

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
FIRAS AHMAD	:	ORDER
	:	DTA NO. 850553
for Redetermination of a Deficiency or for Refund of	:	
New York State Personal Income Tax under Article 22	:	
of the Tax Law for the Year 2017.	:	

Petitioner, Firas Ahmad, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under article 22 of the Tax Law for the year 2017.

The Division of Taxation, by its representative, Amanda Hiller, Esq. (Linda Jordan, Esq., of counsel), brought a motion on January 30, 2025, seeking dismissal of the petition or, in the alternative, summary determination in this matter pursuant to sections 3000.5 and 3000.9 (a) and (b) of the Rules of Practice and Procedure of the Tax Appeals Tribunal. Petitioner, appearing pro se, filed a response by March 3, 2025, which date commenced the 90-day period for the issuance of this order.

Based upon the motion papers, the affidavits and attached documents, and all pleadings submitted in connection with this matter, Osborne K. Jack, Administrative Law Judge, renders the following order.

ISSUE

Whether petitioner filed a timely request for conciliation conference with the Bureau of Conciliation and Mediation Services following the issuance of a notice of disallowance.

FINDINGS OF FACT

1. The subject of the Division of Taxation's (Division's) motion is the timeliness of a request for conciliation conference (request) filed with the Division's Bureau of Conciliation and Mediation Services (BCMS) by petitioner, Firas Ahmad, in protest of a notice of disallowance for tax year 2017, dated February 21, 2019 (notice). The notice was addressed to petitioner at an address in Brooklyn, New York.

2. On April 17, 2023, petitioner filed a request with BCMS in protest of the notice.

3. On May 5, 2023, BCMS issued a conciliation order dismissing request, CMS No. 000352120, to petitioner. The conciliation order determined that petitioner's protest of the notice was untimely and stated, in part:

"The Tax Law requires that a request be filed within two years from the date of the statutory notice. Since the notice(s) was issued on 2/21/19, but the request was not faxed until 4/17/23, or in excess of two years, the request is late filed."

4. On May 18, 2023, petitioner timely filed a petition with the Division of Tax Appeals in protest of the conciliation order.

5. To show proof of proper mailing of the notice, the Division, by the purported affirmation¹ of Linda Jordan, Esq., dated January 30, 2025, submitted the following with its motion papers: (i) an affidavit of Marianna Denier, a Principal Administrative Analyst and the Director of the Division's Management Analysis and Project Services Bureau (MAPS), sworn to on July 16, 2024; (ii) a copy of a "CERTIFIED RECORD FOR - DTF-170 Adjusted Refund

¹ The language contained in the purported affirmation submitted by Ms. Jordan does not comply with the requirements of Civil Practice Laws and Rules (CPLR) 2106 and State Administrative Procedure Act (SAPA) § 302.

Denial” (CMR), postmarked February 21, 2019; (iii) a copy of the notice with the associated mailing cover sheet addressed to petitioner; (iv) an affidavit of Susan Ramundo, a manager of the Division’s mail room, sworn to on July 23, 2024; (v) a copy of petitioner’s request and the conciliation order issued by BCMS on May 5, 2023; and (vi) a copy of petitioner’s electronically filed form IT-201, New York State resident income tax return, for tax year 2017 (return), dated February 8, 2018, showing the same Brooklyn, New York, address for petitioner as that shown on the notice.

6. Ms. Denier has served as the Director of MAPS since July 2022. Prior to that, she was a supervisor in MAPS since October 2004. She is also a Principal Administrative Analyst and has held that position since August 2022. Prior to this position, Ms. Denier was a Supervisor of Administrative Analysis from July 2019 through August 2022. In performing her duties, Ms. Denier has used the Division’s electronic Case and Resource Tracking System (CARTS), which generates statutory notices, including notices of disallowance. As the Director of MAPS, which is responsible for the receipt and storage of CMRs, Ms. Denier is familiar with the Division’s past and present procedures as they relate to statutory notices. Ms. Denier’s affidavit sets forth the Division’s general practices and procedures for generating and issuing statutory notices.

7. Statutory notices generated from CARTS are predated with the anticipated date of mailing and each notice is assigned a certified control number. The certified control number of each notice is listed on a separate one-page mailing cover sheet that is generated by CARTS for each notice. The mailing cover sheet also bears a bar code, the recipient’s mailing address and the Division’s return address on the front, and taxpayer assistance information on the back. CARTS also generates any enclosures referenced in the statutory notice. Each notice, with its

accompanying mailing cover sheet and any enclosures referenced in the body of that notice, is a discrete unit within the batch of notices.

8. Each batch of statutory notices is accompanied by a CMR. The CMR lists each notice in the order it is generated in the batch. The certified control numbers are listed on the CMR under the heading entitled "CERTIFIED NO." The statutory notice 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." Each CMR and associated batch of statutory notices are forwarded to the mail room together. All pages of the CMR are banded together when the documents are delivered to the Division's mail room and remain so when returned to the Division after mailing. 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.

9. The CMR for the batch of statutory notices to be issued on February 21, 2019, including the notice addressed to petitioner, consisted of 346 pages. The Division included with its submission all of the pages of the CMR. Each page includes in its upper left corner a preprinted date that is approximately 10 days in advance of the anticipated mailing date. Appearing in the upper right corner of pages 1 and 346 is the handwritten date "2/21." Following the Division's general practice, the date on the first and last pages of the CMR was manually changed to ensure that the date on the CMR conformed with the actual date that the statutory notices and the CMR were delivered into the possession of the United States Postal Service (USPS). Each of the pages includes a USPS postmark, dated February 21, 2019. Ms. Denier noted that the copy of the CMR attached to her affidavit has been redacted to preserve the confidentiality of information relating to taxpayers who are not involved in this proceeding.

10. Page 170 of the CMR indicates that a notice with certified control number 7104 1002 9735 4768 9450 was mailed to petitioner at the Brooklyn, New York, address listed on the notice. The corresponding mailing cover sheet, attached to the Denier affidavit with a copy of the notice as exhibit “B,” bears this same certified control number and petitioner’s name and address as noted.

11. Page 170 of the CMR also lists reference number 190223168010 00. On both the notice and the mailing cover sheet, “19022316801000 -AD00” is vertically typewritten next to petitioner’s name and address. Ms. Denier does not explain why the letters “AD” which appear on the notice and cover sheet, were not included in the reference number on the CMR. In paragraph five of her affidavit, Ms. Denier discussed the way assessment numbers are [sic] reflected on the CMR pursuant to the Division’s standard mailing procedure. She stated that, “[t]he Assessment numbers are [sic], Audit Case ID numbers, Case ID numbers, Collection Case ID numbers or Document Locator Numbers (DLN) [sic] listed under the second heading, entitled ‘REFERENCE NO.’” She does not explain which, if any, of these categories the reference number used in this case falls under or how the use of that number comports with the Division’s standard mailing procedure.

12. Appearing below the preprinted heading “CERTIFIED NO” on page 346 of the CMR is the preprinted heading “TOTAL PIECES AND AMOUNTS,” next to which is the preprinted number “4,977.” Immediately beneath this heading is the preprinted heading “TOTAL PIECES RECEIVED AT POST OFFICE,” next to which is the handwritten number “4997.” A USPS postmark, dated February 21, 2019, appears on this page, as well as initials or a signature.

13. Ms. Denier states that the notice was mailed on February 21, 2019, as indicated by the CMR, and the USPS postmark on each page of the CMR.

14. Ms. Denier avers that the procedures followed and described in her affidavit were the normal and regular procedures of the Division on February 21, 2019.

15. Ms. Ramundo, a manager of the Division's mail room, describes the mail room's general operations and procedures as they relate to statutory notices. Ms. Ramundo has been a manager of the mail room since 2017. As a mail room manager, Ms. Ramundo is knowledgeable regarding past and present office procedures as they relate to statutory notices. Ms. Ramundo's official title is Associate Administrative Analyst, and her duties include managing the staff that delivers mail to branch offices of the USPS.

16. The mail room receives statutory notices that are ready for mailing in an "Outgoing Certified Mail" area. The mail room also receives the corresponding CMR for each batch of notices. A staff member receives the batch of notices and associated mailing cover sheets and operates a machine that puts each notice and its mailing cover sheet into a windowed envelope. That staff member then weighs, seals and places postage on each envelope. A clerk then checks the first and last pieces of certified mail listed on the CMR against the information contained on the CMR. A clerk will also perform 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. A staff member then delivers the envelopes and the CMR to one of the various USPS branches located in the Albany, New York, area.

17. A USPS employee affixes a postmark and writes his or her initials or signature on the CMR, indicating receipt by the post office of the mail listed on the CMR and of the CMR itself. The mail room also 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 member of the mail room staff picks up the CMR at the USPS the following day and delivers it to other Division personnel for storage and retention. The CMR retrieved from the USPS is the Division's record of receipt by the USPS for the pieces of certified mail listed thereon.

18. Ms. Ramundo avers that each page of the CMR contains a postmark. A review of the CMR confirms the presence of a postmark on each page, and a signature or initials on page 346. The postal employee wrote the number "4977" and initialed or signed the last page to indicate the pieces of mail received at the post office.

19. Ms. Ramundo attests that, based on her review of the Denier affidavit and attached exhibits and her personal knowledge of the mail room procedures, on February 21, 2019, an employee of the mail room delivered to the USPS one piece of certified mail addressed to petitioner at his Brooklyn, New York, address in a sealed postpaid envelope for delivery by certified mail. She also states that the CMR delivered to the USPS on February 21, 2019, was returned to the Division. Ms. Ramundo further attests that the procedures described in her affidavit were the regular 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 February 21, 2019.

20. In his response to the motion, petitioner, by a document purporting to be an affirmation,² asserts that he submitted all required documents on time and that due to administrative disruptions caused by the COVID-19 pandemic, the processing of these documents may have been delayed by the Division.

² The language contained in petitioner's purported affirmation does not comply with the requirements of CPLR 2106 and SAPA § 302.

CONCLUSIONS OF LAW

A. As noted, the Division brings a motion to dismiss the petition under section 3000.9 (a) 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 filed within 90 days of the conciliation order, 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 order 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]). "To defeat a motion for summary judgment, the opponent must also 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 v City of New York*, 49 NY2d at 562). 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 v Tri-Pac Export Corp.*, 22 NY2d 439, 441 [1968]; *Museums at Stony Brook*

v Village of Patchogue Fire Dept., 146 AD2d 572, 573 [2d Dept 1989]). If material facts are in dispute, or if contrary inferences may be drawn reasonably from undisputed facts, then a full trial is warranted, and the case should not be decided on a motion (*see Gerard v Inglese*, 11 AD2d 381, 382 [2d Dept 1960]).

D. A taxpayer may protest a notice of disallowance by filing either a petition for a hearing with the Division of Tax Appeals or a request for a conciliation conference with BCMS within two years from the date of mailing of such notice (*see* Tax Law §§ 689 [c]; 170 [3-a] [a]; *see also Matter of Yoell-Mirel*, Tax Appeals Tribunal, September 21, 2015).

E. Where, as here, the timeliness of a request for conciliation conference is at issue, the initial inquiry is whether the Division has met its burden of demonstrating the fact and date of mailing of the notice to petitioner's last known address (*see Matter of Katz*, Tax Appeals Tribunal, November 14, 1991). To meet its burden, the Division must show proof of a standard procedure used by the Division for issuing statutory notices by one with knowledge of the relevant procedures and must also show proof that the standard procedure was followed with respect to the notice here (*see Matter of Katz; Matter of Novar TV & Air Conditioner Sales & Serv.*, Tax Appeals Tribunal, May 23, 1991).

F. Here, the Division failed to document its standard procedure for the issuance of notices of disallowance. Additionally, the Division failed to demonstrate that such standard procedure was followed in the issuance of the notice of disallowance to petitioner at his last known address. Neither the Denier or the Ramundo affidavit explains the use of the reference number listed on the CMR or how the use of that number complies with the Division's standard mailing procedure.

G. The Division of Taxation's motion for summary determination is denied, and a hearing will be scheduled in due course.

DATED: Albany, New York
May 29, 2025

/s/ Osborne K. Jack
ADMINISTRATIVE LAW JUDGE