

STATE OF NEW YORK

DIVISION OF TAX APPEALS

---

In the Matter of the Petition	:	
of	:	
<b>AHMED A. ALMONTASER</b>	:	ORDER
		DTA NO. 850963
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 2018.	:	

---

Petitioner, Ahmed A. Almontaser, 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 2018.

On June 2, 2025, the Division of Tax Appeals issued to petitioner a notice of intent to dismiss petition pursuant to 20 NYCRR 3000.9 (a) (4). By request of the Division of Taxation, the 30-day period for both parties to respond to the notice of intent to dismiss petition was extended to August 18, 2025. On July 28, 2025, petitioner submitted a letter in opposition to the dismissal. The Division of Taxation, by Amanda Hiller, Esq. (Peter B. Ostwald, Esq., of counsel), submitted documents in support of dismissal by August 18, 2025, which date commenced the 90-day period for the issuance for this order.

After due consideration of the documents submitted, Donna M. Gardiner, Supervising Administrative Law Judge, renders the following determination.

***ISSUE***

Whether petitioner timely filed a petition with the Division of Tax Appeals following the

issuance of a conciliation order.

***FINDINGS OF FACT***

1. This proceeding arose out of a desk audit conducted by the Division of Taxation (Division) of form IT-201, New York resident income tax return, for the tax year 2018, that petitioner, Ahmed A. Almontaser, filed jointly with Nima M. Almontaser.

2. A notice of deficiency, assessment number L-051475045, dated July 27, 2020, was issued by the Division to petitioner and Ms. Almontaser for the year 2018.

3. On February 10, 2021, in protest of the notice of deficiency, petitioner filed a request for conciliation conference with the Division's Bureau of Conciliation and Mediation Services (BCMS).

4. On March 5, 2021, BCMS issued a conciliation order dismissing request (conciliation order), CMS number 000327454, dismissing petitioner's request as untimely filed.

5. On April 17, 2024, petitioner filed a petition with the Division of Tax Appeals in protest of the conciliation order.

6. On June 2, 2025, a notice of intent to dismiss petition was issued to petitioner on the basis that the petition was filed more than 90 days after the issuance of the conciliation order and, therefore, it appeared that the petition was not timely filed.

7. In response to the notice of intent to dismiss petition, and to show proof of proper mailing of the conciliation order, the Division submitted, among other documents: (i) an affirmation of Peter B. Ostwald, Esq., dated August 18, 2025, an attorney employed in the Office of Counsel of the Division; (ii) an affidavit, sworn to on July 14, 2025, of Carla Podlucky, Assistant Supervisor of Tax Conferences of BCMS; (iii) a "CERTIFIED RECORD FOR MANUAL MAIL - CMS-37 - BCMS Order" (CMR) postmarked March 5, 2021; (iv) a copy of

the conciliation order addressed to petitioner and Nima M. Almontaser, with the associated cover letter and cover sheet, dated March 5, 2021; (v) a copy of the request for conciliation conference, dated January 15, 2021, that was filed on February 10, 2021; and (vi) an affidavit, sworn to on July 15, 2025, of Justin Lombardo, a manager of the Division's mail room.

8. In paragraph 5 of his affirmation, Mr. Ostwald states:

“[a]ttached hereto as Attachment 5 is the Division's proof that the Conciliation Order was mailed to Petitioner on March 5, 2021, at his last known address of record, [XXXX] NEWBOLD AVE 1st FL, BRONX, NY 10462-5182. This is the last known address and is the same address as on the Request for Conciliation Conference.”

9. In reviewing the request for conciliation conference filed by petitioner, the address on the form does not reference a floor number at the Newbold Avenue address and the zip code on the form does not include the additional four numbers to the five-digit zip code listed therein. Also submitted with the request for conciliation conference was a cover letter. At the top of the cover letter, petitioner included his address. This address included an apartment number and made no reference to a floor number.

10. The Division did not submit a copy of petitioner's last filed tax return before it sent the conciliation order to petitioner.

11. In response to the notice of intent to dismiss petition, petitioner did not address the issue of timeliness, but only the underlying merits of the petition.

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

A. In ***Matter of Victory Bagel Time*** (Tax Appeals Tribunal, September 13, 2012), the Tax Appeals Tribunal held that the standard to employ for reviewing a notice of intent to dismiss petition is the same as that used for reviewing a motion for summary determination.

B. A motion for summary determination may 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. 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 at the taxpayer’s last known address (*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*).

D. 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). An order is properly mailed when it is delivered into the custody of the United States Postal Service, properly addressed and with the requisite amount of postage affixed (*see Matter of Air Flex Custom Furniture*, Tax Appeals Tribunal, November 25, 1992). In turn, 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).

E. In this case, the Division relies on the request for conciliation conference to establish petitioner’s last known address. However, as set forth in findings of fact 8 and 9, the Division did not mail the conciliation order to the address on the request for conciliation conference. The Division sent the conciliation order to “1st FL” at the Newbold Avenue address. However, neither the request for conciliation conference, nor the cover letter, used a floor number

designation. Thus, the conciliation order was not properly issued to petitioner.

F. The notice of intent to dismiss petition is hereby rescinded and the Division of Taxation shall have 75 days from the date of this order to file its answer in this matter.

DATED: Albany, New York  
November 13, 2025

/s/ Donna M. Gardiner  
SUPERVISING ADMINISTRATIVE LAW JUDGE