “TOTAL PIECES RECEIVED AT POST OFFICE.” Ms. Nagengast adds that the total number of statutory notices mailed pursuant to the CMR was 217.

11. Page 6 of the September 30, 2014 CMR indicates that a Notice of Deficiency, assigned certified control number 7104 1002 9730 0282 0152 and reference number L-041957386, was mailed to “REUBEN-GREGG M,” at 555 West 59th St., Apt 31D, New York, NY 10019-1247, i.e., the same address listed on the Notice of Deficiency. The corresponding mailing cover sheet, attached to the first Nagengast affidavit as “Exhibit B,” bears this certified control number and petitioner’s name and address as noted above.

12. The affidavit of Bruce Peltier, a supervisor in the Division’s mail room since 1999, describes the mail room’s general operations and procedures. The mail room receives the notices in an area designated for “Outgoing Certified Mail.” Each notice is preceded by a mailing cover sheet. A CMR is also received by the mail room for each batch of notices. 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. That staff member then weighs, seals and places

postage on each envelope. The first and last pieces of mail 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 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 initials or signature on the CMR, indicating receipt by the post office. Here, as noted, the USPS employee affixed a postmark dated September 30, 2014 to each page of the CMR and initialed or signed on page 20. 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. Here, the USPS employee complied with this request by writing and circling the number "217" on the last page of the CMR.

13. Mr. Peltier's affidavit states that the CMR is the Division's record of receipt, by the USPS for the pieces of certified mail listed thereon. 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. Peltier's staff on the following day after its initial delivery and is then delivered to other departmental personnel for storage and retention.

14. With respect to the mailing of the three notices of deficiency, each dated December 2, 2014, the Division submitted a second set of affidavits from Mary Ellen Nagengast and Bruce Peltier. Each of the additional affidavits sets forth the same introductory paragraphs regarding the respective affiant's title and job duties and the standard mailing procedures of the Division.

15. Attached as an exhibit to Ms. Nagengast's second affidavit is a 35-page CMR, on each page of which is listed an initial production date that is approximately 10 days in advance of the anticipated date of mailing. Following the Division's general practice, the date was manually

changed on the first and last pages to “12/2/14,” to reflect the actual mailing date. This 35-page CMR lists 381 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 35, which contains seven entries. Portions of the CMR not relevant to this matter have been redacted to preserve the confidentiality of information relating to other taxpayers.

16. Page 2 of this 35-page CMR indicates that two notices of deficiency, assigned certified control numbers 7104 1002 9730 0330 4415 and 7104 1002 9730 0330 4422 and reference numbers L-042249671 and L-042249672, respectively, were mailed to “REUBEN-GREGG M,” at 555 West 59th St., Apt. 31D, New York, NY 10019-1247, i.e., the same address listed on each Notice of Deficiency. The corresponding mailing cover sheets, attached to the second Nagengast affidavit as “Exhibit B,” bear these certified control numbers and petitioner’s name and address as noted above.

17. Page 3 of this 35-page CMR indicates that a Notice of Deficiency, assigned certified control number 7104 1002 9730 0330 4439 and reference number L-042249673, was mailed to “REUBEN-GREGG M,” at 555 West 59th St., Apt. 31D, New York, NY 10019-1247, i.e., the same address listed on this Notice of Deficiency. The corresponding mailing cover sheet, attached to the second Nagengast affidavit as “Exhibit B,” bears this certified control number and petitioner’s name and address as noted above.

18. Review of this 35-page CMR indicates that a USPS employee initialed or signed and affixed a postmark dated December 2, 2014 of the Colonie Center, New York, branch of the USPS to each page of the CMR. On the last page, page 35, the USPS employee wrote and circled the number “381” next to the heading “TOTAL PIECES RECEIVED AT POST OFFICE.”

19. The record includes a copy of Notice of Deficiency L-041957386 allegedly mailed by certified mail to petitioner on September 30, 2014 as described. The record also includes petitioner's resident income tax return (Form IT-201) as electronically filed for the year 2012 (*see* Findings of Fact 6). This return was the last return filed by petitioner prior to the issuance of Notice of Deficiency L-041957386, and it lists petitioner's address as 555 West 59th Street, **Apt. No. 32D**, New York, NY 10019 (emphasis added).

20. The record includes copies of notices of deficiency L-042249671, L-042249672, and L-042249673 allegedly mailed by certified mail to petitioner on December 2, 2014, as described. The record also includes petitioner's resident income tax return as electronically filed for the year 2013 (*see* Findings of Fact 6). This return was the last return filed by petitioner prior to the issuance of notices of deficiency L-042249671, L-042249672, and L-042249673, and it lists petitioner's address as 555 West 59th Street, **Apt. No. 32D**, New York, NY 10019 (emphasis added).

21. The record also includes a two-page e-MPIRE printout document, dated June 14, 2016 at "16:51:56," containing an "Individual Taxpayer Profile Inquiry" "Address Summary" for petitioner's taxpayer identification number, petitioner's name, and "Address:" 555 West 59th St., Apt 32D, New York, NY 10019-1248. This document is described as "the Division's e-MPIRE printout which shows Petitioner changed his physical and mailing address on November 13, 2013 and October 27, 2014 to 555 W 59th St., Apt 31D, New York, NY 10019-1247, via his Online Services Account" (*see* Jordan affidavit at 8).<sup>1</sup> The record includes no other information or

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<sup>1</sup> The record also includes a second two-page e-MPIRE printout document, dated June 14, 2016 at "15:49:58," containing an "Individual Taxpayer Profile Inquiry" "Address Summary" for petitioner with his taxpayer identification number, name, and "Address:" 555 West 59th St., Apt 32D, New York, NY 10019-1248. With the exception of the time appearing at the top of each document, both e-MPIRE printout documents contain identical information.

explanation concerning the document.

22. In opposition to the motion, petitioner asserts that the Division has not established proper issuance of the four notices of deficiency. Petitioner maintains that the proper address to which all four notices of deficiency should have been issued would include Apt. No. 32D, as set forth on the last returns filed by him prior to the issuance of such notices of deficiency, and would not include Apt. 31D, as set forth on the notices of deficiency as mailed. He states that the Division failed to explain the e-MPIRE printout document described above, and that there is no evidence that petitioner notified the Division of a change

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

A. The Division has filed alternate motions, seeking dismissal under 20 NYCRR 3000.9(a), or summary determination under 20 NYCRR 3000.9(b). As the Division of Tax Appeals has subject matter jurisdiction on the issue of the timely filing of the request for conciliation conference in the instant matter (*see* Findings of Fact 5), the Division's motion will be treated as one for summary determination (*see Matter of Ryan*, Tax Appeals Tribunal, September 12, 2013).

B. 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 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]).

C. 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 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 determination 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 a material fact is “arguable” (*Glick & Dolleck v. Tri-Pac Export Corp.*, 22 NY2d 439, 441 [1968]; *Museums at Stony Brook v. Vil. of Patchogue Fire Dept.*, 146 AD2d 572 [2d Dept 1989]). If material facts are in dispute, or if contrary inferences may be drawn reasonably from undisputed facts, then a full trial is warranted and the case should not be decided on a motion (*Gerard v. Inglese*, 11 AD2d 381 [2d Dept 1960]).

D. A taxpayer may protest a notice of deficiency 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 § 681[b]). Alternatively, a taxpayer may contest a notice by filing a request for a conciliation conference with BCMS “if the time to petition for such 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; *Matter of Maro Luncheonette*, Tax Appeals Tribunal, February 1, 1996). This is because, absent a timely protest, a notice of deficiency 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 Lukacs*, Tax Appeals Tribunal, November 8, 2007; *Matter of Sak Smoke Shop*, Tax Appeals Tribunal, January 6, 1989).

E. Where, as here, the Division claims a taxpayer’s protest against a notice was not timely filed, the initial inquiry must focus on the issuance of the notice. Where a notice is found to have

been properly mailed “a presumption arises that the notice was delivered or offered for delivery to the taxpayer in the normal course of the mail” (*see Matter of Katz*, Tax Appeals Tribunal, November 14, 1991). However, the “presumption of delivery” does not arise unless or until sufficient evidence of mailing has been produced and the burden of demonstrating proper mailing rests with the Division (*id.*). The Division may meet this burden by evidence of its standard mailing procedure, corroborated by direct testimony or documentary evidence of mailing (*see Matter of Accardo*, Tax Appeals Tribunal, August 12, 1993). When a notice is found to have been properly mailed by the Division to a petitioner’s last known address by certified or registered mail, the petitioner in turn bears the burden of proving that a timely protest was filed (*Matter of Malpica*, Tax Appeals Tribunal, July 19, 1990). However, as noted, the burden of demonstrating proper mailing in the first instance rests with the Division (*id.*; *see also Matter of Ruggerite, Inc. v. State Tax Commission*, 64 bNY2d 688 [1984]).

F. The mailing evidence required is two-fold: first, there must be proof of a standard procedure used by the Division for the issuance of statutory notices by one with knowledge of the relevant procedures; and second, there must be proof that the standard procedure was followed in the particular instance (*Matter of United Water New York*, Tax Appeals Tribunal, April 4, 2004; *see Matter of Katz*; *Matter of Novar TV & Air Conditioner Sales & Serv.*, Tax Appeals Tribunal, May 23, 1991).

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

H. The CMR for September 30, 2014 provides sufficient documentary proof to establish that a Notice of Deficiency, dated September 30, 2014, was mailed as addressed to petitioner. The 20-page document listed 217 certified control numbers with corresponding names and addresses. Each page of the CMR bears a USPS postmark dated September 30, 2014 and the initials or signature of a USPS employee. Additionally, on the last page of the CMR, the postal employee wrote and circled the number “217” next to the heading “TOTAL PIECES RECEIVED AT POST OFFICE” to indicate receipt by the post office of all pieces of mail listed thereon. 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).

I. The CMR for December 2, 2014 provides sufficient documentary proof to establish that three notices of deficiency, each dated December 2, 2014, were mailed as addressed to petitioner. The 35-page document listed 381 certified control numbers with corresponding names and addresses. Each page of the CMR bears a USPS postmark dated December 2, 2014 and the initials or signature of a USPS employee. Additionally, on the last page of the CMR, the postal employee wrote and circled the number “381” next to the heading “TOTAL PIECES RECEIVED AT POST OFFICE” to indicate receipt by the post office of all pieces of mail listed thereon. Hence, the CMR was properly completed and constitutes documentary evidence of both the date and fact of mailing (*see Matter of Rakusin*).

J. The only remaining issue on this motion is the question of whether the four notices of deficiency were addressed to petitioner at “his last known address” at the time they were mailed, so as to be considered “properly mailed.” Petitioner asserts that the Division’s use of “Apt. 31D,” on the subject notices on the basis of a change of address evidenced herein only by an e-MPIRE printout document (*see* Finding of Fact 21), without any further evidence pertaining

thereto, was improper and does not support using the allegedly changed address for purposes of properly mailing the four notices of deficiency. Rather, petitioner maintains the evidence on this motion only supports the conclusion that petitioner's "last known address" was "Apt. No 32 D," as appearing on the last returns filed prior to the issuance of the notices of deficiency (*see* Findings of Fact 19 and 20).

K. Tax Law § 681(a) authorizes the Division to issue a Notice of Deficiency to a taxpayer where a deficiency in personal income tax has been determined. This section further requires that the notice "shall be mailed by certified or registered mail to the taxpayer at his last known address in or out of this state." A taxpayer's last known address is "the address given on the last return filed by him, unless subsequently to the filing of such return the taxpayer shall have notified the tax commission of a change of address" (Tax Law § 691[b]).

L. Petitioner electronically filed his income tax return for the year 2012 on or about October 9, 2013. This was the last return filed by petitioner prior to the issuance of Notice of Deficiency L-041957386, and it lists petitioner's address as 555 West 59th St., Apt. 32D, New York, NY 10019. For the year 2013, petitioner electronically filed his tax return on or about October 2, 2014. This was the last return filed by petitioner prior to the issuance of notices of deficiency L-042249671, L-042249672 and L-042249673, and it lists petitioner's address as 555 West 59th St., Apt. 32D, New York, NY 10019. The Division contends that its e-MPIRE printout document shows that petitioner changed his physical and mailing address on November 13, 2013 and October 27, 2014 to 555 West 59th St., Apt. 31D, New York, NY 10019-1247, via his Online Services Account, which address was petitioner's last known address prior to the issuance of the notices of deficiency on September 30, 2014 and December 2, 2014. The record contains no evidence in explanation of the e-MPIRE printout document and any information

contained therein, other than the vague description in the Jordan affidavit (*see* Finding of Fact 21). The e-MPIRE printout document, without additional evidence, is insufficient to support a conclusion that petitioner's address changed from "Apt. No. 32D," per his returns, to "Apt 31D," as alleged by the Division. Under the foregoing circumstances, there are material facts in issue and the Division cannot be said to have proved mailing of the September 30, 2014 and the December 2, 2014 notices of deficiency to petitioner's last known address (*Matter of Combemale*, Tax Appeals Tribunal, March 31, 1994).<sup>2</sup> In turn, without proper mailing, the 90-day period for filing either a request or a petition is tolled until such time as petitioner actually received the notices (*Matter of Riehm v. Tax Appeals Tribunal*, 179 AD2d 970 [1992], *lv denied* 79 NY2d 759 [1992]). Since there is no evidence as to when the four notices of deficiency may have been received, the petition is deemed to have been timely filed and the Division's motion for summary determination must be denied.

M. The Division of Taxation's motion for summary determination is denied without prejudice, and a hearing will be scheduled in due course.

DATED: Albany, New York  
October 20, 2016

/s/ Winifred M. Maloney  
ADMINISTRATIVE LAW JUDGE

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<sup>2</sup> It is noted that Domestic Mail Manual 600 (Mailing Standards of the USPS), 602 (1.3) (Address Elements) and (1.4.2[e]) (Complete Address Elements) regards the inclusion of a secondary address unit designator (such as a street, apartment, unit or suite number, as applicable) as a required element of an address. From this, it follows that the use of an incorrect secondary address unit designator (e.g., an incorrect apartment number) is properly considered a consequential error for purposes of commencing the period within which a taxpayer must act to preserve the right to be heard on the merits (*see Matter of Combemale*).

