

STATE OF NEW YORK
DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
GRETCHEN A. STRANAHAN	:	DETERMINATION
for Review of a Notice of Proposed Driver License Suspension Referral under Tax Law, Article 8, § 171-v.	:	DTA NO. 826258

Petitioner, Gretchen A. Stranahan, filed a petition for review of a Notice of Proposed Driver License Suspension Referral under Tax Law, Article 8, § 171-v. The Division of Taxation, by its representative, Amanda Hiller, Esq. (Michele W. Milavec, Esq., of counsel), brought a motion, on November 20, 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 November 20, 2014, and annexed exhibits. Petitioner filed no response to the Division of Taxation's motion. The response due date of December 22, 2014 is 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.

ISSUE

Whether the Division of Taxation's Notice of Proposed Driver License Suspension Referral issued to petitioner pursuant to Tax Law § 171-v should be sustained.

FINDINGS OF FACT

1. The Division of Taxation (Division) issued to petitioner, Gretchen A. Stranahan, at her Queensbury, New York, address, a Notice of Proposed Driver License Suspension Referral (the suspension notice), dated August 2, 2013, which notified petitioner that new legislation allows

New York State to suspend the drivers' 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 she failed to take action. Specifically, the notice indicated that a response was required from petitioner 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. The notice was sent to the same address used by petitioner on the petition she filed in response, and petitioner has not denied receipt of the notice.

Attached to the notice was a Consolidated Statement of Tax Liabilities listing petitioner's assessments subject to collection action, as follows:

Assessment No.	Tax period ended	Tax Amount Assessed	Interest Assessed	Penalty Assessed	Payments and credits	Current Balance Due
L-032290300-9	5/31/08	\$13,149.52	\$11,432.22	\$3,944.75	\$13,892.40	\$14,634.09
L-032290299-8	8/31/08	\$17,299.43	\$17,411.25	\$5,189.74	\$200.00	\$39,700.42
L-032290298-9	11/30/08	\$8,986.94	\$8,447.07	\$2,695.89	\$0.00	\$20,129.90
L-032868517-8	5/31/09	\$6,208.15	\$5,011.45	\$1,862.41	\$0.00	\$13,082.01
L-032868516-9	8/31/09	\$9,298.09	\$6,909.28	\$2,789.40	\$0.00	\$18,996.77
L-034969802-5	5/31/10	\$200.00	\$129.43	\$944.19	\$42.49	\$1,231.13
L-034969801-6	8/31/10	\$8,310.12	\$4,118.55	\$2,453.51	\$250.00	\$14,632.18
Total						\$122,406.50

2. In protest of the suspension notice, petitioner, by filing a Request for Conciliation Conference dated September 16, 2013, requested a conference before the Bureau of Conciliation and Mediation Services (BCMS), which was conducted on December 11, 2013. The conferee sustained the statutory notice, i.e., the suspension notice, by the issuance of a Conciliation Order dated February 7, 2014 (CMS No. 258995).

3. On May 6, 2014, petitioner hand-delivered a timely petition to the Division of Tax Appeals challenging the conclusion reached by the conciliation conferee regarding the suspension notice. The petition, among certain assertions and allegations, sets forth background information describing

petitioner's husband, John Stranahan, and his relationship to American Tree Co., Inc. (the corporation) as a principal officer, manager and operator. It stated that during 2008 through 2011, the corporation incurred various past due sales tax liabilities due to the Division and these liabilities resulted in derivative assessments against petitioner as an alleged "responsible person" for the corporation. One such derivative assessment was L-037011153-8 (not included in the assessments listed on the suspension notice), assessing sales and use tax due for the period September 1, 2010 through November 30, 2010, dated December 5, 2011, for which, according to the documents submitted, a conciliation conference before the Bureau of Conciliation and Mediation Services was requested on or about January 11, 2012. The petition goes on to state that,

"5. . . .The Department held a hearing in the Spring of 2012. Evidence was submitted at the hearing on Petitioner's role in the corporation from 2008-2011. Based on the evidence, the Hearing Officer dismissed the responsible person assessments then pending against Petitioner.

6. The evidence presented at the 2012 hearing and the finding of the Department that Petitioner was not a responsible person for American Tree pertains to all open responsible person assessments for years 2008-2011."

4. Petitioner did not submit any documents supporting the fact that a hearing took place in spring 2012, or that a finding was made by the Division that petitioner was not a responsible person for American Tree.

5. The Division's answer, filed in response to the petition, denies paragraph 6 of the petition and indicated that petitioner had filed a Withdrawal of Protest for Notice No. L-037011153-8.

6. The Division submitted, with its motion, the sworn affidavit of Matthew McNamara, Information Technology Specialist 3 in the Division's Civil Enforcement Division (CED). Mr. McNamara began his employment with the Division in April 2005, and has held various positions within the Division including Information Technology Specialist 2, held in August 2013, and Business Systems Analyst 1, until the start of his current position in November 2014. Mr. McNamara's duties include maintenance of the CED internal website, which includes creation and modification of pages on the site itself, as well as tables within the server database.

He is also involved in the creation of reports based off the Division's internal systems, and supervises a reporting team and makes sure that all procedures are clear and that programs and reports are run in a timely manner.

7. Mr. McNamara's affidavit details the four sequential steps undertaken by the Division in carrying out the license suspension program authorized by Tax Law, Article 8, § 171-v. They are 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, which is less than 20 years old from the issuance of the Notice and Demand, 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: 1) the taxpayer is deceased, or 2) the taxpayer is in bankruptcy, or 3) a new 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 would leave the balance of such liability below the \$10,000.00 threshold for license suspension, or 4) 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 information: social security number, last name, first name, middle initial, name suffix, DMV client ID, gender, date of birth, mailing address including street, city, state and zip code, license class, and 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 7-a. If the taxpayer remains within the criteria for suspension, then a 60-Day Notice will be issued to the taxpayer. In describing the process of 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 transmission arises, an internal group within the Division (DMV-Failed Suspensions) will be contacted to investigate 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 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 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 Finding of Fact 7-a (e.g., the filing of a protest, a bankruptcy filing, the creation and approval of an installment payment

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.

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 suspension is “closed,” the 60-Day Notice would be canceled.

8. A copy of the 60-Day Notice at issue in this matter, i.e., the suspension notice, the Consolidated Statement of Tax Liabilities described in Finding of Fact 1, and a Payment Document (Form DTF-968.4), by which petitioner could remit payment against the liabilities 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 on August 2, 2013, the Division issued to petitioner a suspension notice. Mr. McNamara states that such suspension 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 suspension notice has not been and should not be canceled.

SUMMARY OF THE PARTIES’ POSITIONS

9. In her petition, petitioner asserts that:

a) at the BCMS conference on December 11, 2013, the Division erred by refusing to entertain petitioner’s evidence that she was not a responsible person of American Tree;

b) at the BCMS conference on December 11, 2013, the Division erred by refusing to dismiss the pending suspension referral based on the previous tender of evidence during the BCMS conference held in 2012, that petitioner was not a responsible person of American Tree;

c) at the BCMS conference on December 11, 2013, the Division erred by refusing to dismiss the open and underlying responsible person assessments against her;

d) the Division is trying to improperly hold petitioner liable for another person’s taxes, and the Division has not established that the person receiving the notice is a responsible person for the other, and therefore the person receiving the notice is not the “taxpayer at issue;” and

e) that it is unreasonable, unconscionable and unconstitutional to suspend the driver license of one person for the unpaid taxes of another without a showing that the person whose license is sought to be suspended is a responsible person for the other.

10. The Division asserts that petitioner has not raised any of the grounds listed in Tax Law § 171-v(5), which are the only grounds for challenging the proposed suspension of petitioner's driver's license pursuant to Tax Law § 171-v, and the affidavit of Matthew McNamara supports that petitioner has fixed and final tax liabilities equal to or in excess of \$10,000.00, and petitioner has not established that any grounds exist for a challenge to the proposed suspension. The Division maintains that having failed to state an allowable cause for relief, petitioner no longer has a right to an administrative or judicial review, and thus, the Division of Tax Appeals lacks jurisdiction to review petitioner's suspension referral. In addition, the Division argues that there is no material issue of fact and the facts as presented mandate a determination in favor of the Division.

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 has made a motion to dismiss, on the grounds that petitioner's pleadings fail to state a cause for relief since she 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 her driver's license, or alternatively, a motion for summary determination, on the basis that 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 initially challenged the suspension notice by filing a Request for Conciliation Conference dated September 16, 2013, which was responded to by the Division's BCMS on November 4, 2013, advising petitioner that a conciliation conference was scheduled for December 11, 2013. The conference was held on that date and pursuant to the issuance of the Conciliation Order dated February 7, 2014, the conferee sustained the statutory notice.

There is a 90-day statutory time limit for filing a petition following the issuance of a conciliation order (Tax Law § 170[3-a][e]; 20 NYCRR 4000.5[c][4]). Pursuant to Tax Law § 170(3-a)(e), the conciliation order in this case would be binding upon petitioner unless she filed a timely petition with the Division of Tax Appeals, which lacks jurisdiction to consider the merits of a petition filed beyond the 90-day time limit (*see Matter of Sak Smoke Shop*, Tax Appeals Tribunal, January 6, 1989). In this case, petitioner filed a timely petition on May 6, 2014, thus, the Division of Tax Appeals has jurisdiction over the petition and, accordingly, may entertain the Division's a motion to dismiss under 20 NYCRR 3000.9(a), on the grounds that petitioner failed to state a cause for relief.

C. The foundational requirements for a valid suspension notice are the requisite 60-day notice to petitioner of the Division's intention to make a referral to DMV for license suspension action against petitioner, and the existence of past-due tax liabilities of petitioner which have become fixed and final such that the taxpayer no longer has any right to administrative or judicial review. In this case, the notice requirement is met with the issuance of the suspension notice on August 2, 2013, and petitioner does not deny receipt of the notice. In fact, she timely protested the suspension notice. Secondly, included with the suspension notice was a consolidated

statement of tax assessments issued to petitioner subject to collection action, i.e., fixed and final liabilities, in excess of \$10,000.00, fulfilling the criteria concerning the existence of requisite tax liabilities. Petitioner does not argue that the underlying notices of determination were not issued to her, received by her, or are invalid for some other reason. Instead, petitioner maintains that she is not the person responsible for the taxes, something she was required to prove prior to the liabilities becoming fixed and final. Petitioner's remedy now is limited to the challenges presented in Tax Law § 171-v(5). Petitioner's argument that she was not the "responsible person" for the tax liabilities of American Tree is not within the enumerated challenges available to her. Thus, all the arguments referencing petitioner's position as a responsible person with American Tree's sales tax liabilities are rejected.

D. Petitioner's attempt to assert that she is not the "taxpayer at issue" is also rejected as flawed. Petitioner is permitted under Tax Law § 171-v to challenge the suspension notice on the six enumerated grounds, one of which is that "the individual to whom the notice was provided is not the taxpayer at issue." The suspension notice states the same basis as "[Y]ou are not the taxpayer named in the notice." Petitioner argues that this phrase refers to the person who owes the tax, or the responsible person for another who owes the tax, and petitioner maintains she is neither. Petitioner does not argue, however, that she is not the taxpayer named in the notice. Keeping in mind that petitioner had previous opportunities to challenge the merits of the underlying notices, and failed to do so, resulting in the liabilities becoming fixed and final, if the statute were construed as petitioner suggests, petitioner's challenges would be numerous, perhaps unending, and without the consequence intended by the statute. Petitioner's construction contravenes the statute's plain meaning and, as such, petitioner's position violates long-standing principles of statutory construction:

“[A] court cannot amend a statute by inserting words that are not there, nor will a court read into a statute a provision which the Legislature did not see fit to enact. More particularly, a court cannot, by implication, read or supply in a statute a provision which it is reasonable to suppose the Legislature intentionally omitted” (McKinney's Cons Laws of NY, Book 1, Statutes § 363).

In simple terms, petitioner was the person who was named in the notice and to whom the notice was provided, regardless of her actual liability for the underlying tax assessments. Accordingly, petitioner's argument does not provide a cause for relief, since it is not one of the six enumerated grounds that form the basis to challenge the suspension notice.

E. Petitioner also argues that it is unconstitutional to suspend the driver's license of one person for the unpaid taxes of another, without a showing that the person whose license is sought to be suspended is a responsible person for the other. Such a facial constitutional challenge to the statute is not within the jurisdiction of the Division of Tax Appeals (*see Matter of Eisenstein*, Tax Appeals Tribunal, March 27, 2003), and is not addressed further.

F. 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 her license on specific grounds. 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, her challenge to the Notice of Proposed Driver License Suspension Referral must fail (*see* Tax Law § 171-v[5][ii]), and the Division's motion to dismiss is granted.

G. The Division of Taxation's motion to dismiss is granted; the petition of Gretchen A. Stranahan is hereby dismissed; and the Notice of Proposed Driver License Suspension Referral dated August 2, 2013, is sustained.

DATED: Albany, New York
March 19, 2015

/s/ Catherine M. Bennett
ADMINISTRATIVE LAW JUDGE