

STATE OF NEW YORK
DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
EVA MYERS GRAINGER : ORDER
 : DTA NO. 829726
for Redetermination of Deficiencies or for Refund of New :
York State and New York City Personal Income Tax :
under Article 22 of the Tax Law and the Administrative :
Code of the City of New York for the Years 2016, 2017 :
and 2018. :

Petitioner, Eva Myers Grainger, filed a petition for redetermination of deficiencies or for refund of New York State and New York City personal income tax under article 22 of the Tax Law and the Administrative Code of the City of New York for the years 2016, 2017 and 2018.

The Division of Taxation, by its representative, Amanda Hiller, Esq. (Maria Matos, Esq., of counsel) brought a motion dated July 7, 2020, seeking an order dismissing a petition, or in the alternative, summary determination in the above-referenced matter pursuant to sections 3000.5, 3000.9 (a) (i) and (b) of the Rules of Practice and Procedure of the Tax Appeals Tribunal.

Petitioner, appearing pro se, did not respond to the Division of Taxation's motion. The 90-day period for issuance of this order commenced on August 7, 2020. Based upon the motion papers, the affidavits and documents submitted therewith, and all pleadings and documents submitted in connection with this matter, Winifred M. Maloney, Administrative Law Judge, renders the following order.

ISSUE

Whether petitioner filed timely requests for conciliation conference with the Bureau of Conciliation and Mediation Services following the issuance of three notices of deficiencies.

FINDINGS OF FACT

1. The Division of Taxation (Division) brought a motion, dated July 7, 2020, for dismissal of the petition, or in the alternative, for summary determination in its favor. The subject of the Division’s motion is the timeliness of petitioner’s protest of the following three notices of deficiency (notices):

Notice #	Year Ending	Notice Date
L-049803419	12/31/2016	07/02/2019
L-049814665	12/31/2017	07/03/2019
L-049895645	12/31/2018	07/16/2019

The notices were addressed to petitioner, Eva M. Meyers Grainger, at an address in Jamaica, New York.¹

2. In protest of the notices, petitioner, via her then-representative Felipe Encarnacion, Felipe Tax Corp., filed requests for conciliation conference (requests) with the Bureau of Conciliation and Mediation Services (BCMS). The requests were faxed to and received by BCMS on October 22, 2019. In making her requests for conciliation conference, petitioner used the section titled “Conciliation Conference” appearing on page 2 of the notices of deficiency. Petitioner signed and hand-dated the three requests on October 22, 2019. Each request lists petitioner’s Jamaica, New York, address.

¹ Petitioner’s complete Jamaica, New York, address included a secondary address unit designator, i.e. a floor number.

3. On November 8, 2019, BCMS issued a conciliation order dismissing request (conciliation order) to petitioner. The conciliation order (CMS No. 000315530) determined that petitioner's protests of the notices 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 July 2, 2019; July 3, 2019 and July 16, 2019, but the request was not received until October 22, 2019, or in excess of 90 days, the request is late filed.”

4. On November 15, 2019, a petition protesting the conciliation order was filed by petitioner.² The envelope in which the petition was mailed bears a United States Postal Service (USPS) postage paid label dated November 15, 2019. The petition lists petitioner's Jamaica, New York, address. There is no dispute that the petition was filed within 90 days after the November 8, 2019 issuance of the conciliation order and constitutes a timely challenge thereto.

5. In support of the motion and to show proof of proper mailing of the notices, the Division's motion included the following documents:

a) notice of deficiency, L-049803419, dated July 2, 2019:

(i) an affidavit of Deena Picard, a Data Processing Fiscal Systems Auditor 3 and the Acting Director of the Division's Management Analysis and Project Services Bureau (MAPS), dated March 16, 2020; (ii) a “Certified Record for – DTF-962-F-E – Not of Def Follow Up DTF-963-F-E – Not of Det Follow Up,” postmarked July 2, 2019; (iii) an affidavit of Susan Saccocio, a manager in the Division's mail room, dated March 16, 2020; (iv) a copy of the July 2, 2019 notice with the associated mailing cover sheet addressed to petitioner; (v) a copy of petitioner's request for conciliation conference, faxed to BCMS on October 22, 2019; (vi) an affidavit, dated July 2, 2020, of Heidi Corina, a Legal Assistant II in the Division's Office of Counsel, involved in making requests to the USPS for delivery information³; (vii) a Request for Delivery Information/Return Receipt after Mailing (PS Form 3811-A); (viii) the USPS response to such request; and (ix) a copy of petitioner's New York resident income tax return (form IT-201) for the year 2018,

² Although Mr. Encarnacion was listed as petitioner's representative on the petition, he does not qualify to represent petitioner before the Division of Tax Appeals under 20 NYCRR 3000.2 (*see* Tax Law § 2014 [1]).

³ The Division submitted only one affidavit of Ms. Corina. However, attached to Ms. Corina's affidavit were three Requests for Delivery Information/Return Receipt after Mailing and the USPS response to each of those requests, one for each of the notices at issue, i.e., notices L-049803419; L-049814665 and L-049895645.

electronically filed on February 27, 2019, which lists the same Jamaica, New York, address for petitioner as that listed on the notice, the request for conciliation conference, and the petition. According to Ms. Matos's affirmation, the 2018 income tax return was the last return filed with the Division by petitioner before the notice was issued.

b) notice of deficiency, L-049814665, dated July 3, 2019:

(i) an affidavit of Deena Picard, dated May 4, 2020; (ii) a "Certified Record for – DTF-962-F-E – Not of Def Follow Up DTF-963-F-E – Not of Det Follow Up," postmarked July 3, 2019; (iii) an affidavit of Susan Saccocio, dated May 6, 2020; (iv) a copy of the July 3, 2019 notice with the associated mailing cover sheet addressed to petitioner; (v) a copy of petitioner's request for conciliation conference, faxed to BCMS on October 22, 2019; (vi) the affidavit of Heidi Corina noted earlier (*see* Finding of Fact 5-a); and (vii) a Request for Delivery Information/Return Receipt and the USPS response to such request.⁴ According to Ms. Matos's affirmation, the 2018 income tax return noted earlier was the last return filed with the Division by petitioner before the notice was issued, and lists the same address as that listed on the notice, the request for conciliation conference and the petition (*see* finding of fact 5-a).

c) notice of deficiency, L-049895645, dated July 16, 2019:

(i) an affidavit of Deena Picard, dated May 4, 2020; (ii) a certified mail record entitled "Certified Record for – DTF-962-F-E – Not of Def Follow Up" for notices allegedly issued on July 16, 2019; (iii) an affidavit of Susan Saccocio, dated May 6, 2020; (iv) a copy of the July 16, 2019 notice with the associated mailing cover sheet addressed to petitioner; (v) a copy of petitioner's request for conciliation conference, faxed to BCMS on October 22, 2019; (vi) the affidavit of Heidi Corina noted earlier (*see* findings of fact 5-a and b); and (vii) a Request for Delivery Information/Return Receipt and the USPS response to such request. According to Ms. Matos' affirmation, the 2018 income tax return noted earlier was the last return filed with the Division by petitioner before the notice was issued, and lists the same address as that listed on the notice, the request for conciliation conference and the petition (*see* findings of fact 5-a, b).

6. Each of the affidavits of Deena Picard, who has been in her current position since May 2017, and has been a Data Processing Fiscal Systems Auditor 3 since February 2006, sets forth the Division's general practice and procedure for processing statutory notices. Ms. Picard is familiar with the Division's Case and Resource Tracking System (CARTS), which generates

⁴ *See* finding of fact 5-a, footnote 3.

statutory notices prior to mailing. As the Acting Director of MAPS, which is responsible for the receipt and storage of CMRs, Ms. Picard is familiar with 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 page of the CMR to the actual date of mailing. In addition, as described by Ms. Picard, generally 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 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.

7. 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 number is 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 P.O. ADDRESS."

8. The July 2, 2019 CMR consists of 8 pages and lists 102 certified control numbers along with corresponding assessment numbers, names and addresses. Each page of the CMR includes 13 to 15 such entries, with the exception of page 8, which contains no entries. Ms. Picard notes that the copy of the CMR has been redacted to preserve the confidentiality of

information relating to taxpayers who are not involved in this proceeding. A USPS representative affixed a postmark, dated July 2, 2019, to each page of the CMR, handwrote the number “102” on page 8 next to the heading “TOTAL PIECES RECEIVED AT POST OFFICE, and initialed or signed page 8.

9. Page 6 of the CMR indicates that a notice with certified control number 7104 1002 9735 4973 4660 and assessment ID number L-049803419 was mailed to petitioner at the Jamaica, New York, address listed on the notice. The corresponding mailing cover sheet, attached to the Picard affidavit as exhibit “B,” bears this certified control number and petitioner’s name and address, as noted.

10. The July 3, 2019 CMR consists of 17 pages and lists 239 certified control numbers along with corresponding assessment numbers, names and addresses. Each page of the CMR includes 12 to 15 such entries, with exception of page 17, which contains 11 entries. Ms. Picard notes that the copy of the CMR has been redacted to preserve the confidentiality of information relating to taxpayers who are not involved in this proceeding. A USPS representative affixed a postmark, dated July 3, 2019, to each page of the CMR, handwrote the number “239” on page 17 next to the heading “TOTAL PIECES RECEIVED AT POST OFFICE, and initialed or signed page 17.

11. Page 14 of the CMR indicates that a notice with certified control number 7104 1002 9735 4973 8040 and assessment ID number L-049814665 was mailed to petitioner at the Jamaica, New York, address listed on the notice. The corresponding mailing cover sheet, attached to the Picard affidavit as exhibit “B,” bears this certified control number and petitioner’s name and address, as noted.

12. The CMR for the batch of notices to be issued on July 16, 2019, including that addressed to petitioner herein, consists of four pages and lists 50 certified control numbers along with corresponding assessment numbers, names and addresses. Each page of the CMR includes 14 such entries, with the exception of page 4, which contains 8 entries. Ms. Picard notes that the copy of the CMR has been redacted to preserve the confidentiality of information relating to taxpayers who are not involved in this proceeding. Each of the CMR's four pages includes in its upper left corner the preprinted year/day/time "run" listing of "20191910635." Appearing on pages 1 and 4 is the handwritten date "7-16," reflecting the manual change made by Division personnel to ensure that the preprinted date on the CMR was changed to conform with the actual date on which the statutory notices and the CMR were delivered into the possession of the USPS. A USPS representative affixed a postmark, dated July 13, 2019, to each page of the CMR, handwrote the number "50" on page 4 next to the heading "TOTAL PIECES RECEIVED AT POST OFFICE, and initialed or signed page 4. Ms. Picard, in her affidavit, asserts that the "postmark of July 13, 2019 was incorrectly applied to pages 1 through 4 of the certified mail record. The postmarks were applied in error."

13. Page 3 of the CMR indicates that a notice with certified control number 7104 1002 9735 4982 8215 and assessment ID number L-049895645 was mailed to petitioner at the Jamaica, New York, address listed on the notice. The corresponding mailing cover sheet, attached to the Picard affidavit as exhibit "B," and the petitioner's name and address, as noted.

14. Each of the affidavits of Susan Saccocio a manager in the Division's mail room, describe the mail room's general operations and procedures. Ms. Saccocio has been in this position since 2017 and, as a result, is familiar with the practices of the mail room with regard to statutory notices. The mail room receives the notices and places them in an "Outgoing Certified

Mail” area. Ms. Saccocio 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 of mail are checked against the information on the CMR. A clerk then performs a random review of up to 30 pieces 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. A USPS employee affixes a postmark and also places his or her initials or signature on the CMR, indicating receipt by the post office. The USPS employee initialed or signed the last page of the respective CMRs and affixed a postmark to each page of the respective CMRs. The mail room further 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. A review of the July 2, 2019 and the July 3, 2019 CMRs, and the CMR postmarked July 13, 2019 indicate that the USPS employee complied with this request by handwriting or circling the number of pieces received. With respect to the CMR bearing the postmark of July 13, 2019, Ms. Saccocio, in her affidavit, asserts that “[a] postmark of July 13, 2019 was incorrectly applied to pages 1 through 4 of the certified mail record. The postmarks were applied in error.”

15. The affidavit of Heidi Corina, a Legal Assistant 2 in the Division’s Office of Counsel, details her filing of USPS form 3811-A (Request for Delivery Information/Return Receipt After Mailing) in this matter. Form 3811-A is sent to the USPS for mail delivered on or after July 24, 2000. Filing USPS form 3811-A commences a process by which post-mailing, return receipt, delivery confirmation may be obtained from the USPS with regard to a mailing made by registered, certified, insured or express mail.

16. In this matter, Ms. Corina filed three 3811-A forms seeking information about the delivery of the items mailed by the Division to petitioner. Specifically, the first form requested information regarding a piece of mail that was mailed on July 2, 2019 bearing certified control number 7104 1002 9735 4973 4660 and addressed to petitioner at a Jamaica, New York, address. This is the same certified number on the CMR corresponding with the mailing of a notice of deficiency to petitioner on July 2, 2019. In response, the USPS confirmed delivery of certified mail item number 7104 1002 9735 4973 4660 “on July 6, 2019 at 11:28 AM Located in Jamaica, NY 11436.” The scanned image of the recipient’s signature as shown on the USPS response is that of petitioner, Eva Myers Grainger. The scanned address of the recipient indicates the same Jamaica, New York, address as listed on the notice.

The second form requested information regarding a piece of mail that was mailed on July 3, 2019 bearing certified control number 7104 1002 9735 4973 8040 and addressed to petitioner at a Jamaica, New York, address. This is the same certified number on the CMR corresponding with the mailing of a notice of deficiency to petitioner on July 3, 2019. In response, the USPS confirmed delivery of certified mail item number 7104 1002 9735 4973 8040 “on July 6, 2019 at 11:28 AM Located in Jamaica, NY 11436.” The scanned image of the recipient’s signature as shown on the USPS response is that of petitioner, Eva Myers Grainger. The scanned address of the recipient indicates the same Jamaica, New York, address as listed on the notice.

The third form requested information regarding a piece of mail that was mailed on July 16, 2019 bearing certified control number 7104 1002 9735 4982 8215 and addressed to petitioner at a Jamaica, New York, address. This is the same certified number on the CMR corresponding with the mailing of a notice of deficiency to petitioner on July 16, 2019. In response, the USPS confirmed delivery of certified mail item number 7104 1002 9735 4982 8215 “on 7/18/2019 at

11:20 AM Located in Jamaica, NY 11436.” The scanned image of the recipient’s signature as shown on the USPS response is illegible. The scanned address of the recipient is not the same Jamaica, New York, address as listed on the notice. The scanned address of the recipient does not include a secondary unit designator.

17. According to all of the affidavits submitted, copies of the respective notices were properly mailed to petitioner at her Jamaica, New York, address on the dates indicated as claimed.

18. Petitioner did not respond to the Division’s motion

CONCLUSIONS OF LAW

A. As noted, the Division brings a motion to dismiss the petition under section 3000.9 (a) (1) of the Rules of Practice and Procedure of the Tax Appeals Tribunal (Rules) or, in the alternative, a motion for summary determination under section 3000.9 (b). As the petition in this matter was timely filed (*see* finding of fact 4), the Division of Tax Appeals has jurisdiction over the petition and, accordingly, a motion for summary determination under section 3000.9 (b) of the Rules is the proper vehicle to consider the timeliness of petitioner’s request for conciliation conference. This determination shall address the instant motion as such.

B. A motion for summary determination “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]).

C. 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, Inc. 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]). “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*). Petitioner did not respond to the Division’s motion. Accordingly, she is deemed to have conceded that no question of fact requiring a hearing exists (*see Kuehne & Nagel, Inc. v Baiden*, 36 NY2d 539 [1975]; *John William Costello Assocs. v Std. Metals*, 99 AD2d 227 [1st Dept 1984] *lv dismissed* 62 NY2d 942 [1984]).

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]; 689 [b]). Alternatively, a taxpayer may contest a notice of deficiency by filing a request for a conciliation conference with BCMS “if the time to petition for such hearing has not lapsed” (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 merits of the protest (*see* Tax Law § 681 [b]; *Matter of*

Lukacs, Tax Appeals Tribunal, November 8, 2007; *Matter of Sak Smoke Shop*, Tax Appeals Tribunal, January 6, 1989).

E. Where the timeliness of a request for conciliation conference or petition is at issue, the initial inquiry is whether the Division has carried its burden of demonstrating proper mailing by certified mail of the subject notice, the Division must make the following showing:

“first, there must be proof of a standard procedure used by the Division for the issuance of the statutory notice 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 (*Matter of United Water New York*, Tax Appeals Tribunal, April 1, 2004; *see Matter of Katz*).”

F. In this case, the Division has introduced adequate proof of its standard mailing procedures through the affidavits of Ms. Picard and Ms. Saccocio, the 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 Division has also presented sufficient documentary proof, i.e., properly completed CMRs, to establish that notices were mailed as addressed on the following dates: notice of deficiency L-049803419, mailed on July 2, 2019, and notice of deficiency L-049814665, mailed on July 3, 2019. As specifically detailed in findings of fact 8 through 11, the relevant CMRs have been properly completed and therefore constitute highly probative documentary evidence of both the date and fact of mailing (*see Matter of Rakusin*, Tax Appeals Tribunal, July 26, 2001). In this regard, the affidavits submitted by the Division adequately describe the Division’s general mailing procedure as well as the relevant CMRs, and thereby, establish that the general mailing procedure was followed with respect to these two notices⁵ (*see*

⁵ It should also be noted that the Division, through the affidavit of Heidi Corina, also established delivery of the July 2, 2019 and July 3, 2019 notices.

Matter of DeWeese, Tax Appeals Tribunal, June 20, 2002). Further, the address on the mailing cover sheets and CMRs conform with the address listed on petitioner's New York State resident income tax return for the year 2018, which satisfies the "last known address" requirement in Tax Law § 681 (a). It is thus concluded that the Division properly mailed notice L-049803419 on July 2, 2019 and notice L-049814665 on July 3, 2019, and the statutory 90-day time limit to file either a request for conciliation conference with BCMS or a petition with the Division of Tax Appeals commenced on such dates (see Tax Law §§ 170 [3-a]; 681 [b]; 689 [b]).

H. The Division has established that notices of deficiency L-049803419 and L-049814665 were properly mailed as addressed to petitioner at her last known address on July 2, 2019 and July 3, 2019, respectively. Having established that the notices were properly mailed to petitioner, it was incumbent upon petitioner to file either a request for conciliation conference with BCMS or a petition with the Division of Tax Appeals within 90 days thereafter. Petitioner's requests for conciliation conference, filed on October 22, 2019, were therefore untimely, and were properly dismissed by BCMS. Accordingly, summary determination must be granted in favor of the Division with respect to notices L-049803419 and L-049814665.

I. With respect to notice L-049895645, the Division presented a 4-page CMR to prove that the notice was mailed on July 16, 2019. A USPS postmark, dated July 13, 2019, appears on pages 1 through 4 of this CMR (*see* finding of fact 12). On the last page of the CMR, the USPS representative handwrote the number 50, indicating the total number of pieces of mail received at the post office, and initialed or signed page 4. Ms. Picard and Ms. Saccocio, in their affidavits, asserted that the "postmark of July 13, 2019 was incorrectly applied to pages 1 through 4" of the CMR (*see* findings of fact 12 and 14). They further asserted that "[t]he postmarks were applied in error" (*id.*). Here, the proof submitted fails to establish that the notice was properly mailed on

July 16, 2019 and, thus, the period within which to file a protest was not triggered as of such date.

J. An inadequacy in the evidence of mailing, as in conclusion of law I, may be overcome by evidence of delivery of the notice to the taxpayer (*see Matter of Chin*, Tax Appeals Tribunal, December 3, 2015). In such instances of failure to prove proper mailing, the 90-day period for filing either a request for conciliation conference or a petition is tolled until such time as the taxpayer actually receives the notice (*see Hyatt Equities, LLC*, Tax Appeals Tribunal, May 22, 2008; *Matter of Riehm v Tax Appeals Trib. of State of N.Y.*, 179 AD2d 970 [3d Dept 1992], *lv denied* 79 NY2d 759 [1992]), whereupon the time within which to file a protest will commence (*see Matter of Stickel*, Tax Appeals Tribunal, April 7, 2011), unless issuance of the notice itself is precluded as time-barred by operation of the period of limitations thereupon (*see Matter of Agosto v Tax Commn. of the State of N.Y.*, 68 NY2d 891 [1986], *revg* 118 AD2d 894 [3d Dept 1986]; *Matter of Rosen*, Tax Appeals Tribunal, July 19, 1990).

K. To establish that notice of deficiency L-049895645 was mailed by certified mail and was, in fact, thereafter, delivered to and accepted by petitioner, the Division presented the affidavit of Ms. Corina and the accompanying USPS form 3811-A and USPS response thereto (*see* finding of fact 16). As Ms. Corina states, the postal service did deliver a copy of the notice with certified control number 7104 1002 9735 4982 8215 to the Jamaica, New York, address on July 18, 2019. However, the confirmation from the USPS provided an illegible signature of the recipient and the address of the recipient did not include the secondary unit designator, i.e., the floor number.

Given that the signature of the recipient is illegible and that the address does not include the secondary unit designator, there remains a question of fact as to the actual receipt of notice L-

049895645 by petitioner on the asserted date. Therefore, the 90-day period for filing a request for conciliation conference or a petition was tolled. Evidence in the record indicates that petitioner, at the latest, received notice L-049895645 on October 22, 2019, the date on which she signed the request for conciliation conference.

L. The Division's motion for summary determination is granted with respect to notices of deficiency L-049803419 and L-049814665, dated July 2, 2019 and July 3, 2019, respectively, and the petition of Eva Myers Grainger is denied thereto. The Division's motion for summary determination with respect to notice of deficiency L-049895645, dated July 16, 2019, is denied and a hearing concerning the merits of such notice will be scheduled in due course.

DATED: Albany, New York
October 29, 2020

/s/ Winifred M. Maloney
ADMINISTRATIVE LAW JUDGE