

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
JUAN KIP LENOIR : DETERMINATION
 : DTA NO. 826389
for Review of a Notice of Proposed Driver License :
Suspension Referral under Tax Law, Article 8, :
§ 171-v. :

Petitioner, Juan Kip Lenoir , filed a petition for review of a notice of proposed driver license suspension referral under Tax Law, Article 8, § 171-v.

On January 5, 2015 the Division of Taxation, by Amanda Hiller, Esq. (Michele W. Milavec, Esq., of counsel), filed a motion seeking an order dismissing the petition or, in the alternative, granting summary determination of the proceeding pursuant to 20 NYCRR 3000.5, 3000.9(a)(1)(i) and 3000.9(b). Accompanying the motion was the affirmation of Michele W. Milavec, Esq., and annexed exhibits. Petitioner, appearing pro se, submitted an affirmation in opposition to the Division of Taxation’s motion. After due consideration of the documents submitted, Arthur S. Bray, 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, Juan Kip Lenoir, a Notice of Proposed Driver License Suspension Referral (Form DTF-454), Collection case ID: E-

001582922-CLO1-8 (60-Day Notice), advising that petitioner must pay his New York State tax debts or face the possible suspension of his driver's license pursuant to Tax Law § 171-v. This 60-Day Notice is dated September 17, 2013 and is addressed to petitioner in New York, New York. Included with the 60-Day Notice was a Consolidated Statement of Tax Liabilities (Form DTF 967-E), also dated September 17, 2013, setting forth a list of 17 unpaid assessments subject to collection as follows:

Tax Type	Assessment ID	Period Ended	Tax Assessed	Interest	Penalty	Current Balance
Income	L-039681927-4	12/31/12	\$404.50	\$12.06	\$10.10	\$426.66
Income	L-037883930-4	12/31/11	520.50	61.75	67.62	649.87
Income	L-034860303-4	12/31/09	580.50	184.03	118.90	883.43
Income	L-034854497-6	12/31/08	1,042.00	506.16	494.95	2,043.11
Income	L-029608328-8	12/31/04	1,960.50	2,236.44	931.10	5,128.04
Income	L-029608327-9	12/31/05	848.50	840.15	402.90	2,091.55
Income	L-029593144-5	12/31/02	2,590.00	3,606.32	1,230.25	7,426.57
Income	L-029593116-3	12/31/01	373.00	577.05	193.00	1,143.05
Income	L-029593031-7	12/31/00	1,810.00	3,025.01	859.75	5,694.76
Income	L-021785070-4	12/31/97	2,053.00	5,312.02	974.95	8,339.97
Income	L-014383082-9	12/31/95	0.00	261.87	123.63	385.50
Income	L-013018499-5	12/31/95	4,165.00	13,965.64	1,603.29	19,733.93
Income	L-012655428-4	12/31/94	0.00	255.33	105.90	361.23
Income	L-010581391-6	12/31/94	2,292.00	8501.69	818.10	11,611.79
Income	L-009306406-1	12/31/93	1,995.00	8,466.05	805.84	11,266.89
Income	L-009208847-4	12/31/91	0.00	249.04	82.70	331.74
Income	L-008267751-2	12/31/92	595.00	2,782.70	260.33	3,638.03

2. The 60-Day Notice indicated that a response was required within 60 days from its mailing, or the Division would notify the New York State Department of Motor Vehicles (DMV) and petitioner's driver's license would be suspended. Among the response options listed for

petitioner to undertake within 60 days were the following:

- “-resolve your tax debts or set up a payment plan.
- notify the Tax Department of your eligibility for an exemption, or
- protest the proposed suspension of your license by:
- filing a Request for a Conciliation Conference (Form CMS-1-MN, available of our Web site) with the Tax Department; or
- filing a petition (Form TA-10) with the Division of Tax Appeals, available at www.nysdta.org.”

3. By an Order of Suspension or Revocation (Order of Suspension) dated May 22, 2014, DMV advised petitioner that his driver’s license would be suspended, effective June 5, 2014, based upon “delinquent unpaid tax debt with the NYS Department of Taxation and Finance—case number E001582922.” The Order of Suspension indicated, among other items, that petitioner was eligible for a restricted use license and advised petitioner to contact DMV concerning such eligibility. The record does not disclose whether petitioner availed himself of this option.

4. Petitioner filed a Request for Conciliation Conference (Request) challenging the proposed suspension of his license with the Division’s Bureau of Conciliation and Mediation Services (BCMS). On March 3, 2014, a conciliation conference was held and, in turn, a Conciliation Order (CMS No. 259710) dated April 18, 2014 (Conciliation Order) was issued denying petitioner’s Request and sustaining the proposed suspension of his license.

5. Petitioner challenged the Conciliation Order by filing a petition with the Division of Tax Appeals. The petition bears a United States Postal Service (USPS) postmark dated July 14, 2014 and is date stamped as received by the Division of Tax Appeals on July 15, 2014.

6. The petition and petitioner’s response to the subject motion seek to avoid license suspension upon the basis that he is required to care for his mother, who began to lose her

memory in 1991, and his brother who is afflicted with Down syndrome. Petitioner states that the expense of caring for his mother and brother became his obligation and he carried it out as best he could. Petitioner also notes that since 1984 he has had to cope with a series of serious medical conditions including pneumonia, obesity, high cholesterol, gout and arthritis, which sometimes prohibits him from walking. Petitioner, an attorney, currently has a limited practice of law. He submits that his practice requires him to travel to different boroughs of New York and that he must drive because he is unable to negotiate the subway system and stairs.

In a supporting affirmation, petitioner acknowledges that he incurred the arrears set forth in the affidavit of the representative of the Division of Taxation. However, he believes that his care-giving responsibilities should be considered at least in regard to the penalty and interest asserted to be due. According to petitioner, the Division has “garnish [sic] any future wages by filing various tax levies against my tax arrears which constitute a judgments [sic] against me” Petitioner also states that he is hopeful that an offer in compromise that is currently under consideration will be granted and reduce his tax obligation.

7. In support of its motion, the Division submitted an affidavit, dated January 5, 2015, of Matthew McNamara, who is employed as a Business Systems Analyst 1 in the Division’s Civil Enforcement Division (CED). Mr. McNamara’s duties involve maintenance of the CED internal website, and include creation and modification of pages on the site itself. His duties further involve the creation and maintenance of programs and reports run on a scheduled basis that facilitate and report on the movement of cases, including the creation of event codes based on criteria given by end users. Mr. McNamara’s affidavit fully details the sequential actions or steps, to wit, the “Initial Process,” the “DMV Data Match,” the “Suspension Process” and the

“Post-Suspension Process” undertaken by the Division in carrying out the license suspension program authorized by Tax Law, Article 8, § 171-v, both in general and with particular reference to the instant matter concerning the 60-Day Notice issued to petitioner. Mr. McNamara avers that his review of Division records concerning the matter at issue reveals the same to comport with all of the requirements for establishing a valid basis for referral to DMV for licence suspension and indicates no basis upon which the proposed license suspension should be canceled.

8. In its answer to the petition, and in support of the motion at issue herein, the Division asserts that petitioner has not sought relief from the suspension of his driver’s license under any of the six specifically enumerated grounds for such relief set forth at Tax Law § 171-v(5)(i)-(vi), and thus has raised no basis for administrative or judicial review of the proposed suspension of his license, including review by the Division of Tax Appeals. Accordingly, the Division seeks dismissal of the petition for lack of jurisdiction or summary determination in its favor.

CONCLUSIONS OF LAW

A. As noted, the Division brings a motion to dismiss the petition under section 3000.9(a) of the Rules of Practice and Procedure (Rules) or, in the alternative, a motion for summary determination under section 3000.9(b). Since the petition in this matter was timely filed, the Division of Tax Appeals has jurisdiction over the petition and, accordingly, a motion for summary determination under section 3000.9(b) of the Rules is the proper vehicle to consider the timeliness of petitioner’s request for a conciliation conference. This determination shall address the instant motion as such. Given the timely petition, the Division’s motion to dismiss under section 3000.9(a) of the Rules is improperly brought.

B. 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]).

C. Petitioner has timely protested the suspension notice. Tax Law § 171-v, effective March 28, 2013, provides for the enforcement of past-due tax liabilities through the suspension of drivers’ licenses. The Division must provide notice to a taxpayer of his or her inclusion in the license suspension program no later than 60 days prior to the date the Division intends to refer the taxpayer to DMV for action (Tax Law § 171-v[3]). The liability represented by the notice of deficiency meets the threshold requirement for suspension of petitioner’s driver’s license pursuant to Tax Law § 171-v.

D. Here, petitioner has presented three arguments for why his license should not be suspended. First, petitioner states that an offer in compromise is pending. Second, petitioner contends that the filing of tax levies against him for tax arrears falls within the parameters of Tax Law § 171-v(iii) regarding garnishment. Third, petitioner argues that the suspension of his driver’s license would cause great hardship.

E. A taxpayer’s right to challenge a notice issued pursuant to Tax Law § 171-v is specifically limited to a petition with the Division of Tax Appeals, and must be based on the following grounds:

“(i) the individual to whom the notice was provided is not the taxpayer at issue;

(ii) the past-due tax liabilities were satisfied;

(iii) the taxpayer’s wages are being garnished by the department for the payment of the past-due tax liabilities at issue or for past-due child support or combined child and spousal support arrears;

(iv) the taxpayer's wages are being garnished for the payment of past-due child support or combined child and spousal support arrears pursuant to an income execution issued pursuant to section five thousand two hundred forty-one of the civil practice law and rules;

(v) the taxpayer's driver's license is a commercial driver's license as defined in section five hundred one-a of the vehicle and traffic law; or

(vi) the department incorrectly found that the taxpayer has failed to comply with the terms of a payment arrangement made with the commissioner more than once within a twelve month period for the purposes of subdivision three of this section" (Tax Law § 171-v[5]).

F. Tax Law § 171-v(3)(d) states that the notice to a taxpayer shall include, "a statement that the suspension of the taxpayer's driver's license shall continue until the past-due tax liabilities are fully paid or the taxpayer makes payment arrangements satisfactory to the commissioner. . . ."

G. With respect to petitioner's first argument, there is no evidence that the Commissioner has acted on petitioner's offer in compromise. It follows that this section does not afford petitioner any relief since, at this juncture, there are *no* arrangements that are satisfactory to the Commissioner. An application for an offer in compromise, without acceptance by the Commissioner, does not satisfy this criterion. Petitioner's second argument is also without merit. A garnishment is an income execution upon compensation for personal services (Siegel, NY Prac § 502 at 878 [5th ed 2011]). Here, there is no showing that there has been an income execution upon petitioner's compensation for personal services. The filing of a tax levy is not listed as one of the grounds giving the right to challenge a notice. Lastly, petitioner argues that the Division should not proceed with the suspension of his license because of the hardship a suspension would create. However, assertions of hardship also do not raise any of the grounds set forth in Tax Law § 171-v(5). Accordingly, it is concluded that there is no dispute as to the facts and no basis in

law to grant the petition. As a result, the granting of summary determination is appropriate.

H. The Division's motion for summary determination is hereby granted, the petition of Juan Kip Lenoir is denied, and the Division's notice of proposed driver license suspension is sustained.

DATED: Albany, New York
May 28, 2015

/s/ Arthur S. Bray
ADMINISTRATIVE LAW JUDGE