

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
CHASE A. CARO : DETERMINATION
for Review of a Notice of Proposed Driver License : DTA NO. 826305
Suspension Referral under Tax Law, Article 8, § 171-v. :
:

Petitioner, Chase A. Caro, filed a petition for review of a Notice of Proposed Driver License Suspension Referral, dated August 2, 2013 and issued pursuant to Article 8, § 171-v of the Tax Law.

On October 2, 2015 and October 5, 2015, respectively, petitioner, appearing pro se, and the Division of Taxation, appearing by Amanda Hiller, Esq. (Hannelore Smith, Esq., of counsel), waived a hearing and submitted this matter for determination based on documents and briefs to be submitted by February 11, 2016, which date commenced the six-month period for issuance of this determination. After due consideration of the documents and arguments submitted, Barbara J. Russo, Administrative Law Judge, renders the following determination.

ISSUE

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

FINDINGS OF FACT

1. The Division of Taxation (Division) issued a Notice of Proposed Driver License Suspension Referral, Collection Case ID number E-028684508-CL01-8, dated August 2, 2013, to petitioner, Chase A. Caro, advising of the possible suspension of petitioner's driver's license

because personal income tax assessments issued to him remained unpaid, with a current total balance due in the amount of \$81,021.99. 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 petitioner's driver's license would be suspended. The Notice of Proposed Driver License Suspension Referral included a Consolidated Statement of Tax Liabilities setting forth bills issued to petitioner that are subject to collection action, including the following assessment ID numbers and amounts due: L-028684509-2 with current balance due of \$28,287.45, L-028684508-3 with current balance due of \$18,571.80, L-028684507-4 with current balance due of \$13,638.53, L-028684506-5 with current balance due of \$15,932.63, and L-028684505-6 with current balance due of \$4,591.58. The Consolidated Statement of Tax Liabilities shows an assessment payment/credit in the amount of \$3,590.15 applied to assessment ID number L-028684509-2.

2. On June 3, 2014, petitioner filed a petition with the Division of Tax Appeals seeking an administrative hearing to review the Notice of Proposed Driver License Suspension Referral. Petitioner argues in the petition that:

- “1. Erroneously upheld license suspension with payment arrangement in excess of legal amount offered/garnishment in place
2. Amount due.”

Attached to the petition is a copy of a tax compliance levy, dated April 29, 2013. The levy was issued by the Division as judgment creditor against petitioner and sent to Professional Examination Service, as garnishee, pursuant to New York Civil Practice Laws and Rules (CPLR) § 5232(a). The levy shows a total amount due of \$79,635.66 and requires the garnishee to transfer to the Division property of the petitioner to satisfy the amount due.

3. The Division submitted, in part, the following in support of its position: (i) a Notice of Proposed Driver License Suspension Referral dated August 2, 2013; (ii) the petition with attached conciliation order dated April 18, 2014, issued by the Bureau of Conciliation and Mediation Services, sustaining the Notice of Proposed Driver License Suspension Referral; (iii) an affidavit, dated December 1, 2014, of Matthew McNamara, Information Technology Specialist 3 in the Division's Civil Enforcement Division (CED); (iv) an affidavit, dated November 6, 2015, of Robert Bedard, Tax Compliance Agent II in the Division's CED; (v) CED statement dated September 16, 2015 reflecting payments and refund offsets; (vi) Consolidated Statement of Tax Liabilities dated November 5, 2015; and (vii) a letter from Belle Abstract Corp. (Belle Abstract), dated April 8, 2013, regarding Income Execution ID No. E-028684508-E013-8, stating that Chase Caro was no longer employed by them, and that they are not holding any funds due to him.

4. The affidavit of Matthew McNamara details the steps undertaken by the Division in carrying out the license suspension program authorized by Tax Law Article 8, § 171-v. Mr. McNamara's affidavit details four sequential actions or steps taken by the Division in carrying out the license suspension program, to wit: the "Initial Process," the "DMV Data Match," the "Suspension Process," and the "Post-Suspension Process." These steps are summarized as follows:

a) The "Initial Process" involves the Division's identification of taxpayers who may be subject to the issuance of a 60-Day Notice of Proposed Driver License Suspension Referral under Tax Law § 171-v. This process involves first reviewing internally set selection criteria to identify taxpayers owing a cumulative and delinquent tax liability (tax, penalty and interest) in excess of \$10,000.00, and then reviewing additional data to determine whether any of such

taxpayers are excluded from application of the driver's license suspension provisions of Tax Law § 171-v(5) under the following exclusion criteria:

- the taxpayer is deceased;
- the taxpayer is in bankruptcy;
- a formal or informal protest has been made with respect to any assessment(s) 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 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 the taxpayer has a qualifying driver's license potentially subject to suspension per Tax Law § 171-v. This review examines the following data: (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.

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

c) The "Suspension Process" commences with the Division performing a post-DMV data match review to confirm that the taxpayer continues to meet the criteria for suspension detailed above in Finding of Fact 4-a. If the taxpayer remains within the criteria for suspension, then a 60-Day Notice of Proposed Driver License Suspension Referral will be issued to the taxpayer via regular U.S. 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

Data is exchanged daily between the Division and DMV. Upon successful data procession 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 4-a (e.g., the filing of a protest, a bankruptcy filing, or 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 (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.

5. A copy of the 60-Day Notice of Proposed Driver License Suspension Referral, the Consolidated Statement of Tax Liabilities described in Finding of Fact 1, and a Payment

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" then the 60-Day Notice will be canceled. If the taxpayer "passes" this final compliance check, the suspension by DMV will proceed.

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 Notice of Proposed Driver License Suspension Referral. Mr. McNamara states that such 60-Day Notice of Proposed Driver License Suspension Referral 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 of Proposed Driver License Suspension Referral has not been and should not be canceled.

6. The affidavit of Robert Bedard further details the Division's review of taxpayer records in determining eligibility for the Driver License Suspension Program. Mr. Bedard's current job duties include supervising tax compliance agents within the Division. Mr. Bedard is familiar with the Division's computer record keeping system and the Division's procedures pertaining to the filing of tax warrants, the service of tax compliance levies, and income executions. As part of the Division's review of taxpayer records in determining eligibility for the Driver License Suspension Program, the Division's electronic database is searched prior to the issuance of the Notice of Proposed Driver License Suspension Referral. Among the items searched are the existence of a payment plan between the taxpayer and the Division and the existence of an active wage garnishment for the payment of past due tax liabilities. If a taxpayer is subject to wage garnishment for the payment of past due tax liabilities or if the taxpayer is on an active approved payment plan, such taxpayer is excluded from being selected for suspension.

7. Mr. Bedard avers that the Division's records were reviewed for petitioner and there was no active wage garnishment or payment plan in place when the Division issued the 60-Day

Notice of Proposed Driver License Suspension Referral to petitioner, and additionally there is not an active wage garnishment or approved payment plan in place as of the date of Mr. Bedard's affidavit. Mr. Bedard further states that as petitioner did not meet any of the criteria requiring exclusion, he was not excluded from selection for suspension. With a cumulative balance due of greater than \$10,000.00, petitioner passed all compliance checks for the issuance of the 60-Day Notice of Proposed Driver License Suspension Referral.

8. Petitioner was served with an income execution, ID No. E-028684508-E013-8, on October 22, 2012 in relation to income received from his employer, Belle Abstract. Petitioner did not remit any payments in response to the income execution. As a result of petitioner's default, Belle Abstract was served with the income execution. In response to the income execution, Belle Abstract remitted seven payments of \$25.00 each, beginning on January 19, 2013 and ending on March 9, 2013. By letter dated April 8, 2013, Belle Abstract notified the Division that "Chase Caro is not longer employed by Belle Abstract Corp." The notice further stated that Belle Abstract was going out of business and that they were holding no funds that were due to petitioner. No other income executions were served on any employer of petitioner.

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 drivers' 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 his driver's license because five

personal income tax assessments issued to him remained unpaid, with a total amount due on same of \$81,021.99. Petitioner filed a petition challenging the Notice of Proposed Driver License Suspension Referral. Petitioner argues that the license suspension is erroneous because a garnishment is in place, arguing that a garnishment notice was issued to Professional Examination Services, in addition to the seizure of a stock account and bank account, which petitioner posits may be considered a garnishment.

C. As noted above, two of the specifically enumerated grounds for challenging a notice of proposed driver license suspension referral include: (1) “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” (Tax Law § 171-v[5][iii]); and (2) “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” (Tax Law § 171-v[5][iv]).² Based on a review of the evidence in this matter, it is determined that petitioner has failed to establish the existence of either of these grounds.

D. The affidavits submitted by the Division adequately describe the Division’s general procedure in carrying out the license suspension program, including the Division’s review of taxpayer records in determining eligibility for the Driver License Suspension Program, and that such procedure was followed in this case. As part of the Division’s review of taxpayer records, the Division’s electronic database is searched prior to the issuance of the Notice of Proposed Driver License Suspension Referral. Among the items searched is the existence of an active

² Petitioner has made no argument and presented no evidence that his wages are being garnished for child or spousal support and thus such provision does not pertain herein.

wage garnishment for the payment of past due tax liabilities. If a taxpayer is subject to wage garnishment for the payment of past-due tax liabilities, such taxpayer is excluded from being selected for suspension. A search of the Division's records was conducted prior to the issuance of the Notice of Proposed Driver License Suspension Referral, and no active wage garnishment was in place.

Although an income execution had previously been served on petitioner on October 22, 2012 in relation to his employment with Belle Abstract, petitioner did not remit any payments in response. Pursuant to CPLR 5231(e), if a judgment debtor fails to pay installments pursuant to an income execution served upon him for a period of 20 days, the money the judgment debtor is receiving or will receive is levied upon by serving a copy of the income execution upon the person or entity from whom the judgment debtor is receiving or will receive money. Accordingly, as a result of petitioner's default, Belle Abstract was served with the income execution. In response to the income execution, Belle Abstract remitted seven payments of \$25.00 each, beginning on January 19, 2013 and ending on March 9, 2013. By letter dated April 8, 2013, Belle Abstract notified the Division that "Chase Caro is no longer employed by Belle Abstract Corp." The notice further stated that Belle Abstract was going out of business and that they were holding no funds that were due to petitioner. Because petitioner's employment with Belle Abstract terminated, the income execution and levy became ineffective and lapsed (CPLR 5231[f]). No other income executions were served on any employer of petitioner. As such, petitioner's wages were not being garnished at the time the Notice of Proposed Driver License Suspension Referral was served on August 2, 2013.

E. Petitioner argues that to the extent the garnishment was not fruitful, it still falls within the grounds for challenging a notice of proposed driver license suspension. Contrary to

petitioner's argument, the plain language of the statute provides that "the taxpayer's wages **are** being garnished . . ." (Tax Law § 171-v[5][iii]; emphasis added). The use of the present-tense verb "are" indicates a clear intent that such garnishment must be active. "It is a well settled principle of statutory construction that every word in a statute is to be given effect and to be presumed to have some meaning" (*Matter of Friss v. City of Hudson Police Dept*, 187 AD2d 94, 96 [3d Dept 1993]). Since petitioner's employment with Belle Abstract terminated, the income execution and levy were no longer in effect and cannot provide a ground for challenging the suspension notice.

F. Petitioner further argues that the levy served upon Professional Examination Service provides grounds for challenging the suspension notice. Contrary to petitioner's argument, the subject levy was issued to Professional Examination Service pursuant to CPLR 5232(a), which provides for a levy upon the personal property of a judgment debtor. Such levy is not a wage garnishment as provided for in Tax Law § 171-v(5)(iii) or (iv) and does not fall within any of the specifically enumerated grounds for challenging a suspension notice contained within Tax Law § 171-v(5).

G. Petitioner's argument that the seizure of a stock account and bank account may be considered a garnishment is without merit. As noted above, the plain statutory language provides as grounds for challenging the suspension that "the taxpayer's **wages** are being garnished. . ." (Tax Law § 171-v[5][iii]; emphasis added). A levy on a stock or bank account is simply not a wage garnishment as provided for by the statute, and does not fall within any of the specifically enumerated grounds for challenging a suspension notice contained within Tax Law § 171-v(5).

H. Since petitioner failed to prove any of the bases set forth in Tax Law § 171-v(5), his challenge to the Notice of Proposed Driver License Suspension Referral must fail.

I. The petition of Chase A. Caro is denied and the Notice of Proposed Driver License Suspension Referral dated August 2, 2013 is sustained.

DATED: Albany, New York
July 21, 2016

/s/ Barbara J. Russo
ADMINISTRATIVE LAW JUDGE