

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition :  
of :  
**TOMATO INC.** : **DETERMINATION**  
: DTA NO. 825865  
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 :  
March 1, 2005 through August 31, 2008. :

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Pursuant to § 2006.4 of the Tax Law, a petition must be filed within ninety (90) days from the date a statutory notice is issued.

The Notice of Determination (Assessment No. L-032376352) was issued on August 3, 2009, but the petition was not filed with the Division of Tax Appeals until September 6, 2013, or one thousand four hundred and ninety five (1,495) days later.

Pursuant to 20 NYCRR 3000.9 of the Rules of Practice and Procedure of the Tax Appeals Tribunal, the Division of Tax Appeals issued a Notice of Intent to Dismiss Petition on January 15, 2014 informing the parties of the basis for the intended dismissal.

No response having been received from the petitioner as of this date; therefore,

IT IS ORDERED, on the administrative law judge's own motion, that the petition be, and it is hereby, dismissed with prejudice as of this date.

DATED: Albany, New York  
April 30, 2014

/s/ Daniel J. Ranalli  
Daniel J. Ranalli  
Supervising Administrative Law Judge