

**NEW YORK CITY TAX APPEALS TRIBUNAL
ADMINISTRATIVE LAW JUDGE DIVISION**

In the Matter of the Petition : **DETERMINATION**
:
of : **TAT(H) 11-8(GC)**
:
SEBCO LAUNDRY SYSTEMS, INC. :
:

Hauben, C.A.L.J.:

Upon the motion of the Commissioner of Finance (Commissioner or Respondent) of the City of New York (City), dated December 10, 2012, under Section 1-05(b)(1)(vii) of the City Tax Appeals Tribunal Rules of Practice and Procedure (Tribunal Rules) for an order dismissing the Petition of Sebco Laundry Systems, Inc. (Petitioner) on the grounds that the Petition was not timely filed, the December 10, 2012 Affirmation in Support of Motion to Dismiss by Martin Nussbaum, Esq., Assistant Corporation Counsel and the exhibits submitted therewith,¹ the following Determination is issued.

ISSUE

Whether the Petition should be dismissed as untimely because it was filed more than ninety days after the mailing of the Conciliation Decision.

FINDINGS OF FACT

1. Respondent issued a Notice of Determination to Petitioner dated October 19, 2009 asserting a General Corporation Tax (GCT) deficiency for the period 1/1/05 to 12/31/07 in the principal

¹ Petitioner appeared by its President, Steve Breitman. Petitioner did not respond to the Motion to Dismiss.

amount of \$55,812.03, plus interest to 11/30/09 of \$17,468.35 and penalty of \$23,996.57 for a total amount due of \$97,276.95.

2. Petitioner requested a conciliation conference with Respondent's Conciliation Bureau. On the Request for Conciliation, Petitioner listed its address as 30 Route 22, Green Brook, N.J. 08812, and named Steve Breitman as contact person. On March 19, 2010 the Director of the Conciliation Bureau, Duncan D. Riley, issued a Conciliation Decision to Petitioner discontinuing the Conciliation proceeding. The Conciliation Decision reflects that it was issued "as a result of the taxpayer's or their duly authorized representative's failure to appear for a scheduled conciliation conference on March 16, 2010 at 2:00 P.M." The Conciliation Decision informed Petitioner of its right to file a Petition with the Tribunal within 90 days of the Conciliation Decision.

3. Petitioner filed a petition that was received by the Tribunal on April 22, 2011. The envelope containing the Petition bore a postmark of April 18, 2011. The Tribunal acknowledged receipt of the Petition on May 12, 2011 and advised Petitioner and Respondent that the Petition did not appear to have been timely filed and requested information on the issue of whether the Tribunal had jurisdiction to consider the Petition. Respondent filed an Answer to the Petition on July 11, 2011 but did not move to dismiss the Petition. An informal conference was held in October 2012 and further conferences were scheduled.

4. On December 10, 2012, Respondent filed a motion to dismiss the Petition on the grounds that it had been untimely filed. The Motion was supported by the Affirmation of Martin Nussbaum, Esq., Assistant Corporation Counsel, copies of the Notice of

Determination, Petitioner's Request for Conciliation Conference, the Conciliation Decision, the Petition, the affidavit of Duncan D. Riley (Riley), Director of Respondent's Conciliation Bureau, and copies of mail documents. Petitioner did not file a response to Respondent's motion.

5. Mr. Riley was employed by Respondent in his current position on March 19, 2010. Mr. Riley attested to the routine practice and procedure of mailing Conciliation Decisions to taxpayers from the Conciliation Bureau. A matter in conciliation may be discontinued for a number of reasons including failure to appear for a scheduled conference. When a taxpayer fails to appear, the conciliator handling the case prepares a Conciliation Decision and has the Decision signed by the Director of the Conciliation Bureau. Then the Conciliator prepares an envelope to transmit the Decision to the taxpayer. The Conciliator prepares a United States Postal Service (USPS) Form 3800, Receipt for Certified Mail and a USPS Form 3811, Domestic Return Receipt. On both the Form 3800 and Form 3811, the Conciliator indicates that the Conciliation Bureau is the source of the Form. Once the Forms 3800 and 3811 are prepared, the Conciliator examines them carefully to ensure that the name and address of the taxpayer are present, legible and identical on all pieces. The Conciliator checks to ensure that the pre-printed article number on the Form 3800 matches the number written on the Form 3811. Finally, the Conciliator places the Conciliation Decision in the envelope, seals it, affixes the Forms 3800 and 3811 in the appropriate location (front and back) on the envelope and then places the completed piece of mail in the Conciliation Bureau's mail box reserved for this purpose on the third floor of 345 Adams Street, Brooklyn, New York. Once each day, certified envelopes, prepared by the individual Conciliators of the Conciliation Bureau are picked up from the Conciliation

Bureau's outgoing mail box on the third floor of 345 Adams Street and brought to the mail room at 210 Joralemon Street, Brooklyn, New York for further processing and mailing. Within two days of preparation, pick-up and mailing, the mail room would return the USPS Form 3800, Receipt for Certified Mail, to the Conciliation Bureau. After the receipt has been returned, it is placed in the folder dedicated to that particular matter. Within five to ten days after mailing, the USPS Form 3811, Domestic Return Receipt, is returned to the Conciliation Bureau by the mail room. This form is also placed in the file folder dedicated to that particular matter.

6. Mr. Riley attested that the Receipt for Certified Mail found in Petitioner's file was addressed to Sebco Laundry Systems, Inc, Attn: Steve Breitman, 30 Route 22, Green Brook, New Jersey, 08812, Article Number 7005 1820 0007 4143 2785, mailed from the Conciliation Bureau on March 19, 2010. The receipt indicated that the envelope was taken to the United States Postal Service office located at the Brooklyn Municipal Building at Joralemon Street where a United States Postal Service clerk acknowledged receipt of the envelope by stamping the receipt with a postmark of March 19, 2010. The receipt was returned to the Conciliation Bureau and filed in the folder for Petitioner in accordance with Conciliation Bureau procedures.

7. Mr. Riley also attested that the Domestic Return Receipt returned to the Conciliation Bureau and found in Petitioner's folder is addressed to Sebco Laundry Systems, Inc, Attn: Steve Breitman, 30 Route 22, Green Brook, New Jersey, 08812, Article Number 7005 1820 0007 4143 2785. The article number, line 2, matches the article number on the Form 3800. The signature line has the signature of Patricia Cam. The date of delivery is 3/22/10. The front of the receipt shows a postmark returning the

receipt to the Conciliation Bureau on March 24, 2010. The receipt returned to the Conciliation Bureau was filed in Petitioner's folder in accordance with standard Conciliation Bureau procedures.

8. Mr. Riley also attested that based on the above and upon a review of the file that the Conciliation Decision was prepared and mailed in accordance with the above described procedures.

CONCLUSIONS OF LAW

The timely filing and service of a petition is a jurisdictional prerequisite to the Tribunal review of a taxpayer's petition seeking redetermination of a deficiency asserted by Respondent in a Notice of Determination. (City Charter § 170.) For a petition to be timely filed, it must be filed within ninety days of the latter of the mailing of (1) the protested notice of determination, or (2) if a conciliation conference was requested, within ninety days of the mailing of the Conciliation Decision or the date of the Commissioner's confirmation of the discontinuance of the conciliation proceeding.

In this matter, Petitioner requested a conciliation conference, and a Conciliation Decision was issued, bearing a date of March 19, 2010. The Petition bears a postmark of April 18, 2011, more than a year after the date of the Conciliation Decision. Accordingly, if the Conciliation Decision was properly mailed on March 19, 2010, the Petition was not timely filed and the Tribunal does not have subject matter jurisdiction over the Petition.

The Commissioner has the burden of proving that the Conciliation Decision was properly addressed and mailed. (*Matter*

of Goldman & Goldman, P.C., TAT(E) 02-12(CR) [City Tax Appeals Tribunal, March 24, 2005], Matter of Novar TV & Air Conditioning Sales & Services, Inc., [New York State Tax Appeals Tribunal, May 23, 1991], Matter of William & Gloria Katz, [New York State Tax Appeals Tribunal, November 14, 1991]].

The Certified Mail Receipt and the Domestic Return Receipt prepared for the mailing of the Conciliation Decision were addressed to Sebco Laundry Systems, Inc. Attn. Steve Breitman, 30 Route 22, Green Brook, N.J. 08812, the address listed by Petitioner on the Request for Conciliation. Accordingly, the Conciliation Decision was properly addressed.

A conciliation Decision is deemed mailed when it is delivered to the custody of the USPS for mailing. (*Matter of Goldman & Goldman, P.C., Matter of Novar*). Section 11-2116.a of the Administrative Code provides in relevant part:

[t]he mailing of [any notice authorized or required under the RPTT provisions of the Code] shall be presumptive evidence of the receipt of same by the person to whom addressed. Any period of time which is determined according to the provisions of this chapter by the giving of notice shall commence to run from the date of mailing of such notice.

The Code does not require actual receipt of such notice by the taxpayer.

The "presumption of delivery" arises where there is "sufficient evidence of mailing." (*Matter of Goldman & Goldman, P.C., Matter of Katz.*) Proper mailing of a conciliation decision is established by (1) proof of a standard procedure for issuing

conciliation decisions; and (2) proof that the standard procedure was followed.

The affidavit of Mr. Riley explains Respondent's standard practices and procedures for addressing and mailing conciliation decisions. Mr. Riley attested that based upon his review of the documents in the folder maintained for the documents relating to Petitioner that the procedures described in the affidavit were followed in this matter.

A properly completed Form 3800 represents direct documentary evidence of the date and the fact of mailing. (*Matter of Air Flex Custom Furniture, Inc.* [New York State Tax Appeals Tribunal, November 25, 1992]). The Form 3800 prepared for Petitioner in this matter is properly completed and bears Petitioner's address. The Form 3800 bears a USPS date stamp of "Mar 19 2010," indicating that the envelope to which it was attached was delivered to the USPS on March 19, 2010. Mr. Riley's affidavit and the Form 3800 together constitute direct evidence that Respondent's procedures were followed in this matter. Moreover, The Form 3811, Domestic Mail Receipt, indicates that the Conciliation Decision was in fact delivered to Petitioner on March 22, 2010.

Petitioner did not submit any papers in opposition to Respondent's motion to dismiss the Petition.

Respondent has established that the Conciliation Decision in this matter was properly addressed and mailed to Petitioner on March 19, 2010 and that it was delivered to Petitioner on March 22, 2010.

ACCORDINGLY, IT IS CONCLUDED THAT as the Petition was filed more than ninety days after the mailing of the Conciliation Decision on March 19, 2010, the Petition is untimely filed and the Tribunal lacks jurisdiction to consider it. The Petition is dismissed.

DATED: June 28, 2013
New York, New York

Warren P. Hauben
Chief Administrative Law Judge