

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

In the Matter of the Petition

of

KEYPORT, INC.

:  
:  
:  
:  
:  
:  
:

**DETERMINATION**

**TAT(H) 13-28 (RP)**

---

Murphy, C.A.L.J.:

Upon the motion of the Commissioner of Finance (Commissioner or Respondent) of the City of New York (City), dated December 11, 2013, 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 for Hearing of Keyport, Inc. (Petitioner) on the grounds that the Petition was not timely filed, the December 11, 2013 Affirmation in Support of Motion to Dismiss by Martin Nussbaum, Esq., Assistant Corporation Counsel and the exhibits submitted therewith, 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**

Respondent issued a Notice of Determination to Petitioner dated May 11, 2012, asserting Real Property Transfer Tax on the November 3, 2009 transfer of property located in the Borough of Queens, Block 276, Lot 39, in the principal amount of \$20,559.16,

plus interest to 5/21/02 of \$4,371,73 and penalty of \$2,775.49 for a total amount due of \$27,706.38.

Petitioner requested a conciliation conference with Respondent's Conciliation Bureau, dated July 31, 2012, and signed by Mr. Tehrani. The Request for Conciliation Conference was received by Respondent on August 6, 2012. Petitioner listed its address as 172-13 Hillside Avenue, Ste. 201, Jamaica, NY 11432, on the Request for Conciliation and named Mr. Tehrani as contact person.

On June 12, 2013 Duncan D. Riley, the Director of the Conciliation Bureau, 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 execute and return the Conciliation Bureau's proposed resolution dated January 17, 2013." The Conciliation Decision informed Petitioner of its right to file a Petition protesting the Conciliation Decision with the Tribunal within 90 days of service of the Conciliation Decision.

Petitioner filed a Petition protesting the Notice of Determination. The Petition was signed by Frank Tehrani, President of Petitioner, who was identified as Petitioner's representative. The Petition was received by the Tribunal on September 17, 2013. The envelope containing the Petition bore a postmark of September 13, 2013. The Tribunal acknowledged receipt of the Petition on September 23, 2013. The Tribunal advised Petitioner and Respondent that the Petition did not appear to have been timely filed and requested information with respect to the mailing and receipt of the Petition and the protested Conciliation Decision.

On September 30, 2013, Respondent provided a copy of the envelope in which the Petition was received by the Law Department which bore a U.S. Postal stamp dated September 13, 2013, and a copy of a Certified Mail Receipt for the mailing of the Conciliation Decision with a date of delivery of "6/13." The USPS Certified Mail Receipt post mark is not entirely legible in this copy.

Mr. Tehrani responded to the Tribunal's Acknowledgement by letter dated October 1, 2013. Mr. Tehrani requested dismissal of the matter as the transfer was a "partial conveyance of fee interest" by and/or to the same or related entity, and the property was subject to a continuing lien.

On December 12, 2013, 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, Director of Respondent's Conciliation Bureau, and copies of certain mailing documents.

Included in the mailing documents was a copy of a USPS Form 3800 Postal Service Certified Mail Receipt which recited an item mailed to Petitioner Keyport, Inc. at 172-13 Hillside Avenue, Ste. 201, Jamaica, N.Y. 11432, Attn: Frank Tehrani. The copy of the Certified Mail Receipt was for item number 7008 3230 0002 5515 8168, and bore a legible mailing stamp for the Municipal Retail Station date-stamped June 12, 2013.

Also included in the mailing documents was a copy of a USPS Form 3811 Domestic Return Receipt, referring to article number 7008 3230 0002 5515 8168, which bore a signature and a date of delivery of "6/13." The Domestic Return Receipt was addressed to Respondent Conciliation Bureau, 345 Adams Street, 3<sup>rd</sup> Floor, New York, NY 11201 Attn: Lai F. Tong.

Petitioner did not file a response to Respondent's motion.

Mr. Riley was employed by Respondent in his current position on June 12, 2013. 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 disagreement with or failure to respond to a Proposed Resolution. When a taxpayer transmits his/her disagreement with a Proposed Resolution, or fails to respond to a Proposed Resolution, the conciliator handling the case prepares a Conciliation Decision. The Conciliation Decision is then signed by the Director of the Conciliation Bureau. After the Director of the Conciliation Bureau signs the Conciliation Decision, the conciliator prepares an envelope to transmit the Decision to the taxpayer. The conciliator prepares a USPS Form 3800 Receipt for Certified Mail and a USPS Form 3811 Domestic Return Receipt. On both the USPS Form 3800 and the USPS Form 3811, the conciliator indicates that the Conciliation Bureau is the source of the Form. Once the USPS 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 USPS Form 3800 matches the number written on the USPS Form 3811. Finally, the conciliator places the Conciliation Decision in the envelope, seals it, affixes the USPS

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 outgoing 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 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 on the first floor of 345 Adams Street, Brooklyn, New York for further processing and mailing. Within two days of preparation, pick-up and mailing, the mail room returns the USPS Form 3800 Receipt for Certified Mail, to the Conciliation Bureau. After the receipt has been returned, it is placed in the file 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.

Mr. Riley attested that the USPS Form 3800 Receipt for Certified Mail found in Petitioner's file was addressed to Keyport, Inc., 172-13 Hillside Avenue, Suite 201, Jamaica, N.Y. 11432, Article Number 7008 3230 0002 5515 8168, and was mailed from the Conciliation Bureau on June 12, 2013. He further attested that the receipt bears the handwritten sender line of Conciliation Bureau LFT, and that LFT are the initials of Lai F. Tang, an employee of the Conciliation Bureau.

Mr. Riley attested that the USPS Form 3800 Receipt for Certified Mail indicates 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 June 12, 2013. The Certified Mail Receipt was

returned to the Conciliation Bureau and filed in the folder for Petitioner in accordance with standard Conciliation Bureau procedures.

Mr. Riley also attested that the USPS Form 3811 Domestic Return Receipt returned to the Conciliation Bureau and found in Petitioner's folder is addressed to Keyport, Inc., 172-13 Hillside Avenue, Suite 201, Jamaica, N.Y. 11432, Article Number 7008 3230 0002 5515 8168. The article number at line 2 matches the article number on the USPS Form 3800. The date of delivery is 6/13. Above the date of delivery line is a Signature line for the recipient, which contains a handwritten signature obtained by the U.S. Postal Service of an unidentified individual at the address of Petitioner Keyport, Inc. The front of the receipt shows a date stamp returning the receipt to the Conciliation Bureau on June 17, 2013. The receipt returned to the Conciliation Bureau was filed in Petitioner's folder in accordance with standard Conciliation Bureau procedures.

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

Ninety days from June 13, 2013 is September 10, 2013.

#### **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. (NY 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 June 12, 2013. The Petition bears a postmark of September 13, 2013, more than ninety days after the date of the Conciliation Decision. Accordingly, if the Conciliation Decision was properly mailed on June 12, 2013, 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.*, [NY City Tax Appeals Tribunal TAT(E) 02-12, March 24, 2005], *Matter of Novar TV & Air Conditioning Sales & Services, Inc.*, [NY State Div Tax Appeals DTA No. 806675, May 23, 1991], *Matter of William & Gloria Katz*, [NY State Tax Appeals DTA No. 805768, November 14, 1991]).

The USPS Form 3800 Certified Mail Receipt and the USPS Form 3811 Domestic Return Receipt prepared for the mailing of the Conciliation Decision were addressed to Keyport, Inc., 172-13 Hillside Avenue, Ste. 201, Jamaica, N.Y. 11432, Attn: Frank Tehrani, 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 City Administrative Code does not require actual receipt of such notice by the taxpayer. (Administrative Code § 11-2107; see *Matter of Kenning v. State Tax Commission*, 72 Misc2d 929 [Sup Ct, Albany County 1972], *aff'd* 43 AD2d 815 [3d Dept 1973] *appeal dismissed* 34 NY2d 653 [1974])

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 USPS Form 3800 represents direct documentary evidence of the date and the fact of mailing. (*Matter of Air Flex Custom Furniture, Inc.* [NY State Div Tax Appeals DTA No. 807485, 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 "JUN 12 2013" indicating that the envelope to which it was attached was delivered to the USPS on June 12, 2013. Mr. Riley's affidavit and the Form 3800 together constitute direct evidence that Respondent's procedures were followed in this matter. Moreover, the USPS Form 3811, Domestic Mail Receipt, indicates that the Conciliation Decision was in fact delivered to Petitioner on June 13, 2013.

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 June 12, 2013 and that it was delivered to Petitioner on June 13, 2013. The envelope containing the Petition was USPS post-marked September 13, 2013.

**ACCORDINGLY, IT IS CONCLUDED THAT** as the Petition was filed more than ninety days after the mailing of the Conciliation Decision on June 12, 2013, the Petition is untimely filed and the Tribunal lacks jurisdiction to consider it. The Petition is dismissed.

DATED: April 17, 2014  
New York, New York

---

Anne W. Murphy  
Chief Administrative Law Judge