

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
SUSAN MILLER	:	DETERMINATION
	:	DTA NO. 825888
for Revision of a Notice of Proposed Driver License	:	
Suspension Referral Issued on July 29, 2013 Pursuant	:	
to Tax Law § 171-v.	:	

Petitioner, Susan Miller,¹ filed a petition for revision of a Notice of Proposed Driver License Suspension Referral issued on July 29, 2013 pursuant to Tax Law § 171-v.

The Division of Taxation, by its representative, Amanda Hiller, Esq. (Osborne K. Jack, Esq., of counsel), brought a motion filed July 3, 2014, seeking an order of dismissal or, in the alternative, summary determination in the above-referenced matter pursuant to sections 3000.5, 3000.9(a)(1)(i), (vii) and (b) of the Rules of Practice and Procedure of the Tax Appeals Tribunal. Accompanying the motion was the affidavit of Osborne K. Jack, Esq., dated July 3, 2014, and annexed exhibits. Petitioner, appearing by John O’Neill, EA, did not file a response to the Division of Taxation’s motion. Accordingly, the 90-day period for issuance of this determination began on August 4, 2014, the due date for petitioner’s response. After due consideration of the affidavits and documents, Winifred M. Maloney, Administrative Law Judge, renders the following determination.

¹ Petitioner’s name also appears as Susan N. Miller on documents in the record.

ISSUES

I. Whether the Notice of Proposed Driver License Suspension Referral should be sustained.

II. Whether petitioner filed a timely petition with the Division of Tax Appeals following the issuance of five statutory notices.

FINDINGS OF FACT

1. The Division of Taxation (Division) issued to petitioner, Susan N. Miller, a Notice of Estimated Determination, number L-026987650-2, dated May 30, 2006, that assessed sales and use taxes for the period June 1, 2005 through August 31, 2005 in the amount of \$23,689.45 plus penalty and interest for an estimated balance due of \$30,357.10. This Notice of Estimated Determination is addressed to petitioner at a Depew, New York, address.

2. The Division also issued to petitioner two notices of determination, dated May 30, 2006, which are also addressed to petitioner at the above-noted address. The first Notice of Determination, bearing assessment identification number L-026987649-2, assessed sales and use tax for the period December 1, 2005 through February 28, 2006 in the amount of \$7,000.20 plus penalty and interest for a balance due of \$8,033.44. The second Notice of Determination, number L-026987651-1, assessed sales and use tax for the period September 1, 2005 through November 30, 2005 in the amount of \$14,220.94 plus penalty and interest for a balance due of \$12,357.92.

3. The Division issued to petitioner two notices of determination, dated December 15, 2008, which are addressed to petitioner at the Depew, New York, address. The first Notice of Determination, bearing assessment identification number L-031268178-1, assessed sales and use tax for the period June 1, 2007 through August 31, 2007 in the amount of \$3,389.01 plus penalty

and interest for a balance due of \$4,842.25. The second Notice of Determination, bearing assessment identification number L-031268179-9, assessed sales and use tax for the period March 1, 2007 through May 31, 2007 in the amount of \$7,509.72 plus penalty of \$112.79 and interest of \$826.06, less assessment payments and credits of \$7,509.72 for a balance due of \$938.85.

4. The Division issued to petitioner a Notice of Proposed Driver License Suspension Referral, Collection case ID: E-026987649-CL01-7, dated July 29, 2013, advising of the possible suspension of petitioner's driver's license because eight sales and use tax assessments issued to her remained unpaid, with a current total balance due in the amount of \$41,329.59. This 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 and her driver's license would be suspended. An enclosed Consolidated Statement of Tax Liabilities listed the following unpaid sales and use tax assessments: number L-033072907-3 for the period September 1, 2008 through November 30, 2008; number L-033072906-4 for the period December 1, 2008 through February 28, 2009; number L-031268179-9 for the period March 1, 2007 through May 31, 2007; number L-031268178-1 for the period June 1, 2007 through August 31, 2007; number L-028021116-7 for the period June 1, 2006 through August 31, 2006; number L-026987651-1 for the period September 1, 2005 through November 30, 2005; number L-026987650-2 for the period June 1, 2005 through August 31, 2005; and number L-026987649-2 for the period December 1, 2005 through February 28, 2006.

5. On September 26, 2013, petitioner mailed a petition via United States Postal Service (USPS) Certified Mail to the Division of Tax Appeals. It was received on September 30, 2013. The petition also sought an administrative hearing for the Notice of Proposed Driver License

Suspension Referral, Collection case ID: E-026987649-CL01-7, which was attached to the petition. The petition sought a review of the calculation of interest and penalties and the application of sales tax payments to each of the outstanding assessments listed upon an enclosed Consolidated Statement of Tax Liabilities. No supporting payment documentation was attached to the petition. The petition lists petitioner's address as the Depew, New York, address.

6. To show proof of proper mailing of the Notice of Estimated Determination dated May 30, 2006, and the two notices of determination dated May 30, 2006, the Division provided the following: (i) an affidavit, dated July 2, 2014 of Bruce Peltier, a Principal Mail and Supply Supervisor in the Division's Mail Processing Center; (ii) an affidavit, dated July 1, 2014, of Daniel A. Maney, a Taxpayer Services Specialist 4 and Manager of the Refunds, Deposits, Overpayments and Control Units, which includes the Division's Case and Resource Tracking System (CARTS) Control Unit; (iii) the "Certified Record For Presort Mail - Assessments Receivable" (CMR); and (iv) a consolidated transcript of Mark S. and Susan N. Miller's joint New York State personal income tax return (form IT-201) for the year 2004, filed on May 26, 2005.

7. To show proof of proper mailing of the two notices of determination dated December 15, 2008, the Division provided the following: (i) an affidavit, dated July 2, 2014 of Mr. Peltier; (ii) an affidavit, dated July 1, 2014, of Mr. Maney; (iii) the "Certified Record For Presort Mail - Assessments Receivable" (CMR); and (iv) a consolidated transcript of Mr. and Mrs. Miller's joint New York State personal income tax return (form IT-201) for the year 2006 filed on January 2, 2008.

8. As noted, the Division submitted four affidavits pertaining to the mailing of five notices. The first affidavit was that of Daniel A. Maney, a Taxpayer Services Specialist 4 and

Manager of the Division's CARTS Control Unit, attached to which were copies of the CMR, the May 30, 2006 Notice of Estimated Determination and the May 30, 2006 notices of determination. Mr. Maney's duties include supervising the processing of notices of estimated determination and notices of determination prior to shipment to the Division's mail room. Mr. Maney's affidavit sets forth the Division's general practice and procedure for processing statutory notices. Mr. Maney averred that he held his current position with the Division since January 2010 and is fully knowledgeable of past and present procedures for processing statutory notices, which have not changed since 1992.

9. Mr. Maney receives from CARTS the computer-generated CMR and the corresponding notices. The notices are predated with the anticipated date of mailing. The CMR is produced approximately 10 days in advance of the anticipated date of mailing. This period is provided to allow sufficient time for manual review and processing of the individual notices, including affixation of postage, and mailing by the Division's Mail Processing Center. The date and time of the production of the CMR is listed in the upper left corner on each page of the CMR, using the year, the numeric ordinal day of the year and military time of day. The production date on the CMR is manually changed at the time of mailing by personnel in the Division's Mail Processing Center. This change is made in order to ensure that the date on the CMR conforms with the date the notices and CMR are delivered to the Postal Service. It is also the Division's general practice that all pages of the CMR are banded together when the documents are delivered into the possession of the USPS and remain so when returned to its office. The pages of the CMR stay banded together unless ordered otherwise by Mr. Maney. The page numbers of the CMR run consecutively, starting with page one, and are noted in the upper right corner of each page.

10. All notices are assigned a certified control number. The certified control number of

each notice is listed on a separate one-page mailing cover sheet, which also bears a bar code, the mailing address and the Departmental return address on the front, and taxpayer assistance information on the back. The certified control number is also listed on the CMR under the heading "Certified No." The CMR lists each notice in the order the notices are generated in the batch. The assessment numbers are listed under the heading "Reference No." The names and addresses of the recipients are listed under "Name of Addressee, Street, and P.O. Address."

11. With respect to the May 30, 2006 Notice of Estimated Determination and the May 30, 2006 notices of determination, each page of the 15-page CMR lists an initial production date that is approximately 10 days in advance of the anticipated date of mailing. Following the Division's general practice, the date was manually changed on the first page to "5/31/06."

12. This 15-page CMR lists 158 certified control numbers along with corresponding assessment numbers, names and addresses. Each page of the CMR includes 11 such entries with the exception of page 15, which contains 4 such entries. Portions of the CMR not relevant to this matter have been redacted to preserve the confidentiality of information relating to other taxpayers. A USPS employee affixed a USPS postmark dated May 30, 2006 of the Colonie Center branch of the USPS to each page of the CMR and also wrote his or her initials on each such page.

13. Information regarding the May 30, 2006 notices is contained on page nine of the CMR described above. Specifically, corresponding to certified control numbers 7104 1002 9730 1224 0742; 7104 1002 9730 1224 0759; and 7104 1002 9730 1224 0766 are assessment numbers L-026987649; L-026987650; and L-026987651, respectively, along with petitioner's name, "Miller - Susan N," and the Depew, New York, address. Each of these notices has a corresponding mailing cover sheet that bears the same certified control number and petitioner's name and

address as noted above.

14. The affidavit of Bruce Peltier, a supervisor in the Division's mail room since 1999 and currently Principal Mail and Supply Supervisor in the Division's mail room, describes the mail room's general operations and procedures. The mail room receives the notices in an area designated for "Outgoing Certified Mail." Each notice is preceded by a mailing cover sheet. A CMR is also received by the mail room for each batch of notices. A staff member retrieves the notices and mailing cover sheets and operates a machine that puts each notice and mailing cover sheet into a windowed envelope. That staff member then weighs, seals and places postage on each envelope. The first and last pieces listed on the CMR are checked against the information contained on the CMR. A clerk then performs a random review of 30 or fewer pieces listed on the CMR by checking those envelopes against information contained on the CMR. A staff member then delivers the envelopes and the CMR to one of the various USPS branches located in the Albany, New York, area. A USPS employee affixes a postmark and also places his or her signature or initials on the CMR, indicating receipt by the post office. The mail room further requested that the USPS either circle the total number of pieces received or indicate the total number of pieces received by writing the number on the last page of the CMR.

15. As noted, the USPS employee affixed a postmark dated May 30, 2006 and his or her initials to each page of the CMR. On the last page of the CMR, page 15, the USPS employee circled the preprinted number "158" next to the heading "TOTAL PIECES AND AMOUNTS."

16. Based upon his review of the affidavit of Daniel A. Maney and the exhibits attached thereto, including the certified mail record, Mr. Peltier attests that on May 30, 2006, an employee of the Mail Processing Center delivered three pieces of certified mail addressed to petitioner in Depew, New York, to a branch of the USPS in Albany, New York, in a sealed postpaid envelope

for delivery by certified mail. Mr. Peltier further attests that he can also determine that a member of his staff obtained a copy of the certified mail record delivered to and accepted by the post office on May 30, 2006 for the records of the Division's CARTS Control Unit. He avers that the procedures described in his affidavit were the regular procedures followed by the mail room staff in the ordinary course of business when handling items to be sent by certified mail, and that these procedures were followed in mailing the piece of certified mail to petitioner on May 30, 2006.

17. The consolidated transcript of Mark S. and Susan N. Miller's joint New York State personal income tax return (form IT-201) for the year 2004, filed on May 26, 2005, reported their address as Depew, New York 14043. This was the last return filed by petitioner and her husband prior to the issuance of the May 30, 2006 Notice of Estimated Determination and the two May 30, 2006 notices of determination. This address corresponds with the address on the 15-page CMR and the three May 30, 2006 notices that were sent to petitioner.

18. The Division submitted a second set of affidavits from Daniel A. Maney and Bruce Peltier with respect to the mailing of the notices of determination dated December 15, 2008. Each of the additional affidavits sets forth the same introductory paragraphs regarding the respective affiant's title and job duties and the standard mailing procedures of the Division.

19. Attached as an exhibit to Mr. Maney's second affidavit is a 24-page CMR, on which each such page is listed an initial production date that is approximately 10 days in advance of the anticipated date of mailing. Following the Division's general practice, the date was manually changed on the first page to "12/15/08," to reflect the actual mailing date. This 24-page CMR lists 254 certified control numbers along with corresponding assessment numbers, names and addresses. Each page of the CMR include 11 such entries with the exception of page 24, which contains 1 such entry. Portions of the CMR not relevant to this matter have been redacted to

preserve the confidentiality of information relating to other taxpayers.

20. Page 17 of this 24-page CMR indicates that a Notice of Determination, assigned certified control number 7104 1002 9730 1096 0291 and assessment number L-031268178, was to be mailed to petitioner at the Depew, New York, address listed thereon. The corresponding mailing cover sheet bears this certified control number and petitioner's name and address as noted.

Page 17 of this CMR also indicates that a Notice of Determination, assigned certified control number 7104 1002 9730 1096 0307 and assessment number L-031268179, was to be mailed to petitioner at the Depew, New York, address listed thereon. The corresponding mailing cover sheet bears this certified control number and petitioner's name and address as noted.

21. Review of this 24-page CMR indicates that a USPS employee affixed a postmark dated December 15, 2008 of the Colonie Center branch of the USPS to each page of the CMR and also wrote his or her initials on each such page. On the last page of the CMR, page 24, the USPS employee circled the preprinted number "254" corresponding to the heading "TOTAL PIECES AND AMOUNTS." The affixation of the postmarks, the postal service employee's initials and the circling of the number 254 indicating that all such were received, confirm that the notices of determination dated December 15, 2008 were received by the USPS on that date.

22. The consolidated transcript of Mark S. and Susan N. Miller's joint New York State personal income tax return (form IT-201) for the year 2006, filed on January 2, 2008, reported their address as Depew, New York 14043. This was the last return filed by petitioner and her husband prior to the issuance of the December 15, 2008 notices of determination. This address corresponds with the address on the 24-page CMR and the December 15, 2008 notices of determination that were sent to petitioner.

23. The Division did not submit any documentation to prove mailing of the following notices under protest: assessment number L-028021116 for the period June 1, 2006 through August 31, 2006; assessment number L-033072906 for the period December 1, 2008 through February 28, 2009; and assessment number L-033072907 for the period September 1, 2008 through November 30, 2008.

24. Petitioner did not submit a response to the Division's motion

CONCLUSIONS OF LAW

A. 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. . . .

* * *

(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. In the instant matter, petitioner received a Notice of Proposed Driver License Suspension Referral advising of the possible suspension of her driver's license because eight sales and use tax assessments issued to her remained unpaid, with a total amount due on same of \$41,329.59. Petitioner filed a petition challenging the Notice of Proposed Driver License Suspension Referral and the eight assessments referenced in same.

C. A taxpayer may protest a notice of determination by filing a petition for a hearing with the Division of Tax Appeals within 90 days from the date of mailing of such notice (Tax Law § 1138[a][1]). Alternatively, a taxpayer may contest a notice by filing a request for a conciliation conference with the Bureau of Conciliation and Mediation Services "if the time to petition for such hearing has not elapsed" (Tax Law § 170[3-a][a]). It is well established that the 90-day statutory time limit for filing either a petition or a request for a conciliation conference is strictly

enforced and that, accordingly, protests filed even one day late are considered untimely (*see e.g. Matter of American Woodcraft*, Tax Appeals Tribunal, May 15, 2003; *Matter of Maro Luncheonette*, Tax Appeals Tribunal, February 1, 1996). This is because, absent a timely protest, a notice of determination becomes a fixed and final assessment and, consequently, the Division of Tax Appeals is without jurisdiction to consider the substantive merits of the protest (*see Matter of Lukacs*, Tax Appeals Tribunal, November 8, 2007; *Matter of Sak Smoke Shop*, Tax Appeals Tribunal, January 6, 1989).

D. Where, as here, the timeliness of a petition or request for conciliation conference is at issue, the initial inquiry is whether the Division has carried its burden of demonstrating proper mailing by certified or registered mail to petitioner's last known address (Tax Law § 1147[a][1]; *see Matter of Katz*, Tax Appeals Tribunal, November 14, 1991; *Matter of Novar TV & Air Conditioner Sales & Serv.*, Tax Appeals Tribunal, May 23, 1991). To prove the fact and date of mailing of the subject notices, the Division must make the following showing:

first, there must be proof of a standard procedure used by the Division for the issuance of the statutory notices by one with knowledge of the relevant procedures; and second, there must be proof that the standard procedure was followed in the particular instance in question (*Matter of United Water New York, Inc.*, Tax Appeals Tribunal, April 1, 2004; *see Matter of Katz*).

E. In this case, the Division has introduced adequate proof of its standard mailing procedures through the affidavits of Mr. Maney and Mr. Peltier, Division employees involved in and possessing knowledge of the process of generating and issuing statutory notices (*see Matter of Victory Bagel Time*, Tax Appeals Tribunal, September 13, 2012).

F. The 15-page CMR submitted by the Division provides sufficient documentary proof to establish that a Notice of Estimated Determination, dated May 30, 2006, and two notices of determination, dated May 30, 2006, were mailed by certified mail to petitioner at her last known

address. The 15-page document listed 158 certified control numbers with corresponding names and addresses. Each page of the CMR bears a USPS postmark dated May 30, 2006 and the initials of a USPS employee. The postal employee circled the preprinted number “158” on the last page of the CMR to indicate the number of pieces of certified mail received at the post office. As for the date of “5/31/06” manually written by the Division’s mail room personnel on page 1 of the CMR as the date of delivery to the post office, which date differs from the USPS postmark dated May 30, 2006 that appears on each page of the 15-page CMR. I find this one-day date discrepancy to be inconsequential under the facts of this case. The affixation of the USPS postmark dated May 30, 2006 on each page of the CMR, the postal service employee’s initials and the circling of the preprinted number 158 indicates that each item listed on the CMR was delivered to the custody of the USPS on May 30, 2006, the date stamped on the CMR (*see Matter of Rakusin*, Tax Appeals Tribunal, July 26, 2001). Further, petitioner’s address on the notices, the corresponding mailing cover sheets and the CMR conform with the address reported on the joint personal income tax return filed by petitioner and her husband for 2004, which satisfies the “last known address” requirement in Tax Law § 1138(a)(1). It is concluded that the Notice of Estimated Determination, dated May 30, 2006, and the two notices of determination, dated May 30, 2006, were properly mailed and thus, the statutory 90-day time limit to file either a Request for Conciliation Conference with the Bureau of Conciliation and Mediation Services (BCMS) or a petition with the Division of Tax Appeals commenced on May 30, 2006 (Tax Law § § 170[3-a][b]; 1138[a][1]).

G. The 24-page CMR provides sufficient documentary proof to establish that two notices of determination, dated December 15, 2008, were mailed by certified mail to petitioner at her last known address. The 24-page document listed 254 certified control numbers with corresponding

names and addresses. Each page of the CMR bears a USPS postmark dated December 15, 2008 and the initials of a USPS employee. The postal employee circled the preprinted number “254” on the last page of the CMR to indicate the number of pieces of certified mail received at the post office. The CMR has thus been properly completed and therefore constitutes highly probative documentary evidence of both the date and fact of mailing (*see Matter of Rakusin*). Further, petitioner’s address on the notices, the corresponding mailing cover sheets and the CMR conform with the address reported on the joint personal income tax return filed by petitioner and her husband for 2006, which satisfies the “last known address” requirement in Tax Law § 1138(a)(1). It is concluded that the two notices of determination, dated December 15, 2008, were properly mailed and thus, the statutory 90-day time limit to file either a Request for Conciliation Conference with BCMS or a petition with the Division of Tax Appeals commenced on December 15, 2008 (Tax Law § § 170[3-a][b]; 1138[a][1]).

H. In order to timely protest the Notice of Estimated Determination and the notices of determination issued on May 30, 2006, petitioner was required to file a petition or a request for a conciliation conference within 90 days of May 30, 2006, i.e., on or before August 28, 2006. In order to timely protest the notices of determination issued on December 15, 2008, petitioner was required to file a petition or request for a conciliation conference within 90 days of December 15, 2008, i.e., on or before March 16, 2009.² As noted above, petitioner’s petition challenging the Notice of Proposed Driver License Suspension Referral, and the eight sales and use tax assessments referenced in same, was filed on September 26, 2013, well beyond the expiration of the 90-day period of limitations for protesting the statutory notices issued on either May 30, 2006

² Since March 15, 2009 fell on a Sunday, petitioner had until Monday, March 16, 2009 to file her petition or request for a conciliation conference (*see* General Construction Law § 20).

or December 15, 2008. Petitioner has offered no claim or evidence to meet her burden to prove that any timely protest was filed before the 90-day period of limitations for challenging either the May 30, 2006 statutory notices or the December 15, 2008 statutory notices expired. As such, the Notice of Estimated Determination and the four notices of determination became fixed and final assessments and petitioner no longer has the right to petition for review of same (*see* Tax Law § 1138[a][1], [2]; *Matter of Sak Smoke Shop*).

I. The Division has established that the statutory notices (notice numbers L-026987649-2, L-026987650-2 and L-026987651-1) dated May 30, 2006 and the two statutory notices (notice numbers L-031268178-1 and L-03126179-9) dated December 15, 2008 are fixed and final tax liabilities. These five tax liabilities were listed, along with three other assessments, on the Consolidated Statement of Tax Liabilities attached to the Notice of Proposed Driver License Suspension Referral issued by the Division. Review of the Consolidated Statement of Tax Liabilities indicates that the unpaid amounts on these five past-due tax liabilities totaled \$38,876.83. In her petition, petitioner challenges the Notice of Proposed Driver License Suspension Referral, seeking a review of the calculation of interest and penalties and the application of sales tax payments to each of the eight assessments listed on the Consolidated Statement of Tax Liabilities. Petitioner did not submit any payment documentation indicating that any of the assessments, including the five past due tax liabilities described above, were satisfied. Since petitioner failed to prove that the five past due tax liabilities were satisfied, her challenge to the Notice of Proposed Driver License Suspension Referral must fail (*see* Tax Law § 171-v[5][ii]).

J. The Division of Taxation's motion is granted; the petition of Susan Miller is hereby dismissed; and the Notice of Proposed Driver License Suspension Referral is sustained.

DATED: Albany, New York
October 23, 2014

/s/ Winifred M. Maloney
ADMINISTRATIVE LAW JUDGE