STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
FRANK DEMARTINO	:	DECISION DTA NO. 826652
for Review of a Notice of Proposed Driver License Suspension Referral under Tax Law § 171-v.	:	

Petitioner, Frank DeMartino, filed an exception to the determination of the Administrative Law Judge issued on January 7, 2016. Petitioner appeared pro se. The Division of Taxation appeared by Amanda Hiller, Esq. (Linda Jordan, Esq., of counsel).

Petitioner filed a letter brief in support of his exception. The Division of Taxation filed a letter brief in opposition. No reply brief was filed. Petitioner's request for oral argument was denied. The six-month period for the issuance of this decision began on June 16, 2016, the date that petitioner's reply brief was due.

ISSUES

I. Whether certain documents submitted by petitioner during the proceedings before the Administrative Law Judge are part of the record on exception.

II. 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 5 and 6, which have been modified to more accurately and fully reflect the record. Original finding of fact 9 from the determination of the Administrative Law Judge has not been included

as it merely contains a statement of the Division of Taxation's (Division) position. We have, however, made an additional finding of fact that has been numbered 9 herein, and additional findings of fact 10, 11 and 12. The Administrative Law Judge's findings of fact, modified findings of fact and additional findings of fact are set forth below.

1. The Division issued to petitioner, Frank DeMartino, a notice of proposed driver license suspension referral (form DTF-454), Collection case ID: E-027921596-CL01-2 (60-day notice), advising that petitioner must pay his New York State tax debts or face the possible suspension of his driver's license pursuant to Tax Law § 171-v.

2. This 60-day notice is dated July 29, 2013 and is addressed to petitioner at his Howard Beach, New York, address. Included with the 60-day notice was a consolidated statement of tax liabilities (form DTF-967-E), also dated July 29, 2013, setting forth an unpaid assessment. The assessment was for withholding tax, assessment ID L-027921596-6, for the tax period ended December 31, 2005. The assessment was for interest in the amount of $10,754.04, plus penalty in the amount of $20,094.90. Petitioner received a credit for payment in the amount of $4,000.00, which left a remaining balance due of $26,848.94.

3. 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 amount 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 Tax Department, 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 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 conciliation conference with the Division, or filing a petition with the Division of Tax Appeals.

4. Petitioner requested a conciliation conference before the Bureau of Conciliation and Mediation Services (BCMS) protesting the 60-day notice. By conciliation order dated

September 5, 2014, the conferee sustained the notice of proposed driver license suspension referral.

5. Thereafter, petitioner filed a petition with the Division of Tax Appeals on December 4, 2014. The petition raises no challenge to the issuance or validity of the tax assessment above as a past-due fixed and final liability giving rise to the proposed suspension of his license. Likewise, the petition does not challenge the Division's issuance or his receipt of the 60-day notice. Instead, the petition asserts that the underlying assessment failed to offset monies owed to him, by the State of New York or related entities, in a pending federal litigation in United States District Court.

6. The Division filed its answer to the petition on February 11, 2015, and in turn brought a motion filed on August 18, 2015, seeking an order dismissing the petition or, in the alternative, granting summary determination in favor of the Division pursuant to Tax Law § 2006 (6) and 20 NYCRR 3000.5, 3000.9 (a) and (b). The Division submitted with its motion an affidavit, dated August 18, 2015, made by Ronald Catalano, who is employed as a Tax Compliance Manager 2 in the Civil Enforcement Division (CED). Mr. Catalano's duties involve overseeing the operations of the Training Unit of the CED's Operations Analysis and Support Bureau. His duties further involve working with the Office of Information Technology Services to ensure that CED's systems support the operational needs of CED.

7. Mr. Catalano's affidavit fully details the sequential actions, i.e., the initial process, the DMV data match, the suspension process and the post-suspension process undertaken by the Division in carrying out the license suspension program authorized by Tax Law § 171-v. 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 of proposed driver license suspension referral under Tax Law § 171-v. First, the Division internally sets the following selection criteria: the taxpayer

has an outstanding cumulative balance of tax, penalty and interest in excess of $10,000.00; the age of the assessment used to determine the cumulative total must be less than 20 years from the notice and demand issue date; all cases in formal or informal protest, and all cases in bankruptcy status are eliminated; all cases where taxpayers have active approved payment plans are excluded; and any taxpayer with a "taxpayer deceased" record on his or her collection case is excluded.

Next, the criteria are utilized to search the Division's databases on a weekly basis, and a file is created of possible taxpayers to whom a 60-day notice of proposed driver license suspension referral could be sent. This process involves first utilizing the criteria to identify taxpayers owing a cumulative and delinquent tax liability (tax, penalty and interest) in excess of $10,000.00 in the relevant time frame, and then for each such identified candidate, determining whether that candidate would be excluded under any of the following criteria:

- a formal or informal protest has been made with respect to any assessment 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;

- the taxpayer is in bankruptcy;

- the taxpayer is deceased; or

- the taxpayer is on an active approved payment plan.

b) The "DMV Data Match" involves the Division providing identifying information to DMV for each taxpayer not already excluded under the foregoing criteria to determine whether the taxpayer has a qualifying driver's license potentially subject to suspension per Tax Law § 171-v. DMV then conducts a data match of the information provided by the Division with its information and returns the following information to the Division: (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) street; (10) city; (11) state; (12) zip code; (13) license class; and (14) license expiration date.

Once the Division determines that a taxpayer included in the DMV Data Match 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 a). If the taxpayer remains within the criteria for suspension, then a 60-day notice of proposed driver license suspension referral will be issued to the taxpayer via regular United States mail.

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), the case will be electronically sent by the Division to DMV for license suspension.[1] Such case data is sent daily, Monday through Friday, by the Division to DMV. DMV then sends a return data file to the Division each day confirming data records that were processed successfully, and indicating any data records with an issue. The Division investigates those data records with an issue. With regard to the data records that were processed successfully, DMV sends 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 cancellation 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

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[1] Prior to license suspension, the Division performs another 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 of Proposed Driver License Suspension Referral remains on the Division's system but the suspension will not proceed until the "on-hold" status is resolved. If the suspension is "closed," the 60-day notice will be canceled. If the taxpayer passes this final compliance check, the suspension by DMV will proceed.

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 in a) (e.g., the filing of a protest, a bankruptcy filing, the creation and approval of an installment payment agreement). 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; however, the 60-day notice of proposed driver license suspension referral would remain in the Division's system. If the status is changed to "closed," the 60-day notice of proposed driver license suspension referral is canceled.

8. Mr. Catalano's affidavit also fully details how that process was followed by the Division in the instant matter concerning the 60-day notice issued to petitioner. A copy of the 60-day notice of proposed driver license suspension referral and the consolidated statement of tax liabilities described in findings of fact 1 and 2, and a payment document (form DTF-968.4), by which petitioner could remit payment against the liability in question, were included with Mr. Catalano's affidavit. Mr. Catalano avers that based upon his review of Division records and his personal knowledge of Departmental policies and procedures regarding driver's license suspension referrals, that the issuance on July 29, 2013 to petitioner of the 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.

9. Petitioner's response to the Division's motion was originally due September 17, 2015. Petitioner submitted a request for an extension of time to file his response to the Administrative Law Judge by facsimile transmission on September 17, 2015. Petitioner also submitted the original document containing his request to the Administrative Law Judge by regular mail on September 18, 2015. The Administrative Law Judge granted petitioner an extension to file his

response until October 19, 2015. Petitioner submitted his response to the Administrative Law Judge by facsimile transmission on October 19, 2015.[2] Petitioner also submitted the original document containing his request to the Administrative Law Judge by regular mail on October 20, 2015. The Division was copied on each of these documents, both by facsimile transmission and regular mail.

10. Petitioner's response to the Division's motion consisted of a cover letter and a copy of a complaint allegedly filed in the United States District Court for the Eastern District of New York. The cover letter requested that the Administrative Law Judge take judicial notice of the litigation. Furthermore, the cover letter requested that the Administrative Law Judge either stay further proceedings before the Division of Tax Appeals until the disposition of the federal lawsuit or grant petitioner an additional 60 days to perform research because of the complex constitutional issues involved.

In its simplest form, the claim in petitioner's federal litigation is that the New York State Department of Labor (Labor Department) caused the Dormitory Authority of the State of New York (Dormitory Authority) to illegally withhold payment to petitioner for work completed by his construction company. In particular, a state court had awarded petitioner a judgment totaling $57,378.32 on some of the same facts involved in the federal litigation (***DeMartino v NYS Dep't of Labor***, 167 F.Supp.3d 342, 349-50 [US Dist Ct, ED NY, March 1, 2016]),[3] but the Labor Department blocked payment of the judgment by the Dormitory Authority through the issuance of a withholding notice (***id.***).

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[2] The actual date of petitioner's facsimile transmission was October 18, 2015. However, as October 18, 2015 was a Sunday, it is deemed to have occurred on Monday, October 19, 2015.

[3] As noted by the Division in its brief in opposition to petitioner's exception, an appeal has been filed in this case with the Second Circuit Court of Appeals (Docket No. 16-978).

11. The Division responded to petitioner's submission by stating that it was not a party to the federal litigation, and petitioner was not contesting the fixed and final assessment upon which the 60-day notice was based, in that litigation. Thus, the Division asserted that the disposition would not have any impact on petitioner's fixed and final assessment and therefore was not relevant to the proceedings before the Division of Tax Appeals.

12. The Administrative Law Judge denied both petitioner's request for a stay of the proceedings in the Division of Tax Appeals and petitioner's request for a 60-day extension to allow for further research.

THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE

The Administrative Law Judge first addressed petitioner's response to the Division's motion and found that "these documents were not responsive to the issue herein and, as late filed, have not been considered."

The Administrative Law Judge then addressed the question of whether the 60-day notice should be sustained. 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[4] and explained that such a motion "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]). The Administrative Law Judge explained that where the party bringing the motion makes a prima facie showing of entitlement to summary determination as a matter of law, and there are no material issues of fact, the party bringing the motion is entitled to summary determination.

[4] Although not specifically held, the implication of the Administrative Law Judge's discussion of this issue wherein she states that the Division's motion to dismiss the petition was improperly brought, is that such motion was denied.

The Administrative Law Judge explained that Tax Law § 171-v provides for the enforcement of past-due tax liabilities through the suspension of drivers' licenses. The Administrative Law Judge concluded that the 60-day notice complied with the requirements of Tax Law § 171-v in that it was based upon petitioner's outstanding tax liabilities in the cumulative amount of $26,848.94. The Administrative Law Judge also found that petitioner did not meet, or even raise, any of the specific grounds available for relief under the statute. Therefore, the Administrative Law Judge concluded that there were no facts in dispute and there was no legal basis upon which to grant the petition, and granted the Division's motion for summary determination.

SUMMARY OF ARGUMENTS ON EXCEPTION

Petitioner argues that the Administrative Law Judge should have considered his response to the Division's motion as it was both timely and relevant. Petitioner notes that the request for an extension to file that he submitted by facsimile transmission on September 17, 2015 and by regular mail on September 18, 2015 was accepted as timely. Petitioner argues that, therefore, his response to the Division's motion that he submitted in the same manner should also be accepted in that both submissions by facsimile transmission were timely and both submissions by regular mail were a day late.

Petitioner argues that the issue he presents is an issue of whether unsatisfied money judgments obtained during the course of state litigation by petitioner from the Dormitory Authority could have been used to satisfy his tax obligations but for the Labor Department blocking payment of the same through the issuance of a withholding notice. Petitioner asserts that this Tribunal has jurisdiction to address this issue as it is essentially a dispute over the Division's right to collect a debt, "an everyday, garden variety controversy that regular, normal

court proceedings are designed to take care of" (citing ***New Hampshire Fire Ins. v Scanlon***, 362 US 404, 410 [1960]).

With regard to the Administrative Law Judge's refusal to take into consideration petitioner's response to the Division's motion, the Division notes that it does not have access to the mailing records of the Division of Tax Appeals, but, in any event disagrees with petitioner's contention that the facsimile transmission of the response constitutes timely mailing, referencing 20 NYCRR 3000.22. The Division also agrees with the Administrative Law Judge that as petitioner's response did not assert any of the six grounds enumerated in Tax Law § 171-v (5), it was unresponsive to the issues presented by the motion.

With regard to whether the 60-day notice should be sustained, the Division asserts that the Administrative Law Judge correctly found that petitioner did not challenge the basis for the issuance of the notice, in that petitioner has not contested the existence of a past-due tax liability in excess of $10,000.00. Furthermore, the Division asserts that the Administrative Law Judge correctly found that petitioner has not alleged any of the six grounds enumerated in Tax Law § 171-v (5) which, if proven, would allow for relief from the proposed license suspension.

Finally, the Division addresses petitioner's contention that the result of the federal litigation, if in petitioner's favor, would require that his outstanding tax liabilities be offset by the amount of a state court judgment against the Department of Labor, which would effectively erase the past-due state tax liability that is the basis for the 60-day notice. First, the Division argues that this Tribunal lacks jurisdiction to determine what method the Division chooses to use to collect unpaid tax liabilities. Second, the Division asserts that petitioner's reliance on ***New Hampshire Fire Ins. v Scanlon*** is misplaced as such decision is inapplicable to the facts in the present case because the underlying issue in ***New Hampshire Fire Ins.*** was whether the IRS or a

third-party, not the taxpayer, was entitled to funds that the IRS had levied upon in an attempt to collect a tax debt.

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***:

> "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).

In determining a motion for summary determination, the evidence must be viewed in a manner most favorable to the party opposing the motion (***see Rizk v Cohen***, 73 NY2d 98, 103 [1989]); ***Museums at Stony Brook v Village of Patchogue Fire Dept.***, 146 AD2d 572 [1989], 573-74 [1989]; ***see also Weiss v Garfield***, 21 AD2d 156, 158 [1964]). However, "[u]nsubstantiated allegations or assertions are insufficient to raise an issue of fact" (***Matter of Azzato***, Tax Appeals Tribunal, May 19, 2011, ***citing Alvord & Swift v Muller Constr. Co.***, 46 NY2d 276 [1978]).

Tax Law § 171-v (1) authorizes "a program to improve tax collection through the suspension of drivers' licenses of taxpayers with past-due tax liabilities equal to or in excess of ten thousand dollars." Tax liabilities are defined as including penalties and interest due on any tax amounts (Tax Law § 171-v [1]). The phrase "past-due tax liabilities" is specifically defined as "any tax liability or liabilities which have become fixed and final such that the taxpayer no

longer has any right to administrative or judicial review (Tax Law § 171-v [1]). Petitioner no longer has any right to any administrative or judicial review with regard to the propriety of, or the amount of the tax assessed by, the assessment listed on the consolidated statement of tax liabilities attached to the 60-day notice, nor did petitioner raise these issues during these proceedings. Therefore, by operation of the definition in the statute, such liabilities are fixed and final and properly the subject of the 60-day notice.

We turn now to petitioner's complaint that the Administrative Law Judge did not consider his response to the Division's motion. Although the Administrative Law Judge indicated that the response was not considered because it was late-filed, she also indicated that it was not responsive to what was at issue in the Division's motion. The Administrative Law Judge thus did consider the response in order determine that the documents contained therein were not relevant to the issue presented. We note also that, although the response was late-filed, Administrative Law Judges and this Tribunal have some discretion in accepting late-filed non-jurisdictional documents (***see Matter of O'Keh Caterers Corporation***, Tax Appeals Tribunal, November 5, 1992 [brief filed one-day late by the Division was accepted by the Tribunal]). Accordingly, we conclude that petitioner's response to the Division's motion is a part of the record in this case and available to the Tribunal in reaching its decision.

What the documents in that response show is that petitioner has been involved in protracted litigation with the Labor Department and the Dormitory Authority with regard to work his construction company completed for the Dormitory Authority, but for which it was not paid because of the Labor Department's issuance of withholding notices. In particular, it is noted that a state court awarded petitioner a judgment in an amount greater than the past-due tax liabilities upo which the 60-day notice was based, but payment was never received by petitioner as the Labor Department issued a withholding notice that stopped the Dormitory Authority from paying

the judgment. While petitioner's arguments are somewhat confusing, he appears to be arguing that the Division of Tax Appeals proceedings should be stayed pending the final disposition of all of the litigation, and then, if petitioner prevails, the Division should be required to offset his past-due tax liabilities by any amount it is determined that the Dormitory Authority owes him.

We agree with the Division that there is no basis in law for granting petitioner the relief he requests. First, as noted by the Division, the Division is not a party in any of the litigation involving petitioner and the Labor Department and Dormitory Authority. Additionally, the protracted federal and state litigation regarding petitioner's claims against the Labor Department and the Dormitory Authority have no relationship to the past-due tax liabilities that are the basis for the 60-day notice. Petitioner has pointed to no legal authority, nor are we aware of any legal authority, for the proposition that the Division must offset his past-due tax liabilities with any amount he may be owed from the Dormitory Authority. Furthermore, we find no support in ***New Hampshire Fire Ins.*** for petitioner's position in this case. Proceedings before the Division of Tax Appeals are not "regular normal court proceedings" as those discussed in ***New Hampshire Fire Ins.***, but rather administrative proceedings whose jurisdictional basis is contained in the Tax Law. Generally speaking, this Tribunal does not have jurisdiction over choices made by the Division in furtherance of the collection of past-due taxes (***see Matter of Driscoll***, Tax Appeals Tribunal, April 11, 1991). Thus, we conclude that the extensive litigation in which petitioner is involved on the state and federal level has no bearing on the instant case.

There being no other facts in dispute in this matter, we now review the application of Tax Law § 171-v, which provides for the enforcement of past-due tax liabilities through the suspension of drivers' 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.[5]

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 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

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[5] There may be a slight inconsistency between the statute and the Division's process in that it appears that 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.

> (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 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 taxpayer's 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.

In conclusion, the Division has shown that its process regarding the suspension of drivers' licenses for past-due tax liabilities is in conformity with the statutes governing such program and that the 60-day notice issued to petitioner in the present case was issued pursuant to those procedures. Even assuming that the facts as alleged by petitioner are true, such facts do not defeat the Division's motion for summary determination, because, as a matter of law, such facts are not relevant to the issues in the present matter.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Frank DeMartino is denied;

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

3. The petition of Frank DeMartino is denied; and

4. The notice of proposed driver license suspension referral, dated July 29, 2013, is sustained.

DATED: Albany, New York
December 16, 2016

/s/ Roberta Moseley Nero
Roberta Moseley Nero
President

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

/s/ Dierdre K. Scozzafava
Dierdre K. Scozzafava
Commissioner
By JAM with permission