STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
JOSE A. MUNIZ	:	DECISION DTA NO. 826347
For Review of a Notice of Proposed Driver License Suspension Referral Under Tax Law § 171-v.	:	

Petitioner, Jose A. Muniz, filed an exception to the determination of the Administrative Law Judge issued on April 2, 2015. Petitioner appeared pro se. The Division of Taxation appeared by Amanda Hiller, Esq. (Michele W. Milavec, Esq., of counsel).

Petitioner filed a brief in support of his exception. The Division of Taxation filed a letter brief in opposition. Petitioner filed a reply brief. Petitioner's request for oral argument was denied. The six-month period for the issuance of this decision began on August 27, 2015, the date that petitioner's reply brief was received.

After reviewing the entire record in this matter, the Tax Appeals Tribunal renders the following decision.

ISSUE

Whether the Division of Taxation's notice of proposed driver license suspension referral issued to petitioner should be sustained.

FINDINGS OF FACT

We find the facts as determined by the Administrative Law Judge, except for findings of fact 1, 2 and 3, which have been modified to more fully reflect the record. The Administrative

Law Judge's findings of fact and the modified findings of fact are set forth below.

1. The Division of Taxation (Division) issued to petitioner, Jose A. Muniz, a notice of proposed driver license suspension referral (the 60-day notice), dated September 27, 2013, which notified petitioner that new legislation allows New York State to suspend the driver's licenses of persons who have delinquent unpaid tax debts. The notice informed petitioner of how to avoid such suspension, how to respond to the notice and what would ensue if he failed to take action. Attached to the notice was a consolidated statement of tax liabilities listing petitioner's assessments subject to collection, as follows:

Assessment No.	Tax period ended	Tax Amount Assessed	Interest Assessed	Penalty Assessed	Payments and credits	Current Balance Due
L-035411945-2	8/31/09	$0.00	$159.33	$254.08	$0.00	$413.41
L-035411944-3	11/30/09	$0.00	$0.00	$28.30	$0.00	$28.30
L-033157748-8	8/31/08	$878.54	$925.98	$263.45	$0.00	$2,067.97
L-033157747-9	11/30/08	$758.36	$745.90	$227.43	$0.00	$1,731.69
L-033157746-1	5/31/09	$1,020.91	$865.62	$306.09	$0.00	$2,192.62
L-033157745-2	2/28/09	$674.36	$618.88	$202.23	$0.00	$1,495.47
L-032739147-2	12/31/05	$2,978.00	$2,718.37	$1,440.89	$0.00	$7,137.26
L-032739146-3	12/31/03	$254.00	$318.03	$193.45	$0.00	$765.48
L-032372458-4	3/31/06	$0.00	$408.21	$1,194.25	$0.00	$1,602.46
L-032372457-5	6/30/06	$0.00	$298.12	$872.16	$0.00	$1,170.28
L-032372456-6	9/30/06	$0.00	$538.21	$1,574.58	$0.00	$2,112.79
L-031626648-6	5/31/08	$570.51	$396.13	$171.05	$704.80	$432.89
L-028266429-1	9/30/04	$0.00	$446.89	$693.56	$0.00	$1,140.45
L-028266428-2	12/31/04	$0.00	$655.97	$1,018.05	$0.00	$1,674.02
L-026663149-7	9/30/02	$0.00	$303.00	$373.33	$0.00	$676.33
L-026663148-8	12/31/02	$0.00	$378.15	$465.92	$0.00	$844.07

L-026663147-9	3/31/03	$0.00	$349.04	$430.08	$0.00	$779.12
L-026663146-1	6/30/03	$0.00	$290.87	$358.40	$0.00	$649.27
L-026663145-2	6/30/02	$0.00	$1,124.60	$1,385.68	$0.00	$2,510.28
L-026663144-3	3/31/04	$0.00	$422.02	$519.98	$0.00	$942.00
L-026663143-4	6/30/04	$0.00	$395.24	$486.99	$0.00	$882.23
Total						**$31,248.39**

Specifically, the 60-day notice indicated that a response was required within 60 days from its mailing, or the Division would notify the New York State Department of Motor Vehicles (DMV) and petitioner's driver's license would be suspended. The front page of the 60-day notice informed petitioner that unless one of the exemptions on the back page of the 60-day notice applied to him, he was required to pay the tax due, or set up a payment plan, in order to avoid suspension of his license.

The back page of the 60-day notice is titled, "How to respond to this notice." The opening sentence directly beneath the title lists a phone number and instructs the recipient that "[I]f any of the following apply," he or she is to call the Division at that number. Furthermore, the recipient is advised that he or she may be asked to supply proof in support of his or her claim. The first two headings under the title, "How to respond to this notice" are "Child support exemption" and "Commercial driver's license exemption." The third heading, "Other grounds," states that the recipient's driver's license will not be suspended if any of the following apply: "You are not the taxpayer named in the notice. The tax debts have been paid. The Tax Department [Division] is already garnishing your wages to pay these debts. Your license was previously selected for suspension for unpaid tax debts ***and***: you set up a payment plan with the Tax Department [Division], ***and*** the Tax Department [Division] erroneously found you failed to comply with that

payment plan on at least two occasions in a twelve-month period." Also under "Other grounds" is the statement that the recipient may contact the Division to establish that he or she is eligible for innocent spouse relief under Tax Law § 654, or that enforcement of the underlying tax debts has been stayed by the filing of a bankruptcy petition.

Under the heading, "Protests and legal actions," it is explained that if the recipient protests with the Division, or brings a legal action, he or she may only do so based upon the grounds listed above. Furthermore, under a heading titled, "If you do not respond within 60 days," the recipient is informed that the Division will provide DMV with the information necessary to suspend the recipient's driver's license, unless the recipient does one of the following within 60 days: resolves his or her tax debts or sets up a payment plan; notifies the Division of his or her eligibility for an exemption; or protests the proposed suspension of his or her license by either: filing a request for a conciliation conference with the Division, or filing a petition with the Division of Tax Appeals.

2. On June 17, 2014, petitioner filed a petition in response to a conciliation default order dated March 21, 2014 from the Division's Bureau of Conciliation and Mediation Services (BCMS). The conciliation default order attached to the petition indicated that notice of the conciliation conference was mailed to petitioner on February 6, 2014, and that petitioner had failed to appear at a conciliation conference on March 12, 2014. Also included was a letter addressed to petitioner enclosing the conciliation order. This letter informed petitioner that if there was a reasonable excuse for his default, he could file a request to vacate the default with the conciliation conferee within 30 days. The letter explained that as an alternative to filing a request to vacate the default with the conciliation conferee, petitioner could file a petition with the Division of Tax Appeals within 90 days.

Also attached to the petition was an order of suspension or revocation issued by DMV and dated May 22, 2014, indicating that petitioner's driver's license would be suspended on June 5, 2014 based upon "delinquent unpaid tax debt with the NYS Department of Taxation and Finance [Division]."

The petition claims that petitioner never received notice of the scheduled conciliation conference, and thus was denied due process in that he was not allowed an opportunity to be heard at a conciliation conference. The petition also alleges that the June 5, 2014 suspension of petitioner's license has, and will continue to, constitute an undue hardship, particularly with regard to finding and retaining employment.

3. The Division filed its answer to the petition on August 27, 2014. The Division, in turn, filed a notice of motion and supporting papers on December 22, 2014, seeking an order dismissing the petition, or, in the alternative, granting summary determination pursuant to Tax Law § 2006 (6) and 20 NYCRR 3000.5 and 3000.9 (a) and (b).

The Division submitted with its motion an affidavit, sworn to December 22, 2014, made by Matthew McNamara, who is employed as an Information Technology Specialist 3 in the Division's Civil Enforcement Division (CED). Mr. McNamara's duties involve maintenance of the CED internal website, and include creation and modification of pages on the site itself. His duties further involve the creation and maintenance of programs and reports run on a scheduled basis that facilitate and report on the movement of cases, including the creation of event codes based on criteria given by end users. Mr. McNamara's affidavit details the steps undertaken by the Division in carrying out the license suspension program authorized by Tax Law § 171-v.

4. Mr. McNamara's affidavit addresses four sequential actions or steps, to wit, the "Initial Process," the "DMV Data Match," the "Suspension Process" and the "Post-Suspension Process." These steps are summarized as follows:

a) The "Initial Process" involves the Division's identification of taxpayers who may be subject to the issuance of a 60-Day Notice under Tax Law § 171-v. This process involves first reviewing internally set selection criteria to identify taxpayers owing a cumulative and delinquent tax liability (tax, penalty and interest) in excess of $10,000.00, and then reviewing additional data to determine whether any of such taxpayers are excluded from application of the driver's license suspension provisions of Tax Law § 171-v (5) under the following elimination (or exclusion) criteria:

- the taxpayer is deceased;
- the taxpayer is in bankruptcy;
- the age of any assessments included in determining the cumulative amount of liability is more than 20 years from the Notice and Demand issue date;
- a formal or informal protest has been made with respect to any assessments included in the cumulative balance of tax liability where the elimination of such assessment(s) would leave the balance of such liability below the $10,000.00 threshold for license suspension; or
- the taxpayer is on an active approved payment plan.

b) The "DMV Data Match" involves reviewing information on record with DMV for a taxpayer not already excluded under the foregoing criteria to determine whether that taxpayer has a qualifying driver's license potentially subject to suspension per Tax Law § 171-v. This review examines the following 14 data points:

(1) social security number
(2) last name
(3) first name
(4) middle initial
(5) name suffix
(6) DMV client ID

(7) gender
(8) date of birth
(9) mailing address street
(10) mailing address city
(11) mailing address state
(12) mailing address zip code
(13) license class
(14) license expiration date.

If, upon this review, the Division determines that a taxpayer has a qualifying driver's license, that taxpayer is put into the suspension process.

c) The "Suspension Process" commences with the Division performing a post-DMV data match review to confirm that the taxpayer continues to meet the criteria for suspension detailed above in finding of fact 4 (a). If the taxpayer remains within the criteria for suspension, then a 60-day notice will by issued to the taxpayer. In describing the process for the issuance of the 60-day notice, Mr. McNamara states:

> "The date of the correspondence trigger will be stored on the database as the day that the 60-day notice was sent, but an additional 10 days will be added to the date displayed on the page to allow for processing and mailing. Additionally, the status will be set to 'Approved' and the clock will be set for seventy-five (75) days from the approval date.
>
> The taxpayer(s) is sent the 60-day notice (form DTF-454) via regular U.S. mail to the taxpayer's mailing address."

After 75 days with no response from the taxpayer, and no update to the case such that the matter no longer meets the requirements for license suspension (i.e., the case is not on hold or closed or otherwise changed), the case will be electronically sent by the Division to DMV for license suspension.[1] Data is exchanged daily between the Division and DMV. If an issue of data

[1] Prior to license suspension, the Division performs another "criteria for suspension" compliance check of its records. If, for any reason, a taxpayer "fails" the compliance criteria check, the case status will be updated to "on-hold" or "closed" (depending on the circumstances) and the suspension will be stayed. If the status is "on-hold" the 60-day notice remains on the Division's system but the suspension will not proceed until the "on-hold" status is resolved. If the suspension is "closed" then the 60-day notice will be canceled. If the taxpayer "passes" this final criteria compliance check, the suspension by DMV will proceed.

transmission arises, an internal group within the Division (DMV-Failed-Suspensions) will investigate and resolve the issue. Upon successful data processing and transfer, DMV will send a 15-day letter to the taxpayer, advising of the impending license suspension. In turn, if there is no response from the taxpayer, and DMV does not receive a cancelation record from the Division, the taxpayer's license will be marked as suspended on the DMV database.

d) The "Post-Suspension Process" involves monitoring events subsequent to license suspension so as to update the status of a suspension that has taken place. Depending upon the event, the status of a suspension may be changed to "on-hold" or "closed." A change to "on-hold" status can result from events such as those set forth above (e.g., the filing of a protest, a bankruptcy filing, the creation and approval of an installment payment agreement and the like). Similar to the process described in footnote 1, where a subsequent event causes a case status change to "on-hold," the license suspension would be revoked by DMV and the matter would not be referred back to DMV by the Division for resuspension until resolution of the "on-hold" status (the 60-day notice would remain in the Division's system). If the subsequent event resulted in "closed" status, the 60-day notice would be canceled.

5. A copy of the 60-day notice at issue in this matter, a consolidated statement of tax liabilities, and a payment document (form DTF-968.4), by which petitioner could remit payment against the liability in question, were included with Mr. McNamara's affidavit. Mr. McNamara avers, based upon his knowledge of Division policies and procedures regarding driver's license suspension referrals, and upon his review of the Division's records, that the Division issued the 60-day notice to petitioner on September 27, 2013. Mr. McNamara states that such 60-day notice comports with statutory requirements, that petitioner has not raised any of the specifically listed

grounds for challenging such a notice set forth at Tax Law § 171-v (5), and that, therefore, the 60-day notice has not been and should not be canceled.

6. Petitioner did not file a response to the Division's motion.

THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE

The Administrative Law Judge concluded that the Division of Tax Appeals had subject matter jurisdiction over the petition filed in this matter. Therefore, the Administrative Law Judge found that at issue was the Division's motion for summary determination[2] and explained that such a motion 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]).

The Administrative Law Judge explained that Tax Law § 171-v provides for the enforcement of past-due tax liabilities through the suspension of driver's licenses. The Administrative Law Judge concluded that the Division had established a prima facie showing that petitioner met the requirements for license suspension in that the Division had given proper notice of the proposed license suspension referral to petitioner and petitioner had fixed and final outstanding tax liabilities in excess of $10,000.00. The Administrative Law Judge noted that it was incumbent upon petitioner to produce evidence sufficient to raise a question of fact requiring a hearing. As petitioner did not respond to the motion, or present any evidence, the Administrative Law Judge concluded that the facts asserted by the Division in support of its motion were deemed admitted and petitioner was deemed to have conceded that no question of fact requiring a hearing existed.

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[2] Although not specifically held, the implication of the Administrative Law Judge's discussion of this issue is that the Division's motion to dismiss the petition was denied.

With regard to petitioner's due process argument, the Administrative Law Judge understood such argument to be a request to vacate the conciliation default order and held that the Division of Tax Appeals did not have jurisdiction to provide the relief requested by petitioner. The Administrative Law Judge explained that the Division's regulations provide that petitioner had two choices upon receipt of the conciliation default order: either to request that the conciliation conferee vacate the default; or to file a petition with the Division of Tax Appeals (20 NYCRR 4000.5 [b] [3]). The Administrative Law Judge found that having chosen the latter option, petitioner had chosen to place himself in the same position procedurally as if he had never filed a request for a conciliation conference (***Matter of Poindexter***, Tax Appeals Tribunal [September 7, 2006]).

Therefore, the Administrative Law Judge granted the Division's motion for summary determination.

ARGUMENTS ON EXCEPTION

Petitioner asserts that: (1) he did not receive notice of the conciliation conference scheduled by BCMS and that is why he did not attend; (2) the Division was required to prove that it mailed such notice by registered or certified mail and that no such proof was offered by the Division; and (3) the Administrative Law Judge failed to address these arguments in the determination. Finally, petitioner asserts that the failure of the Division to provide him with proper notice of the conciliation conference resulted in his being denied an opportunity to be heard with regard to the 60-day notice, and thus was a violation of his due process rights under the Federal and State constitutions.

The Division argues that petitioner was not denied due process by the failure of the Administrative Law Judge to vacate the conciliation default order, because petitioner chose not

to file a request to vacate the order with the conciliation conferee, the procedure whereby such relief could have been granted. Furthermore, the Division points out that as the Administrative Law Judge noted, petitioner was in the same place procedurally as he would have been had he never filed a request for a conciliation conference.

The Division argues that as petitioner did not challenge the proper issuance of the notice of proposed driver's license suspension referral, or his receipt of the notice, or raise any one of the six specifically enumerated grounds set forth in Tax Law § 171-v (5), petitioner's exception should be denied and the determination of the Administrative Law Judge affirmed.

OPINION

Procedurally, we agree with the conclusion of the Administrative Law Judge that the Division's motion to dismiss is not the proper vehicle for reaching a resolution of this matter and, accordingly, we decide the Division's alternative motion for summary determination. As we previously noted in ***Matter of United Water New York***, (Tax Appeals Tribunal, April 1, 2004):

> "Inasmuch 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 [1968]). If material facts are in dispute, or if contrary inferences may be reasonably drawn 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 [1960]). Upon such a motion, it is not for the court 'to resolve issues of fact or determine matters of credibility but merely to determine whether such issues exist' (***Daliendo v. Johnson***, 147 AD2d 312 [1989])"(***Matter of United Water New York, Inc.***, Tax Appeals Tribunal, April 1, 2004).

Petitioner did not respond to the Division's motion, or offer any evidence to contradict the evidence submitted by the Division. Therefore, we agree with the Administrative Law Judge that the facts asserted by the Division in support of its motion are deemed admitted and petitioner is deemed to have conceded that no question of fact requiring a hearing exists ***(see Kuehne & Nagel v Baiden***, 36 NY2d 539, 544 [1975]; ***John William Costello Assoc. v Standard Metals***

Corp., 99 AD2d 227 [1984], ***lv dismissed*** 62 NY2d 942 [1984]);***Whelan v GTE Sylvania***, 182 AD2d 446, 449 [1992]). Therefore, there are no facts in dispute and we turn to a review of the application of Tax Law § 171-v, which provides for the enforcement of past due tax liabilities through the suspension of driver's licenses.

Tax Law § 171-v (3) requires the Division to notify a taxpayer that he or she is going to be included in the driver's license suspension program by first class mail to the taxpayer's last known address no later than 60 days prior to the Division informing DMV of the taxpayer's inclusion. This subdivision also states that no notice shall issue to a taxpayer whose wages are already being garnished by the Division for past-due tax liabilities, child support, or combined child and spousal support. The process as found herein adequately ensures that notices are issued no later than 60 days prior to a taxpayer being included in the driver's license suspension program.[3]

Tax Law § 171-v also requires that the notification include: a clear statement of the past due tax liabilities, together with notice that the taxpayer's information will be provided to DMV 60 days after the mailing of the notice; a statement that the taxpayer can avoid license suspension by paying the debt or entering into a payment agreement acceptable to the Division and information as to how the taxpayer can go about this; a statement that a taxpayer can only protest the 60-day notice based upon the issues set forth in subdivision 5; and a statement that the suspension will remain in effect until the fixed and final liabilities are paid or a satisfactory

[3] There may be a slight inconsistency between the statute and the Division's process in that it appears there is no provision for ensuring that a taxpayer whose wages are already being garnished by the Division for past-due tax liabilities, child support, or combined child and spousal support is not sent a 60-day notice. However, as this provision is not relevant to the current matter, and there are provisions in the 60-day notice for such taxpayers to avoid a license suspension referral by notifying the Division of such garnishments, we will not address this issue.

payment arrangement is entered into. Subdivision 5 provides that a taxpayer may only challenge a driver's license suspension or referral on the following grounds:

> "(i) the individual to whom the notice was provided is not the taxpayer at issue; (ii) the past-due tax liabilities were satisfied; (iii) the taxpayer's wages are being garnished by the department for the payment of the past-due tax liabilities at issue or for past-due child support or combined child and spousal support arrears; (iv) the taxpayer's wages are being garnished for the payment of past-due child support or combined child and spousal support arrears pursuant to an income execution issued pursuant to section five thousand two hundred forty-one of the civil practice law and rules; (v) the taxpayer's driver's license is a commercial driver's license as defined in section five hundred one-a of the vehicle and traffic law; or (vi) the department incorrectly found that the taxpayer has failed to comply with the terms of a payment arrangement made with the commissioner more than once within a twelve month period for the purposes of subdivision three of this section" (Tax Law § 171-v [5]).

As evidenced by the 60-day notice, the Division has shown that all of the notice requirements of Tax Law § 171-v are met in the notice of proposed driver's license referral issued in this matter.

If the taxpayer has not challenged the notice on any of the above-grounds, paid the past due tax liabilities or made payment arrangements, by the conclusion of the 60-day period, the Division shall notify DMV that the driver's license shall be suspended (Tax Law § 171-v [4]). Again, the Division's procedures comply with the statutory requirements.

Finally, the Division has shown, and petitioner has not contested, that the 60-day notice was issued in compliance with the Division's procedures.

Petitioner, however, argues that without an opportunity to be heard at a conciliation conference, he has been denied his due process rights as guaranteed by the Federal and State constitutions. Petitioner also asserts that such rights were violated by the Administrative Law Judge's failure to address his arguments regarding this issue. Petitioner is incorrect on both counts.

Petitioner had the opportunity to challenge the 60-day notice by either filing a request for a conciliation conference with BCMS, or a petition with the Division of Tax Appeals (Tax Law §§ 170 (3-a); 2006 (4); ***see also*** finding of fact 1). Petitioner chose to proceed by filing a request for a conciliation conference with BCMS. Ordinarily, a person pursuing his or her appeal rights in this manner would have the opportunity of presenting his or her case twice, first to a conciliation conferee at BCMS, and then, if he or she objected to the results set forth in the conciliation order, to an Administrative Law Judge at the Division of Tax Appeals (***see*** Tax Law § 170 [3-a] [b] and [e]). However, in this case, the conciliation order issued was a default order based upon petitioner's failure to appear at the conciliation conference. Upon receipt of the conciliation order, petitioner could have either requested that the conciliation conferee vacate the default, or proceed by filing a petition with the Division of Tax Appeals for a hearing on the issuance of the notice of proposed driver's license suspension (20 NYCRR 4000.5 [b] [3]; ***see also Matter of Poindexter***, Tax Appeals Tribunal [September 7, 2006]; ***Matter of Sawlani***, Tax Appeals Tribunal [September 14, 1995]). As there is no evidence in the record, nor does petitioner assert, that a request was made to the conciliation conferee to vacate the default, it is concluded that petitioner chose not to avail himself of that opportunity. Rather, petitioner chose to proceed by filing a petition for a hearing with the Division of Tax Appeals. Petitioner cannot now argue that he was denied his due process rights when it was his decision not to request that the default conciliation order be vacated. In any event, as noted by the Administrative Law Judge, petitioner was in the same position he would have been had he chosen to proceed by way of filing a petition with the Division of Tax Appeals rather than a request for a conciliation conference in the first instance, i.e., he was entitled to a hearing before an Administrative Law Judge regarding the 60-day notice (20 NYCRR 4000.5 [b] [3]; ***see also Matter of Poindexter***;

Matter of Sawlani). Based upon these circumstances, we not only fail to see how petitioner has been denied any opportunity to be heard in this matter, but conclude petitioner has had multiple opportunities to be heard, and has taken advantage of none of them.[4]

With regard to petitioner's assertion that the Administrative Law Judge did not address his due process arguments in the determination, petitioner is also incorrect. The Administrative Law Judge understood such argument to be a request to vacate the conciliation default order and held that the Division of Tax Appeals could not grant such relief based upon 20 NYCRR 4000.5 [b] [3].

Finally, although not directly raised by either party or the Administrative Law Judge, we are troubled by an issue raised by the record in this matter. Based upon the order of suspension or revocation issued by DMV and dated May 22, 2014, and the lack of any evidence to the contrary being submitted by the Division, it appears that petitioner's driver's license was suspended on June 5, 2014 and has remained suspended throughout these proceedings. Both the 60-day notice issued to petitioner, and the Division's own procedures, indicate that petitioner's license should not have been suspended during his appeal of the 60-day notice (***see*** findings of fact 1 and 4 [d]). These circumstances present an issue of first impression for the Tribunal. Furthermore, the extent of the Tribunal's jurisdiction over the actual suspension of a driver's license is unclear. Such an issue should not be decided without first obtaining the benefit of the analysis of the parties and the Administrative Law Judge. However, in this case considering that petitioner did not raise the issue, and that petitioner's appeal of his 60-day notice with the Division of Tax Appeals and Tax Appeals Tribunal is concluded with the issuance of this

[4] While this conclusion renders the issue of whether the Division was required to prove that it mailed the notice of the conciliation conference by registered or certified mail moot, we would note that we are not aware of, nor did petitioner point to, any statutory or regulatory requirement that certified or registered mail be used with regard to such notices.

decision, we find that no useful purpose would be served by any further proceedings in this matter.

Accordingly it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Jose A. Muniz is denied;

2. The determination of the Administrative Law Judge is affirmed;

3. The petition of Jose A. Muniz is denied; and

4. The notice of proposed driver license suspension referral, dated September 27, 2013, is sustained.

DATED: Albany, New York
February 26, 2016

/s/ Roberta Moseley Nero
Roberta Moseley Nero
President

/s/ Charles H. Nesbitt
Charles H. Nesbitt
Commissioner

/s/ James H. Tully, Jr.
James H. Tully, Jr.
Commissioner