

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
ANDREW R. LAPPNER	:	DETERMINATION
for Revision of a Notice of Proposed Driver License	:	DTA NO. 825836
Suspension Referral Pursuant to Tax Law, Article 8,	:	
§ 171-v, issued on August 2, 2013.	:	

Petitioner, Andrew R. Lappner, filed a petition for revision of a Notice of Proposed Driver License Suspension Referral pursuant to Tax Law, Article 8, § 171-v, issued on August 2, 2013.

The Division of Taxation, by its representative, Amanda Hiller, Esq. (Michele W. Milavec, Esq., of counsel), brought a motion on August 8, 2014, to dismiss the petition or, in the alternative, seeking summary determination in favor of the Division of Taxation pursuant to sections 3000.5, 3000.9(a)(i) and (b) of the Rules of Practice and Procedure of the Tax Appeals Tribunal. Accompanying the motion was the affidavit of Michele W. Milavec, Esq., dated August 7, 2014, and annexed exhibits. Petitioner filed a response to the Division of Taxation's motion on September 8, 2014, the date from which the 90-day period for the issuance of this order began. Based upon the motion papers, the affidavits and documents submitted therewith, and all pleadings and documents submitted in connection with this matter, Catherine M. Bennett, Administrative Law Judge, renders the following determination.

2. On August 19, 2013, petitioner mailed a petition via United States Postal Service (USPS) Certified Mail to the Division of Tax Appeals, which was received on August 21, 2013. The petition sought an administrative hearing to request an extension of time to prevent the suspension of his driver's license and to protest the Notice of Proposed Driver License Suspension Referral, Collection case ID: E-002065543-CL01-6, which was attached to the petition. Attached to the petition was a Consolidated Statement of Tax Liabilities addressed to petitioner listing several bills subject to collection and a bill not yet subject to collection. The document bore many handwritten notations made by petitioner (designated as such by him), some of which are not legible and most of which are not understandable. In addition, the petition contained an assertion that petitioner had "just filed [on or about August 15, 2013] tax years 2009, 2009, 2010 & 2011, which were calculated & prepared by my CPA." There was no mention of payments made with the returns, or any reference to satisfaction of tax liabilities for these years.

3. The Division submitted the sworn affidavit of Ronald Catalano, Tax Compliance Manager 2, in support of the Division's motion. Mr. Catalano's duties include overseeing the operations of the Decision Support and Testing Unit of the Civil Enforcement Division's (CED) Operations Analysis and Support Bureau, in addition to working with the Office of Information Technology Services to ensure that the CED's systems support the operational needs of the CED. He described the process by which the Division searches for and refers taxpayers with delinquent tax liabilities to the New York State Department of Motor Vehicles (DMV). Based upon a pre-determined selection criteria, a file of candidates who could be sent a 60-day Notice of Proposed Driver License Suspension Referral (the 60-day notice) is produced. Then the Division excludes

taxpayers from being selected for suspension if they are deceased or in bankruptcy or if a new formal or informal protest has been added to any assessment, the result of which is the balance of fixed and final tax liabilities below the \$10,000.00 threshold for suspension, or the taxpayer is on an active payment plan. The Division then sends a file with identifying information to DMV for candidates not excluded, in order to obtain their driver's license details. The DMV performs the match and returns the identifying information to the Division, a determination is made that the taxpayer has a qualifying driver's license, and the taxpayer is put into the suspension process. Before a 60-day notice is issued, a further compliance check is run against the taxpayer's information to assure he or she still meets the criteria for suspension, in order to allow for any lapse in time between the DMV match and the mailing of the 60-day notice. Once the 60-day notice is mailed via regular U.S. mail to the taxpayer's mailing address, if after 75 days there has been no response from the taxpayer or an update to the case, the matter will be electronically sent to the DMV for suspension after another compliance check is performed by the Division to be sure the case still meets the requisite criteria. If the case passes all the compliance checks, the taxpayer is added to the file to be sent to the DMV for suspension. If successfully processed, the DMV will send a 15-day letter to the taxpayer advising him or her of the impending license suspension. If there is not response from the taxpayer and the DMV does not receive a cancellation record from the Division, the taxpayer's license or permit will be marked as suspended on the DMV's database.

4. In this case, Mr. Catalano affirmed that the Notice of Proposed Driver License Suspension Referral, dated August 2, 2013, along with a Consolidated Statement of Tax Liabilities setting forth tax bills issued to petitioner, was issued by the Division to petitioner. He

affirms that petitioner has fixed and final tax liabilities equal to or in excess of ten thousand dollars and that petitioner passed all compliance checks for proper issuance of a 60-day notice. Based upon Mr. Catalano's review of the Division's records and his personal knowledge of the procedures regarding the 60-day driver license suspension referrals to the DMV, he concluded that the issue of the 60-day notice to petitioner dated August 2, 2013, was proper, that as of the date of his affidavit, August 7, 2014, the 60-day notice had not been canceled, and he had not been able to identify any grounds upon which petitioner could challenge the proposed suspension of his driver's license.

5. Petitioner's response to the Division's motion alleged tax arrears totaling \$13,272.00, and requested that medical bills and limited current income provide the basis to request a waiver of the suspension referral.

CONCLUSIONS OF LAW

A. Effective March 28, 2013, Tax Law § 171-v provides, in relevant part, as follows:

(1) The commissioner shall enter into a written agreement with the commissioner of motor vehicles, which shall set forth the procedures for the two departments to cooperate in a program to improve tax collection through the suspension of driver's licenses of taxpayers with past due tax liabilities equal to or in excess of ten thousand dollars. For the purposes of this section, the term "tax liabilities" shall mean any tax, surcharge, or fee administered by the commissioner, or any penalty or interest due on these amounts owed by an individual with a New York driver's license, the term "driver's license" means any license issued by the department of motor vehicles, except for a commercial driver's license as defined in section five hundred one-a of the vehicle and traffic law, and the term "past due tax liabilities" means 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.

* * *

(3) The department shall provide notice to the taxpayer of his or her inclusion in the license suspension program no later than sixty days prior to the date the department intends to inform the commissioner of motor vehicles of the

taxpayer's inclusion. . . . Notice shall be provided by first class mail to the taxpayer's last known address as such address appears in the electronic systems or records of the department. Such notice shall include:

(a) a clear statement of the past-due tax liabilities along with a statement that the department shall provide to the department of motor vehicles the taxpayer's name, social security number and any other identifying information necessary for the purpose of suspending his or her driver's license pursuant to this section and subdivision four-f of section five hundred ten of the vehicle and traffic law sixty days after the mailing or sending of such notice to the taxpayer;

(b) a statement that the taxpayer may avoid suspension of his or her license by fully satisfying the past-due tax liabilities or by making payment arrangements satisfactory to the commissioner, and information as to how the taxpayer can pay the past-due tax liabilities to the department, enter into a payment arrangement or request additional information;

(c) a statement that the taxpayer's right to protest the notice is limited to raising issues set forth in subdivision five of this section;

(d) a statement that the suspension of the taxpayer's driver's license shall continue until the past-due liabilities are fully paid or the taxpayer makes payment arrangements satisfactory to the commissioner; and

(e) any other information that the commissioner deems necessary.

* * *

(5) Notwithstanding any other provision of law, and except as specifically provided herein, the taxpayer shall have no right to commence a court action or proceeding or to any other legal recourse against the department or the department of motor vehicles regarding a notice issued by the department pursuant to this section and the referral by the department of any taxpayer with past-due tax liabilities to the department of motor vehicles pursuant to this section for the purpose of suspending the taxpayer's driver's license. A taxpayer may only challenge such suspension or referral on the grounds that (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 purposes of subdivision three of this section.

However, nothing in this subdivision is intended to limit a taxpayer from seeking relief from joint and several liability pursuant to section six hundred fifty-four of this chapter, to the extent that he or she is eligible pursuant to that subdivision, or establishing to the department that the enforcement of the underlying tax liabilities has been stayed by the filing of a petition pursuant to the Bankruptcy Code of 1978 (Title Eleven of the United States Code).

B. The Division of Taxation has made a motion to dismiss, or alternatively, a motion for summary determination, on the grounds that petitioner's pleadings fail to state a cause for relief since he has not raised any of the exceptions set forth in Tax Law § 171-v, which are the only grounds for challenging the proposed suspension of his driver's license, and there are no material issues of fact, which should result, as a matter of law, in granting the Division's motion for summary determination.

Petitioner filed his petition on August 19, 2013, within 60 days of the Notice of Proposed Driver License Suspension Referral dated August 2, 2013. Thus, the Division of Tax Appeals has jurisdiction over the petition (Tax Law § 171-v[3]) and, accordingly, a motion for summary determination under 20 NYCRR 3000.9(b) is a proper vehicle to consider the merits of petitioner's protest of the 60-day notice and the Division's arguments in support of the motion. This determination shall address the instant motion as such.

C. A motion for summary determination 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]).

Section 3000.9(c) of the Rules of Practice and Procedure of the Tax Appeals Tribunal provides

that a motion for summary determination is subject to the same provisions as a motion for summary judgment pursuant to Civil Practice Law and Rules § 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 [1980]). 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]; *Museums at Stony Brook v Village of Patchogue Fire Dept.*, 146 AD2d 572 [1989]).

D. In the instant matter, petitioner received a Notice of Proposed Driver License Suspension Referral advising of the possible suspension of his driver’s license due to numerous tax years of income tax assessments issued to him that remained unpaid, with a total amount due of \$73,398.23. Petitioner filed a petition challenging the Notice of Proposed Driver License Suspension Referral and requested a nine-month extension of time in order to avoid the suspension of his driver’s license so that he may continue to attempt to find employment in order to satisfy his tax debts. Although in his petition he claims to have filed returns for some of the years for which tax liabilities are owed, petitioner does not maintain that any payments of taxes were made with the filed returns.

The Division has established that Assessment ID Nos. L-038437996-7, L-035644354-2, L-034204342-7 and L-033383662-4 are fixed and final tax liabilities subject to collection, totaling \$73,398.23 as of August 2, 2013. These tax liabilities, extending back to tax year 2004, were listed on the Consolidated Statement of Tax Liabilities attached to the Notice of Proposed Driver

License Suspension Referral issued by the Division on that date. The Division provided petitioner with the 60-day notice, wherein petitioner was advised that petitioner could avoid suspension of his license and the method of doing so, how to respond to the notice, how to protest the notice, the exemptions provided by law, what may happen if he fails to respond and a list of unpaid bills upon which the suspension referral is based.

E. The Division provided petitioner with the information required by Tax Law § 171-v, which satisfies the due process imposed by the law. Pursuant to Tax Law § 171-v, petitioner may only challenge the suspension of his license on specific grounds, which does not include an extension of time, medical or financial hardship, or limited current income. Petitioner did not submit any payment documentation indicating that any of the assessments were satisfied or challenge the suspension on any of the other grounds set forth in Tax Law § 171-v(5). His primary argument was to grant him additional time to arrange payment since he has incurred recent medical bills and has limited income. Petitioner has the burden of establishing by clear and convincing evidence that there are grounds to challenge the 60-day notice and actually prove that one or more of the grounds exist, and petitioner has failed to carry such burden. Accordingly, his challenge to the Notice of Proposed Driver License Suspension Referral must fail (*see* Tax Law § 171-v[5][ii]).

F. The Division of Taxation's motion for summary determination is granted; the petition of Andrew R. Lapper is hereby denied; and the Notice of Proposed Driver License Suspension Referral dated August 2, 2013, is sustained.

DATED: Albany, New York
December 4, 2014

/s/ Catherine M. Bennett
ADMINISTRATIVE LAW JUDGE