

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
PAVEL HARASHCHANKA	:	ORDER
for Revision of a Determination or for Refund of Sales	:	DTA NO. 851920
and Use Taxes under Articles 28 and 29 of the Tax	:	
Law for the Period December 1, 2004 through August	:	
31, 2006.	:	

Petitioner, Pavel Harashchanka, 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 December 1, 2004 through August 31, 2006.

Petitioner, appearing pro se, brought a motion, on September 29, 2025, seeking to vacate levy pursuant to Civil Practice Law and Rules 5222-a. A copy of this motion was sent to the Division of Taxation on December 5, 2025. The Division of Taxation, appearing by Amanda Hiller, Esq. (Kaitlyn Smith, Esq., of counsel), requested and was granted an extension of time to reply to petitioner’s motion, and on January 29, 2026, timely responded in opposition to petitioner’s motion and filed a cross-motion for dismissal or 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. Petitioner timely responded to the cross-motion by March 2, 2026, which date commenced the 90-day period for the issuance of this order.

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 order.

ISSUES

I. Whether the Division of Tax Appeals has jurisdiction to entertain petitioner's motion to vacate levy.

II. Whether the Division of Taxation has established that no material and triable issue of fact exists such that summary determination should be granted in its favor.

FINDINGS OF FACT

1. This matter concerns a notice of determination (notice) issued to petitioner, Pavel Harashchanka, dated March 21, 2008, and bearing assessment number L-029783138. The notice asserted additional sales and use taxes for the period of December 1, 2004 through August 31, 2006, in the amount of \$532,090.23, plus interest and penalty, against petitioner as a responsible person for Remco USA, Inc.

2. The Division of Taxation (Division) addressed the notice to petitioner at his apartment on 84th Street in Brooklyn, New York.

3. On March 20, 2025, petitioner filed a request for conciliation conference (request) with the Division's Bureau of Conciliation and Mediation Services (BCMS). The Division's motion papers include a copy of the request and attachments, which indicate that petitioner was protesting a document, dated March 13, 2025, identified as a "Bank Levy / Warrant and Levy Action" and bears assessment identification number or case number E-808408594-7. A copy of the document is not in the record with the request.

4. On April 4, 2025, BCMS issued a conciliation order dismissing request (conciliation order) to petitioner, bearing CMS number 000370918. BCMS construed petitioner's request as a challenge to the underlying notice, determined that petitioner's request 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 was issued on March 21, 2008, but the request was not mailed until March 20, 2025, or in excess of 90 days, the request is late filed.”

5. On June 21, 2025, petitioner timely protested the conciliation order by filing a petition with the Division of Tax Appeals.

6. Therein, petitioner asserted that he was not a responsible person for Remco USA, Inc., because he has never had any connection to that entity. In an affidavit from petitioner, sworn to on April 15, 2025, he states that he has never been affiliated with a company called Remco USA, Inc., and that he never participated in the business activities of that company. Petitioner also avers that he left the United States in 2007 and only returned in 2023. He swears that during that time, he was not involved with any companies in the United States. Petitioner alleges and states that he has been the victim of identity theft, and states that he has filed reports with the Federal Trade Commission and the Internal Revenue Service to document this issue. Petitioner also attached a warrant from the Division issued against Remco USA, Inc. This warrant is for taxes due under articles 28 and 29 for the period ending August 31, 2006, and references assessment ID L-029780432. The warrant has the docket date of September 19, 2008, and Warrant ID number E-808408581-W001-4.

7. Petitioner also stated that at the time the notice was issued, he did not live at the apartment on 84th Street in Brooklyn, New York. He stated that since January 2007, he had been living outside of the United States due to the expiration of his visa. Petitioner stated that he had no notice of this issue and only became aware of this tax matter recently.

8. On September 29, 2025, petitioner filed a motion to vacate levy pursuant to Civil Practice Law and Rules (CPLR) 5222-a. The motion, dated September 26, 2025, argues that the

levy should be vacated because the Division failed to provide proper notice to petitioner. The motion provides, in part, the following:

“CPLR § 5222-a requires that, when a levy is served on a financial institution, the judgment debtor and any joint account holder must be provided with an Exemption Notice and Claim Form. These forms inform the account holders of their statutory rights to claim exemptions, including but not limited to wages, child support, Social Security benefits, and statutory minimum balances.

In this case, Petitioners did not receive the required Exemption Notice of Claim Form from Capital One Bank or from the Department of Taxation and Finance. The failure to provide these notices deprived Petitioners of their statutory right to assert exemptions in a timely manner.”

9. Subsequently, petitioner provided additional facts, including the following:

“On March 11, 2025, Capital One Bank received a levy issued by the [Division]. Petitioner did not receive any Exemption Notice or Claim Form prior to the levy.

Petitioner first became aware of the levy only after accessing his bank account and discovering that funds had been frozen. On April 10, 2025, [the Division] seized \$13,468.00 from petitioner’s joint bank account.

Initially, the levy restrained the full balance of Petitioner’s account, which was approximately \$22,774.43. After Petitioner contacted [the Division] and provided documentation demonstrating that certain funds belong to non-debtor account holders, [the Division] determined to seize only \$13,468.00 and released the remainder of the restrained funds.”

10. Petitioner supported the foregoing by submitting a document, dated February 16, 2026; a March 13, 2025, letter from Capital One explaining that on March 11, 2025, it received a levy bearing the docket or case number E-808408594-L015-8, ordering the collection of \$8,674,859.39 from his bank accounts, owed to the Division; and, a bank statement for petitioner’s savings account ending in 3774, for the period of April 1, 2025 through April 30, 2025, showing the seizure of \$13,468.00.

11. Petitioner failed to serve the Division with a copy of his motion as required by section 3000.5 (b) of the Rules of Practice and Procedure of the Tax Appeals Tribunal (Rules).

By letter, dated December 5, 2025, the Supervising Administrative Law Judge wrote to the parties indicating the lack of service and provided a copy of the motion to the Division. The Division of Tax Appeals provided the Division with 30 days to respond. The Division of Tax Appeals acknowledged petitioner's motion to vacate levy as filed on December 5, 2025, and provided the Division 30 days to respond, to which the Division timely filed its papers in opposition and cross-moved for dismissal or for summary determination in its favor.

12. In support of its cross motion and to show proof of proper mailing of the notice, the Division, by affirmation of Kaitlyn Smith, Esq., dated January 28, 2026, submitted the following with its motion papers: (i) an affidavit of Amanda House, the Co-Director of the Division's Management Analysis and Project Services Bureau (MAPS), sworn to on January 27, 2026; (ii) a "CERTIFIED RECORD FOR PRESORT MAIL - ASSESSMENTS RECEIVABLE" (CMR), postmarked March 21, 2008; (iii) copies of the notice and associated cover sheet, both of which were addressed to petitioner at the Brooklyn, New York, address with the same apartment designation; (iv) an affidavit of Justin Lombardo, a manager of the Division's mail room, sworn to on January 27, 2026; (v) resident income tax returns for tax years 2002 and 2005 (2002 and 2005 returns), filed on May 19, 2006, listing the same Brooklyn, New York, address for petitioner as is listed on the notice. Petitioner's 2005 return lists the same Brooklyn, New York, address listed on the subject notice. Ms. Smith avers that petitioner's 2005 return was the last return filed by petitioner before said notice was issued and that the address listed thereon was petitioner's last known address.

13. The affidavit of Ms. House, who has been the Co-Director of MAPS since December 2024 and an employee of the Division since March 1999, sets forth the Division's general practice and procedure for processing statutory notices. As Co-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. 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 was manually changed on the first page of the CMR in the present case to the actual mailing date of "3/21/08." In addition, as described by Ms. House, generally all pages of the CMR are banded together when the documents are delivered into 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.

14. According to the House affidavit, 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." Additionally, according to the House affidavit, the last page of the CMR lists the total number of pieces of mail, as well as the total amount of postage and fees.

15. The CMR attached to the House affidavit consists of 26 pages and lists 277 certified control numbers along with corresponding assessment numbers, names and addresses. Each

page of the CMR includes 11 such entries with the exceptions of page 24, on which one of the original entries is crossed out, and page 26, which is the last page and contains 2 entries. Ms. House notes that the copy of the CMR that is attached to her affidavit 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 March 21, 2008, to each page of the CMR, wrote and circled the number "276" on page 26 next to the heading "TOTAL PIECES RECEIVED AT POST OFFICE" and initialed or signed page 26. Ms. House adds that the total number of statutory notices mailed pursuant to the CMR was 276.

16. Page 13 of the CMR attached to the House affidavit indicates that a notice of determination with certified control number 7104 1002 9730 0674 0364 and reference number L-029783138 was mailed to "HARASHCHANKA-PAVEL" at the Brooklyn, New York, address listed on the subject notice of determination. The corresponding mailing cover sheet, attached to the House affidavit as exhibit "B," bears this certified control number and the name "HARASHCHANKA-PAVEL" and address as noted.

17. The affidavit of Mr. Lombardo, a manager of the mail room since 2016 and currently an Associate Administrative Analyst, describes the general operations and procedures of the Division's mail room. Mr. Lombardo attests that he is familiar with the Division's present and past office procedures as related to statutory notices, and that these procedures have remained essentially unchanged since approximately 1992. The mailroom receives the notices and places them in an "Outgoing Certified Mail" area. Mr. Lombardo confirms that a mailing cover sheet precedes each notice. According to the Lombardo affidavit, 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. 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 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. Each page of the CMR in exhibit "A" of the House affidavit contains a USPS postmark, dated March 21, 2008. In addition to the date, the postmark stamp reads "COLONIE CENTER12205" and "USPS." On page 26, corresponding to "TOTAL PIECES AND AMOUNTS," is the preprinted number 277, which is crossed out, and next to "TOTAL PIECES RECEIVED AT POST OFFICE" is the handwritten and circled entry "276," indicating that one piece of certified mail has been "pulled" from the CMR. There is a set of initials or a signature on page 26.

18. Mr. Lombardo further explains that a piece of mail may be "pulled" for any number of reasons, including, but not limited to, a discrepancy in a name or address. Any piece of mail "pulled" will be segregated from the remaining group of statutory notices for correction and issuance at another time. His review of the March 21, 2008, CMR reflected that one piece of mail was "pulled." The piece that was "pulled" is listed on page 24 of the CMR. This piece had been assigned certified control number 7104 1002 9730 0674 1583. A line was placed through the entry for this taxpayer after the statutory notice was "pulled." This deletion is reflected in the change of the total pieces received at the post office on page 26 of the CMR. No such mark is made on or near the listing for petitioner.

19. Based on his review of the affidavit of Ms. House and the exhibits attached thereto, including the CMR, and his personal knowledge of the procedures of the mail room, Mr. Lombardo stated that, on March 21, 2008, an employee of the mail room delivered one piece of certified mail addressed to petitioner at the Brooklyn, New York, address to the USPS in Albany, New York, in a sealed postpaid windowed envelope for delivery by certified mail. Mr. Lombardo attested that the 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 March 21, 2008.

20. Petitioner filed a timely response to the Division's cross motion. On March 24, 2026, petitioner attempted to file a supplementary brief, which was rejected as late and not considered in the rendering of this order.

SUMMARY OF THE PARTIES' POSITIONS

21. Petitioner argues that his motion should be granted, and the levy vacated, because the Division failed to provide him with an exemption notice or claim form prior to executing said levy. Petitioner argues that the Division's cross motion should be denied because material questions of fact remain unanswered, specifically, that he did not receive Exemption Notice or Claim Form prior to the execution of the levy. Petitioner also argues that he did not receive the underlying notice because he did not reside at his Brooklyn, New York, apartment in 2008.

22. The Division argues that petitioner's motion should be denied because collection activities, including levies, do not fall within the jurisdiction of the Division of Tax Appeals. It further notes that a levy does not constitute a statutory notice that provides for hearing rights in this forum. The Division argues that its cross motion should be granted because petitioner challenged the notice, i.e., requested a conciliation conference, after the statutory protest period

had expired, and therefore, the Division of Tax Appeals lacks jurisdiction to consider the underlying merits of the instant petition.

CONCLUSIONS OF LAW

A. Turning to the first issue, petitioner’s motion to vacate levy, pursuant to CPLR 5222-a, must be denied. The Division of Tax Appeals is a forum of limited jurisdiction (*see* Tax Law § 2008; *Matter of Black*, Tax Appeals Tribunal, December 5, 2024; *Matter of Scharff*, Tax Appeals Tribunal, October 4, 1990, *revd on other grounds sub nom Matter of New York State Dept. of Taxation & Fin. v Tax Appeals Trib.*, 151 Misc 2d 326 [Sup Ct, Albany County 1991]). Its power to adjudicate disputes is exclusively statutory (*see Matter of New York State Dept. of Taxation & Fin. v Tax Appeals Trib.*, 151 Misc 2d at 332). We cannot extend our authority to areas not specifically delegated to us (*see Matter of Meltzer*, Tax Appeals Tribunal, March 29, 2018). The Division of Tax Appeals is authorized “[t]o provide a hearing as a matter of right, to any petitioner upon such petitioner’s request . . . unless a right to such a hearing is specifically provided for, modified or denied by another provision of this chapter” (Tax Law § 2006 [4]). Tax Law § 2008 (1) limits the jurisdiction of the Division of Tax Appeals to matters:

“protesting any written notice of the division of taxation which . . . has advised the petitioner of a tax deficiency, a determination of tax due, a denial of a refund or credit application, a cancellation, revocation or suspension of a license, permit or registration, a denial of an application for a license, permit or registration or any other notice which expressly gives a person the right to a hearing in the division of tax appeals under this chapter or other law.” Provided, however, that any written communications of the division of taxation that advise a taxpayer of a past-due tax liability, as defined in section one hundred seventy-one-v of this chapter, shall not give a person the right to a hearing in the division of tax appeals.

Petitioner’s motion to vacate levy concerns a warrant, which is not a document that gives rise to the right to a hearing in the Division of Tax Appeals. Rather, warrants constitute collection activities, which are not within this agency’s jurisdiction (*see Matter of Yim*, Tax

Appeals Tribunal, October 7, 2021; *Matter of Barrier Oil*, Tax Appeals Tribunal, July 29, 1999; *Matter of Pavlak*, Tax Appeals Tribunal, February 12, 1998; *Matter of Driscoll*, Tax Appeals Tribunal, April 11, 1991). As the Division of Tax Appeals lacks subject matter jurisdiction over a warrant, petitioner's motion to vacate levy, must be denied.

B. The next issue concerns the Division's cross motion for dismissal or for summary determination in its favor. As the petition in this matter was filed with the Division of Tax Appeals within 90 days of the issuance of the conciliation order (*see* finding of fact 5), the Division of Tax Appeals has jurisdiction over the petition and a motion for summary determination is the proper motion for relief if petitioner's request for conciliation conference was untimely (*see Matter of Panco Equipment Corp.*, Tax Appeals Tribunal, May 24, 2021).

C. 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]).

Under the Rules, a motion for summary determination is subject to the same provisions as a motion for summary judgment pursuant to CPLR 3212 (20 NYCRR 3000.9 [c]). "The proponent of a summary judgment motion must make a prima face 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 whether a material issue of fact exists or if there is even arguably such an issue (*Bershaw v Altman*, 100 AD2d 642, 643 [3d Dept 1984]). "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 resets his claim’ . . . ‘mere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient’” (*Whelan v GTE Sylvania*, 182 AD2d 446, 449 [1st Dept 1992], citing *Zuckerman v City of New York*, 49 NY2d at 562).

D. There is a 90-day statutory time limit for filing a request for a conciliation conference following the issuance of a statutory notice, including the notice at issue here (Tax Law § 170 [3-a] [a]). The statutory time limit for the filing of a petition or a conciliation conference request is strictly enforced (*see e.g. Matter of American Woodcraft*, Tax Appeals Tribunal, May 15, 2003 [petition filed one day late dismissed]). If a protest is not filed within the 90-day statutory period, the notice of determination becomes a fixed and final liability, leaving the Division of Tax Appeals without jurisdiction to consider the substantive merits of the protest (*see* Tax Law § 1138 [a] [1]; *see e.g. Matter of Garitta*, Tax Appeals Tribunal, February 21, 2017; *Matter of Voelker*, Tax Appeals Tribunal, August 31, 2006; *Matter of Sak Smoke Shop*, Tax Appeals Tribunal, January 6, 1989).

Where, as here, the timeliness of a taxpayer’s protest is in question, the initial inquiry is on the mailing of the statutory notice because a properly mailed notice or conciliation order creates a presumption that such document was delivered in the normal course of the mail (*see Matter of Katz*, Tax Appeals Tribunal, November 14, 1991). 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).

E. The evidence required of the Division in order to establish proper mailing 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 this particular instance (*see Matter of Katz*;

Matter of Novar TV & Air Conditioner Sales & Serv., Tax Appeals Tribunal, May 23, 1991).

The Division may meet its burden of proof to show its standard mailing procedure and that such procedure was followed by “producing affidavits from individuals with the requisite knowledge of mailing procedures and a properly completed CMR” (*Matter of Balan*, Tax Appeals Tribunal, October 27, 2016). As noted by the Tribunal, “[e]mployee affidavits are, generally, a necessary component of the Division’s proof in a timeliness case to show that it has a standard mailing procedure and that such procedure was followed in each case (*Matter of Marrero*, Tax Appeals Tribunal, May 21, 2020, citing *Matter of Balan*).

The House and Lombardo affidavits, submitted by the Division, are consistent with the CMR, the notice, and with each other, have not been refuted and are found to be reliable. They adequately describe the Division’s general mailing procedure as well as the relevant CMR and establish that the general mailing procedure was followed in this case (*see Matter of DeWeese*, Tax Appeals Tribunal, June 20, 2002).

F. It is concluded that the Division has offered sufficient proof to establish the mailing of the statutory notice to petitioner’s last known address on March 21, 2008. The CMR has been properly completed and therefore constitutes highly probative documentary evidence of both the date and fact of mailing (*see Matter of Rakusin*, Tax Appeals Tribunal, July 26, 2001). Further, the address on the mailing cover sheet and CMR conforms with the address listed on petitioner’s 2002 and 2005 returns, which satisfies the “last known address” requirement. The Division has, through its moving papers, demonstrated proper mailing of the notice to petitioner on March 21, 2008, which absent contrary evidence, raises a presumption of receipt by petitioner (*see Tax Law § 1147 [a] [1]; Matter of Ruggerite, Inc. v State Tax Commn., Dept. of Taxation & Fin. of State of N.Y.*, 97 AD2d 634, 635 [3d Dept 1983], *affd* 64 NY2d 688 [1984]; *Matter of United*

Grocery & Deli Corp., Tax Appeals Tribunal, June 13, 2024). Petitioner is entitled to rebut that presumption (*see e.g. Matter of T. J. Gulf, Inc. v New York State Tax Commn.*, 124 AD2d 314, 315 [3d Dept 1986]).

Where the taxpayer successfully rebuts the presumption of receipt, the 90-day period for filing either a request or a petition is tolled until such time as the taxpayer actually receives the notice (*see Matter of Hyatt Equities, LLC*, Tax Appeals Tribunal, May 22, 2008; *Matter of Riehm v Tax Appeals Trib.*, 179 AD2d 970, 971 [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 thereon (*see Matter of Agosto v Tax Commn. of State of N.Y.*, 68 NY2d 891, 893 [1986], *revg* 118 AD2d 894 [3d Dept 1986]; *Matter of Rosen*, Tax Appeals Tribunal, July 19, 1990). If the presumption of receipt is not rebutted, herein, it must be concluded that 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 March 21, 2008 (*see* Tax Law §§ 170 [3-a] [a], 1138 [a] [1]) and, as the request was filed on March 20, 2025, which was more than 90 days after the issuance of the notice at issue, it would be untimely.

G. Petitioner states that he did not receive the notice because, on March 21, 2008, he did not live at his apartment on 84th Street in Brooklyn, New York. He had been residing outside of the United States since 2007 and only learned of the notice in 2025, when the levy was issued against his bank account. Whether petitioner ever received the notice due to his living outside of the United States is a material question of fact requiring a hearing.

H. The motion of Pavel Harashchanka to vacate levy is denied, the Division of Taxation's cross motion for summary determination is denied and this matter will be scheduled for a hearing in due course.

DATED: Albany, New York
May 28, 2026

/s/ Alexander Chu-Fong
ADMINISTRATIVE LAW JUDGE