

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition :  
of :  
**MIRIAM SNYDER** : DETERMINATION  
 : DTA NO. 827383  
for Redetermination of Deficiencies or for Refund of :  
New York State Personal Income Tax under Article 22 :  
of the Tax Law for the Years 2000 through 2015. :  

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Petitioner, Miriam Snyder, filed a petition for redetermination of deficiencies or for refund of New York State personal income tax under Article 22 of the Tax Law for the years 2000 through 2015.

On March 18, 2016, the Division of Tax Appeals issued to petitioner a Notice of Intent to Dismiss Petition pursuant to 20 NYCRR 3000.9(a)(4), on the basis that the required statutory notices were not included with the petition (20 NYCRR 3000.3[b][8]). By a letter dated April 13, 2016, the 30-day period within which to respond to the Notice of Intent to Dismiss Petition was extended, upon the Division of Taxation's April 7, 2016 request, to June 2, 2016. On May 24, 2016, the Division of Taxation, by Amanda Hiller, Esq. (Linda A. Jordan, Esq., of counsel) submitted an affirmation and accompanying documents, including affidavits, in support of the proposed dismissal of the petition. Petitioner did not respond to the proposed dismissal of the petition. Pursuant to 20 NYCRR 3000.5(d) and 3000.9(a)(4), the 90-day period for issuance of this determination commenced on June 2, 2016, pursuant to the extension granted by the Division of Tax Appeals. After due consideration of the affirmation, affidavits, documents and

arguments submitted, and all pleadings filed, Dennis M. Galliher, Administrative Law Judge, renders the following determination.

***ISSUE***

Whether the Division of Tax Appeals has jurisdiction to address the merits of the petition.

***FINDINGS OF FACT***

1. Petitioner, Miriam Snyder, filed a petition with the Division of Tax Appeals. The petition is dated as signed on December 15, 2015. The envelope in which the petition was filed, by certified mail, bears a United States Postal Service (USPS) postmark, dated December 19, 2015, and the petition and the envelope are date stamped as received by the Division of Tax Appeals on December 22, 2015.

2. The foregoing petition included a 19-page affidavit signed by petitioner and 16 attached exhibits. Page one of the petition indicates (by checkmarked boxes) that petitioner seeks relief on several bases, as follows:

- a refund;
- a review of revocation or denial of a licence, permit or registration;
- a review of revocation or denial of exempt status; and
- other relief stated as “dismissal of all no proof of claim of liabilities alleged [sic].”

The petition lists the tax in question as personal income tax, and at page two lists the amount of tax determined and contested as \$40,000.00, but is accompanied by the statement “I am due \$5,000.” The petition further alleges that the Division of Taxation (Division) made the following errors: “Please see the attached affidavit dated 12-15-15 and the exhibits which will show patterned & practiced NYS tax agent bad faith, malicious, vexatious, retaliatory and

erroneous acts against Miriam Snyder.” Item seven of the petition indicates (by a checkmarked box), that a conciliation conference with the Division’s Bureau of Conciliation and Mediation Services (BCMS) had been requested. However, a Conciliation Order was not attached or included among the 16 exhibits filed with the petition.

3. Page 18 of the affidavit accompanying the petition summarizes the relief sought by petitioner as follows:

“I most graciously seek immediate justice in the enforcement of contract, constitutional law and justice. I DEMAND the immediate release of my Driver’s license, the return of funds stolen from my bank accounts, and ALL MONIES DUE ME. I seek the removal of each and every non procedural, unsigned, unauthorized, out of compliance, fictitious, and unconstitutional assessment, lien, levy, and warrant based on their self-evidenced unenforceability and invalidness and based on the above cited laws that render such as false instruments.”

4. The Division of Tax Appeals responded to the foregoing petition by a letter dated December 30, 2015 advising petitioner that the petition could not be processed until certain missing information was provided. Specifically noted as missing from the petition was any notice or assessment number (page 1) or a Conciliation Order (page 3). The letter further stated that a copy of the “appropriate notice/assessment/denial” was not attached to the petition, and advised petitioner that the petition could not be considered until the same was provided. The letter provided a Division of Taxation employee name and contact telephone number by which petitioner could obtain the appropriate documents, and requested petitioner to supply the necessary information postmarked within 30 days of the date of the letter.

5. Petitioner did not respond to the foregoing letter, and on March 18, 2016, the Division of Tax Appeals issued to petitioner a Notice of Intent to Dismiss Petition (Notice of Intent). This

Notice of Intent advised, pursuant to 20 NYCRR 3000.3(d)(1), that where a petition is not in the form required, the same shall be promptly returned to the petitioner, together with a statement indicating the requirements with which the petition does not comply and advising that an additional 30 days will be allowed within which a corrected petition may be filed. The Notice of Intent further advised that, in conformity with 20 NYCRR 3000.3(b)(8), in order to establish timeliness, the petition shall contain a copy of the conciliation order issued, or other statutory notice being protested. The Notice of Intent noted that the petition did not include the required statutory notices, and therefore did not appear to have been timely filed. Finally, the Notice of Intent stated that, pursuant to 20 NYCRR 3000.3(d)(1) and 3000.9(a)(4), respectively, petitioner had 30 days within which to file a corrected petition, and that the parties had 30 days within which to submit written comments on the proposed dismissal. The 30-day period within which to respond to the Notice of Intent was extended, upon the request of the Division to June 2, 2016.

6. Careful review of the petition reveals, at page nine, a list of items petitioner disputes, labeled by petitioner as “non proof of claims.” This list includes items identified as Assessment ID numbers L-040663127-9, L-040663126-1, L-025598055-2, L-023414207-1, L-027624035-5 and L-028080145-6, plus three items identified by Warrant ID numbers E-025598055-W001-3, E-025598055-W002-7 and E-025598055-W004-6. The foregoing six Assessment ID numbers appear on a Consolidated Statement of Tax Liabilities dated September 17, 2015 and addressed to petitioner (Petition Exhibit 9), while the three Warrant ID numbers appear on a Tax Compliance Levy dated November 2, 2015 and listing petitioner as the Judgment Debtor (Petition Exhibit 10).

7. Petitioner did not respond to the December 30, 2015 letter from the Division of Tax Appeals (*see* Finding of Fact 4), or to the Notice of Intent to Dismiss Petition (*see* Finding of Fact 5), and thus did not provide the missing documents specified in the December 30, 2015 letter or any comments in response to the Notice of Intent.

Assessment ID L-025598055-2

8. In response to the Notice of Intent and to prove mailing of the assessment numbered L-025598055-2, the Division provided the following: (i) an affirmation of Linda Jordan in support of dismissal of the petition; (ii) an affidavit, dated April 22, 2016, of Mary Ellen Nagengast, a Tax Audit Administrator I and the Director of the Division's Management Analysis and Project Services Bureau (MAPS); (iii) an affidavit, dated April 25, 2016, of Bruce Peltier, Principal Mail and Supply Clerk in the Division's Mail Processing Center (mailroom); (iv) an affidavit, dated May 20, 2016, of Diane M. Rynski, a Taxpayer Services Administrator 2 in the Division's Office of Processing and Taxpayer Services, together with a transcript of petitioner's Personal Income Tax Return (Form IT-201), filed for the year 2003 on April 15, 2004, which reports the same address for petitioner as that listed on the Notice of Deficiency bearing assessment number L-025598055-2 ; and (v) the 31-page "Certified Record for Presort Mail - Assessments Receivable" (CMR) for September 12, 2005, together with a copy of the Notice of Deficiency with its associated mailing cover sheet.

9. 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. 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. In addition, as described by Ms. Nagengast, 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.

10. All notices are assigned a certified control number. The certified control number for each notice is listed on a separate one-page mailing cover sheet, which also bears a bar code, the taxpayer's mailing address and the departmental return address on the front, and taxpayer assistance information on the back. CARTS also generates any enclosures referenced within the body of each notice, and each notice, with its accompanying mailing cover sheet and appropriate enclosures, is a discrete unit within the batch of notices, and the mailing cover sheet is the first sheet in the unit.

11. The CARTS-generated CMR for each batch of notices lists each statutory notice in the order in which the notices are generated in the batch. The certified control numbers for the notices appear on the CMR under the columnar heading entitled "Certified No." The assessment numbers for the notices appear under the second columnar heading entitled "Reference No.," and the names and addresses of the taxpayers are listed under the third columnar heading entitled "Name of Addressee, Street, and P.O. Address." Remaining columnar headings list appropriate

postage and fee amounts. Each CMR and associated batch of statutory notices are forwarded to the Division's mail room together.

12. Each statutory notice is, as noted, predated with the anticipated date of its mailing. In contrast, each page of the CMR lists an initial date that is approximately 10 days in advance of such anticipated date of mailing in order to allow sufficient lead time for manual review and processing for postage by personnel in the Division's mail room. The CMR lists in its upper left corner the date, ordinal day of the year and military time of the day when the CMR was printed. Following the Division's general practice, this preprinted date, identified as the "run," is to be manually changed by personnel in the Division's mail room to reflect that the preprinted date on the CMR is conformed to the actual date on which the statutory notices and the CMR were delivered into the possession of the USPS (i.e., the mailing date).

13. The affidavit of Bruce Peltier, a supervisor in the Division's mail room since 1999 and currently a mail and supply supervisor, describes the mailroom's general operations and procedures. Under the Division's standard mailing procedures, statutory notices that are ready for mailing are received by the mail room in an area designated for "Outgoing Certified Mail." Each notice in a batch is preceded by its mailing cover sheet and is accompanied by any required enclosures, and each batch includes its accompanying CMR. A member of the mail room staff, in turn, operates a machine that puts each statutory notice and the associated documents into a windowed envelope so that the address and certified number from the mailing cover sheet shows through the window. The staff member then weighs, seals and affixes postage and fee amounts on the envelopes. A mail processing clerk thereafter checks the first and last pieces of certified mail listed on the CMR against the information contained on the CMR, and then performs a

random review of up to 30 pieces of certified mail listed on the CMR by checking those envelopes against the information contained on the CMR. In turn, a member of the mail room staff delivers the sealed, stamped envelopes to a branch of the USPS in the Albany, New York, area for mailing. A USPS employee then affixes his or her initials or signature and a USPS postmark to a page or pages of the CMR to indicate receipt of the mail listed on the CMR and of the CMR itself. 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 mail room, each CMR is picked up at the post office by a staff member on the following day after its initial delivery and is then delivered back to the Division for storage and retention in the regular course of its business.

14. The CMR for the batch of notices to be issued on September 12, 2005, includes the Notice of Deficiency addressed to petitioner herein and includes the assessment number L-025598055-2. The CMR consists of 31 cut sheet pages, including page 6, the page on which information pertaining to petitioner appears. Each page of the CMR includes in its upper left corner the preprinted year/day/time "run" listing of "20052431700." Appearing in the upper left corner of the first page of the CMR (i.e., pages 1 and 31), is the handwritten date "9/12/05," 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. Each page of the CMR includes a USPS postmark dated September 12, 2005. All pages of the CMR include 11 entries, with the exception of page 31, the last page of the CMR, on which 6 entries appear. Certified control number "7104 1002 9730 0849 7655," pertaining to petitioner, was assigned to the Notice of

Deficiency bearing assessment number L-025598055-2, and was to be mailed to petitioner at her 3230 Cruger Ave. Apt., 6B, Bronx, NY 10467-6420 address, as listed on her 2003 tax return.

This was the last return filed before the subject notice was issued to petitioner.<sup>1</sup>

15. Appearing on page 31 of the CMR is the preprinted heading “Total Pieces and Amounts,” to the right of which appear preprinted columns headed “Pieces,” “Postage,” and “Fees.” These columns reflect the preprinted number of pieces of mail for this CMR, here 336, as well as the postage and fee amounts for such pieces of mail. Immediately below this heading is the preprinted heading “Total Pieces Received At Post Office.” Appearing to the immediate right of this heading is the handwritten number 336. The area immediately below and to the right of this heading reflects the aforementioned USPS postmark dated September 12, 2005, with the initials of the postal clerk appearing above the postmark. In fact, these same initials and USPS postmark appear on each page of the CMR. Thus, page 31 of the CMR indicates that a total of 336 pieces of mail were delivered into the custody of the USPS on September 12, 2005. Mr. Peltier states, based upon his review of the Nagengast affidavit and the exhibits attached thereto, and upon his personal knowledge of the procedures of the mail room, that on September 12, 2005, an employee delivered a piece of mail addressed to petitioner, in Bronx, New York, to a branch of the USPS in Albany, New York, in a sealed postpaid envelope for delivery by certified mail. Mr. Peltier attested that the procedures described in his affidavit were the regular procedures followed by mail room staff in the ordinary course of business when handling items

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<sup>1</sup> Ms. Nagengast notes that the names and addresses of other taxpayers listed on the CMR pages provided herein have been redacted to protect the confidentiality of those taxpayers.

to be sent by certified mail, and that these procedures were followed in mailing the piece of mail to petitioner on September 12, 2005.

Assessment ID: L-023414207-1

16. In response to the Notice of Intent and to prove mailing of the assessment numbered L-023414207-1, the Division provided the following: (i) an affirmation of Linda Jordan in support of dismissal of the petition; (ii) an affidavit, dated April 22, 2016, of Mary Ellen Nagengast, a Tax Audit Administrator I and the Director of the Division's Management Analysis and Project Services Bureau (MAPS); (iii) an affidavit, dated April 25, 2016, of Bruce Peltier, Principal Mail and Supply Clerk in the Division's Mail Processing Center (mailroom); (iv) an affidavit, dated May 20, 2016, of Diane M. Rynski, a Taxpayer Services Administrator 2 in the Division's Office of Processing and Taxpayer Services, together with a transcript of petitioner's Personal Income Tax Return (Form IT-201), filed for the year 2003 on April 15, 2004, which reports the same address for petitioner as that listed on the Notice of Deficiency bearing assessment number L-023414207-1; and (v) the 33-page "Certified Record for Presort Mail - Assessments Receivable" (CMR) for November 14, 2005, together with a copy of the Notice of Deficiency with its associated mailing cover sheet.

17. The Division's general practice and procedure for processing statutory notices, as set out in the affidavit of Mary Ellen Nagengast in Findings of Fact 9 through 12, is incorporated by reference as if fully set forth here. The Division's general operations and procedures in its mail room, as set out in the affidavit of Bruce Peltier in Finding of Fact 13, are also incorporated by reference as if fully set forth here.

18. The CMR for the batch of notices to be issued on November 14, 2005 includes the Notice of Deficiency addressed to petitioner herein and includes the assessment number L-023414207-1. The CMR consists of 33 cut sheet pages, including page 4, the page on which information pertaining to petitioner appears. Each page of the CMR includes in its upper left corner the preprinted year/day/time “run” listing of “20053061700.” Appearing in the upper left corner of the first and last pages of the CMR (i.e., pages 1 and 33), is the handwritten date “11/14/05,” 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. Each page of the CMR includes a USPS postmark dated November 14, 2005. All pages of the CMR include 11 entries, with the exception of page 33, the last page of the CMR on which 9 entries appear. Certified control number “7104 1002 9730 1064 0773,” pertaining to petitioner, was assigned to the Notice of Deficiency bearing assessment number L-023414207-1, and was to be mailed to petitioner at her 3230 Cruger Ave., Apt. 6B, Bronx, NY 10467-6420 address, as listed on her 2003 tax return. This was the last return filed before the subject notice was issued to petitioner.<sup>2</sup>

19. Appearing on page 33 of the CMR is the preprinted heading “Total Pieces and Amounts,” to the right of which appear preprinted columns headed “Pieces,” “Postage,” and “Fees.” These columns reflect the preprinted number of pieces of mail for this CMR, here 361, as well as the postage and fee amounts for such pieces of mail. Immediately below this heading is the preprinted heading “Total Pieces Received At Post Office.” Appearing to the immediate

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<sup>2</sup> Ms. Nagengast notes that the names and addresses of other taxpayers listed on the CMR herein have been redacted to protect the confidentiality of those taxpayers.

right of this heading is the handwritten number 361. The area above and to the right of this heading reflects the initials of the postal clerk and the aforementioned USPS postmark dated November 14, 2005. In fact, these same initials and USPS postmark appear on each page of the CMR. Thus, page 33 of the CMR indicates that a total of 361 pieces of mail were delivered into the custody of the USPS on November 14, 2005. Mr. Peltier states, based upon his review of the Nagengast affidavit and the exhibits attached thereto, and upon his personal knowledge of the procedures of the mail room, that on November 14, 2005, an employee delivered a piece of mail addressed to petitioner, in Bronx, New York, to a branch of the USPS in Albany, New York, in a sealed postpaid envelope for delivery by certified mail. Mr. Peltier attested that the procedures described in his affidavit were the regular procedures followed by mail room staff in the ordinary course of business when handling items to be sent by certified mail, and that these procedures were followed in mailing the piece of mail to petitioner on November 14, 2005.

Assessment Ids: L-040663126-1 and L-040663127-9

20. In response to the Notice of Intent and to prove mailing of the assessments numbered L-040663126-9 and L-040663127-9, the Division provided the following: (i) an affirmation of Linda A. Jordan in support of dismissal of the petition; (ii) an affidavit, dated April 22, 2016, of Mary Ellen Nagengast, a Tax Audit Administrator I and the Director of the Division's Management Analysis and Project Services Bureau (MAPS); (iii) an affidavit, dated April 25, 2016, of Bruce Peltier, Principal Mail and Supply Clerk in the Division's Mail Processing Center (Center); (iv) an affidavit, dated May 20, 2016, of Diane M. Rynski, a Taxpayer Services Administrator 2 in the Division's Office of Processing and Taxpayer Services, together with a transcript of petitioner's Personal Income Tax Return (Form IT-201), filed for the year 2003 on

April 15, 2004, which reports the same address for petitioner as that listed on the notices of deficiency bearing assessment numbers L-040663126-1 and L-040663127-9; and (v) the 1,105-page “Certified Record for Presort Mail - Assessments Receivable” (CMR) for March 3, 2014, together with copies of the notices of deficiency with their associated mailing cover sheets.

21. The Division’s general practice and procedure for processing statutory notices, as set out in the affidavit of Mary Ellen Nagengast in Findings of Fact 9 through 12, are incorporated by reference as if fully set forth here. The Division’s general operations and procedures in its mail room, as set out in the affidavit of Bruce Peltier in Finding of Fact 13, are incorporated by reference as if fully set forth here.

22. The CMR for the batch of notices to be issued on March 3, 2014, includes the notices of deficiency addressed to petitioner herein and includes the assessment numbers L-040663126-1 and L-040663127-9. The CMR consists of 1,105 cut sheet pages, including page 243, the page on which information pertaining to petitioner appears. Each page of the CMR includes in its upper left corner the preprinted year/day/time “run” listing of “20145511700.” Appearing in the upper right corner of the first and last pages of the CMR (i.e., pages 1 and 1,105), is the handwritten date “3/3/14,” 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. Each page of the CMR includes a USPS postmark dated March 3, 2014. All pages of the CMR include 11 entries, with the exception of page 1,105, the last page of the CMR on which 5 entries appear. Certified control numbers “7104 1002 9730 0183 6406” and “7104 1002 9730 0183 6413,” pertaining to petitioner, were assigned to the notices of deficiency bearing assessment

numbers L-040663126-1 and L-040663127-9, and were to be mailed to petitioner at her 3230 Cruger Ave., Apt. 6B, Bronx, NY 10467-6420 address, as listed on her 2003 tax return.<sup>3</sup>

23. Appearing on page 1,105 of the CMR is the preprinted heading “Total Pieces and Amounts,” to the right of which appear preprinted columns headed “Pieces,” “Postage,” and “Fees.” These columns reflect the preprinted number of pieces of mail for this CMR, here 12,149, as well as the postage and fee amounts for such pieces of mail. Immediately below this heading is the preprinted heading “Total Pieces Received At Post Office.” Appearing to the immediate right of this heading is the handwritten number “12,149.” Appearing at the lower right side of page 1,105 is a stamped box bearing the instruction “POST OFFICE Hand write total # of pieces and initial. Do Not stamp over written areas.” The area immediately below and to the right of this stamped instruction reflects the initials of the postal clerk and the aforementioned USPS postmark dated March 3, 2014. In fact, the same USPS postmark appears on each page of the CMR. Thus, page 1,105 of the CMR indicates that a total of 12,149 pieces of mail were delivered into the custody of the USPS on March 3, 2014. Mr. Peltier states, based upon his review of the Nagengast affidavit and the exhibits attached thereto, and upon his personal knowledge of the procedures of the mail room, that on March 3, 2014, an employee delivered two pieces of mail addressed to petitioner, in Bronx, New York, to a branch of the USPS in Albany, New York, in sealed postpaid envelopes for delivery by certified mail. Mr. Peltier attested that the procedures described in his affidavit were the regular procedures followed by mail room staff in the ordinary course of business when handling items to be sent by

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<sup>3</sup> Petitioner’s address has remained consistent and unchanged on all of the filings made in this matter.

certified mail, and that these procedures were followed in mailing the pieces of mail to petitioner on March 3, 2014.

24. The facts set forth above as Findings of Fact 8 through 15 (concerning assessment L-025598055-2), 16 through 19 (concerning assessment L-023414207-1), and 20 through 23 (concerning assessments L-040663126-9 and L-040663127-9) were established through the affidavits of Mary Ellen Nagengast, a Division employee and Director of its MAPS bureau, Bruce Peltier, a Division employee and supervisor in the Division's mail room, and Diane M. Rynski, a Division employee in the Office of Processing and Taxpayer Services, together with the documents submitted therewith (*see* Findings of Fact 8, 16 and 20). Each affiant avers to their personal involvement in and familiarity with the ongoing past and present practices and procedures concerning, respectively, the preparation and generation of notices such as those notices of deficiency at issue herein, their subsequent issuance by mailing via delivery to the USPS, and the source of the address to which such notices are mailed. The Division maintains that the foregoing evidence establishes that the notices of deficiency bearing the noted assessment numbers were properly issued to petitioner on September 12, 2005, November 14, 2005, and March 3, 2014, respectively. In turn, the Division asserts that the petition challenging such notices was filed more than 90 days after the dates on which they were issued, leaving the petition untimely and the Division of Tax Appeals without jurisdiction to review the same on the merits.

Assessment IDs: L-027624035-5 and L-080801145-6

25. In addition to the four assessments described above, petitioner also listed assessment numbers L-027624035-5 and L-028080145-6 in her petition, but did not include copies of such

assessments with her petition. The Division, in response, provided copies of such assessments, dated August 28, 2006 and January 16, 2007, respectively. The Division points out that each of such assessments was issued as a Notice of Additional Tax Due. Review of the assessments reveals the same to have been issued as a result of petitioner's failure to have reported changes to her federal income tax returns, for the tax years 2002 and 2003, to New York State as required under Tax Law § 659. The Division notes that these assessments were issued after December 1, 2004, and asserts that, under Tax Law § 173-a(2), petitioner is not entitled to a hearing, and the Division of Tax Appeals is without jurisdiction to provide one, with respect to such assessments prior to payment thereof.

26. Finally, petitioner also listed three warrants, identified by the numbers E-025598055-W001-3, E-025598055-W002-7 and E-025598055-W004-6, with such three Warrant ID numbers appearing on a Tax Compliance Levy dated November 2, 2015 and listing petitioner as the Judgment Debtor. The Division asserts that the Division of Tax Appeals does not have jurisdiction to provide a hearing with respect to the Division's levy and collection activities on warrants such as those listed by petitioner.

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

A. In ***Matter of Victory Bagel Time*** (Tax Appeals Tribunal, September 13, 2012) the 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. The Division responded in support of the Notice of Intent to Dismiss Petition on four bases, as follows:

i) petitioner did not include copies of any of the documents she has listed as being protested.

ii) two of the assessments listed as protested (L-027624035-5 and L-028080145-6) are notices of additional tax due, with respect to which the right to a hearing, before payment, is precluded by the terms of Tax Law § 173-a.

iii) three of the documents listed as protested (E-025598055-W001-3, E-025598055-W002-7 and E-025598055-W004-6) are warrants with respect to which the jurisdiction of the Division of Tax Appeals does not extend.

iv) four of the assessments (L-040663126-1, L-040663127-9, L-025598055-2 and L-023414207-1) were properly issued to petitioner, as established by the mailing proof provided by the Division, such that petitioner's failure to have filed any challenge to such assessments within 90 days after their issuance leaves the same fixed and final and not subject to review on the substantive merits thereof by the Division of Tax Appeals.

Each of the foregoing bases for dismissal will be addressed hereafter.

D. The Division of Tax Appeals is authorized to "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]).

Consistently, as an adjudicatory body of limited jurisdiction, the powers of the Division of Tax Appeals are confined to those expressly conferred in its authorizing statute (*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 Tribunal*, 151 Misc 2d 326 [1991]). Therefore, in the absence of legislative action, this forum cannot extend its authority to entertain disputes that have not been specifically delegated to it and to which its jurisdiction does not extend (*Matter of Hooper*, Tax Appeals Tribunal, July 1, 2010).

E. First, to the extent petitioner seeks review of the six notices listed on the Consolidated Statement of Tax Liabilities dated September 17, 2015, and review of the three warrants listed on the Tax Compliance Levy dated November 2, 2015 (*see* Finding of Fact 6), petitioner has failed to provide copies of any statutory notices or other documents concerning such identified liabilities that would enable a determination to be made as to the timeliness of the petition herein challenging the same, or that there exists jurisdiction or the right to a hearing before the Division of Tax Appeals with regard to such identified liabilities (*see Matter of Pacori*, Tax Appeals Tribunal, November 20, 2008; 20 NYCRR 3000.3[b][8]; 3000.9[a][4]). Accordingly, dismissal of the petition on this basis alone is warranted.<sup>4</sup>

F. Turning to the second basis for dismissal, concerning Assessment IDs L-027624035-5 and L-028080145-6 (*see* Finding of Fact 25), a taxpayer must report changes or corrections to federal taxable income, as made by or reported to the Internal Revenue Service, to the Division within 90 days after the final determination of such changes or corrections, and either concede to the accuracy of the federal changes or corrections or state a basis for asserting that the changes or corrections are erroneous (Tax Law § 659). If the federal changes or corrections are not timely reported, the Division is authorized by Tax Law § 681(e) to issue a Notice of Additional Tax Due. The Division may issue such notice at any time (Tax Law § 683[c][1][C]).

G. Tax Law § 173-a(2) specifically provides that a Notice of Additional Tax Due issued on or after December 1, 2004 shall not be construed as a notice that gives the taxpayer the right to a hearing before the Division of Tax Appeals (Tax Law § 173-a[2]). Accordingly, as a matter of law (and in addition to the foregoing basis for dismissal set forth in Conclusion of Law E), Tax Law § 173-a(2) precludes petitioner from obtaining a hearing with respect to the subject

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<sup>4</sup> It is noted in this regard that no conciliation order was attached to the petition (*see* Finding of Fact 2).

notices of additional tax due. Neither Article 22 nor Article 40 of the Tax Law provides taxpayers with the right to a hearing to contest such notices (*see Matter of Kyte*, Tax Appeals Tribunal, June 9, 2011).

H. Turning next to the third basis for dismissal, concerning the three warrants identified as E-025598055-W001-3, E-025598055-W002-7 and E-025598055-W004-6 (*see* Finding of Fact 26), it is well established that the Division of Tax Appeals has no authority to review activities conducted by the Division to collect unpaid taxes after the assessments have become fixed and final, including providing a hearing to address the protocol pursuant to which the Division applies payments on outstanding assessments or concerning levy and collection matters such as those that would be undertaken in connection with the warrants listed in this matter (*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; *see Club Marakesh v. Division of Tax Appeals*, Sup. Ct., Albany Co., Nov 7, 1990, Keniry, J). Thus (and in addition to the foregoing bases for dismissal set for in Conclusions of Law E, F and G), dismissal of the petition as to the three identified warrants is required.

I. Finally, turning to the fourth basis for dismissal, concerning Assessment IDs L-025598055-2 (*see* Findings of Fact 8 through 15), L-023414207-1 (*see* Findings of Fact 16 through 19), and L-040663126-1 and L-040663127-9 (*see* Findings of Fact 20 through 23), there is a 90-day statutory time limit for filing a petition following the issuance of a Notice of Deficiency (Tax Law §§ 681[b]; 689[b]). The Division of Tax Appeals lacks jurisdiction to consider the merits of any petition filed beyond the 90-day time limit (*Matter of Voelker*, Tax Appeals Tribunal, August 31, 2006).

J. Where the timeliness of a petition is at issue, the initial inquiry is whether the Division has carried its burden of demonstrating proper issuance of the underlying statutory notices by mailing the same, via certified or registered mail, to petitioner's last known address (*see Matter of Katz*, Tax Appeals Tribunal, November 14, 1991; *Matter of Novar TV & Air Conditioner Sales & Serv.*, Tax Appeals Tribunal, May 23, 1991). A notice is issued when it is properly mailed, and it is properly mailed when it is delivered into the custody of the USPS (*Matter of Air Flex Custom Furniture*, Tax Appeals Tribunal, November 25, 1992).

K. 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 under review (*see Matter of Katz; Matter of Novar TV & Air Conditioner Sales & Serv.*).

L. 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 and issuing notices of deficiency. In addition, careful review of the documents submitted establishes that the Division has also presented sufficient documentary proof, i.e., the properly completed CMRs together with the affidavit of Ms. Rynski, that the subject notices of deficiency were properly addressed and were, in fact, mailed to petitioner on September 12, 2005, November 14, 2005 and March 3, 2014, respectively (*see* Finding of Fact 24) .

M. The 90-day period for filing petitions with respect to the foregoing four notices listed in the petition commenced 90 days after the respective issuance dates of each of such notices (i.e., within 90-days after September 12, 2005 [L-025598055-2], November 14, 2005 [L-

023414207-1], and March 3, 2014 [L-040663126-1 and L-040663127-9]). The petition in this matter was filed on December 19, 2015 (*see* Finding of Fact 1), a date that falls well-beyond the 90-day period of limitations applicable to each of the foregoing notices, and was thus untimely. Accordingly, as a matter of law, the Division of Tax Appeals is without jurisdiction to consider the merits of the petition. Thus, dismissal of the petition as to the four notices of deficiency identified herein is required.<sup>5</sup>

N. As noted, petitioner did not respond to the Notice of Intent to Dismiss Petition in any manner, including specifically submitting any challenge or evidence to counter the Division's proof of mailing of the notices as described above.

O. The Notice of Intent to Dismiss Petition dated March 18, 2016 is sustained and the petition of Miriam Snyder is hereby dismissed.

DATED: Albany, New York  
September 1, 2016

/s/ Dennis M. Galli her  
ADMINISTRATIVE LAW JUDGE

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<sup>5</sup> These same four notices of deficiency were the subject of a previous proceeding brought by petitioner in the context of her challenge to the Division's proposed suspension of her driver's license pursuant to Tax Law Article 8, § 171-v. In that prior proceeding, the Division's motions for summary determination sustaining the proposed license suspension, and for dismissal of the petition as untimely, were denied (without prejudice) because, inter alia, the Division failed to establish the dates of issuance of the same four notices, such that there remained the unresolved material issue of fact as to whether such notices were fixed and final liabilities (per Tax Law § 171-v[1]) with respect to which no further rights to a hearing existed (*see Matter of Snyder*, Order DTA No. 826108, January 8, 2015, Galliher, ALJ). Shortly after issuance of that Order, the Division issued a Notice of Discontinuance of Proceeding by which it canceled its then-proposed suspension of petitioner's driver's license. Petitioner's subsequent application for costs in regard to such prior proceeding was denied by an Order dated June 25, 2015 (*see Matter of Snyder*, Order DTA No. 826108, June 25, 2015, Galliher, ALJ).