

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition :  
of :  
**ROBERT CONWAY** : DETERMINATION  
For Review of a Notice of Proposed Driver License : DTA NO. 826392  
Suspension Referral Under Tax Law, Article 8, § 171-v. :  
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Petitioner, Robert Conway, 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 January 6, 2015, 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 affirmation of Michele W. Milavec, Esq., sworn to January 5, 2015, and annexed exhibits. Petitioner, appearing by Catherine M. Foti, Esq., did not file a response to the Division of Taxation's motion. Based upon the motion papers, the affidavits and documents submitted therewith, and all pleadings and documents submitted in connection with this matter, Kevin R. Law, Administrative Law Judge, renders the following determination.

***ISSUE***

Whether the Division of Taxation's Notice of Proposed Driver License Suspension Referral issued to petitioner should be sustained.

**FINDINGS OF FACT**

1. The Division of Taxation (Division) issued to petitioner, Robert Conway, a Notice of Proposed Driver License Suspension Referral (the 60-Day Notice), dated September 16, 2013, which notified petitioner that new legislation allows New York State to suspend the driver's 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 he failed to take action. Attached to the notice was a Consolidated Statement of Tax Liabilities listing petitioner's income tax assessments subject to collection, as follows:

<b>Assessment No.</b>	<b>Tax period ended</b>	<b>Tax Amount Assessed</b>	<b>Interest Assessed</b>	<b>Penalty Assessed</b>	<b>Payments and credits</b>	<b>Current Balance Due</b>
L-038907803-2	12/31/11	\$109,033.00	\$12,253.44	\$9,267.72	\$0.00	\$130,554.16
L-037083216-4	12/31/10	\$112,624.00	\$26,811.89	\$41,670.88	\$0.00	\$181,106.77
<b>Total</b>						<b>\$311,660.93</b>

The Consolidated Statement of Tax Liabilities also listed the following income tax assessments that were under formal or informal review, as follows:

<b>Assessment No.</b>	<b>Tax period ended</b>	<b>Tax Amount Assessed</b>	<b>Interest Assessed</b>	<b>Penalty Assessed</b>	<b>Payments and credits</b>	<b>Current Balance Due</b>
L-037066741-5	12/31/09	\$281,992.00	\$96,071.24	\$121,256.56	\$0.00	\$499,319.80
L-037066740-6	12/31/08	\$92,810.00	\$41,681.25	\$44,084.75	\$0.00	\$178,576.00
L-037066739-6	12/31/07	\$81,942.00	\$44,823.59	\$38,922.45	\$0.00	\$165,688.04
L-037066738-7	12/31/06	\$136,657.00	\$93,119.39	\$64,911.85	\$0.00	\$294,688.24
L-037063323-2	12/31/05	\$22,501.00	\$18,677.25	\$10,687.75	\$0.00	\$51,866.00
<b>Total</b>						<b>\$1,190,138.08</b>

2. On July 18, 2014, following the issuance of a Conciliation Order, dated April 18, 2014, sustaining the 60-Day Notice, petitioner filed a petition with the Division of Tax Appeals. The petition alleges that since petitioner must pay court ordered spousal support and because he has custody of his children, those obligations are similar to the exceptions to license suspension referral enumerated in Tax Law § 171-v(5). The petition alleges that because petitioner has custody of his children and one of those children is disabled, petitioner requires his driver's license to take his child to needed medical appointments. In addition, the petition alleges that petitioner qualifies for exemption under Tax Law § 171-v(5) because his assets and income are the subject of a receivership order pertaining to a divorce proceeding to which he is a party.

3. Attached to the petition is an April 18, 2014 Notice and Demand L-040982184-1 asserting income tax liabilities for the years 2004 through 2009, as follows:

<b>Tax period ended</b>	<b>Tax Amount Assessed</b>	<b>Interest Assessed</b>	<b>Penalty Assessed</b>	<b>Payments and credits</b>	<b>Current Balance Due</b>
12/31/04	\$92,139.00	\$0.00	\$0.00	\$92,139.00	\$0.00
12/31/05	\$40,150.00	\$0.00	\$0.00	\$40,150.00	\$0.00
12/31/06	\$157,499.00	\$0.00	\$0.00	\$157,499.00	\$0.00
12/31/07	\$107,435.00	\$0.00	\$0.00	\$107,435.00	\$0.00
12/31/08	\$92,810.00	\$0.00	\$0.00	\$92,810.00	\$0.00
12/31/09	\$281,767.00	\$0.00	\$0.00	\$281,767.00	\$0.00
<b>TOTALS</b>	<b>\$771,800.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$771,800.00</b>	<b>\$0.00</b>

The petition alleges that because the amounts assessed in this notice differ from those for the same years as reflected on the Consolidated Statement of Tax Liabilities referenced in Finding of Fact 1, the assessments appearing on Consolidated Statement of Tax Liabilities are not fixed and final and cannot form the basis of a license suspension referral.

4. The Division filed its answer to the petition on September 17, 2014, and in turn brought the subject motion on January 6, 2015. The Division submitted with its motion an affidavit, sworn to January 5, 2015, made by Matthew McNamara, who is employed as an Information Technology Specialist 3 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 details the steps undertaken by the Division in carrying out the license suspension program authorized by Tax Law, Article 8, § 171-v.

5. In his affidavit, Mr. McNamara describes the Division's process for selection of candidates who could be sent notices of proposed driver license suspension pursuant to Tax Law § 171-v. The initial search criteria includes that 1) the taxpayer has an outstanding balance of tax, penalty, and interest in excess of \$10,000.00; 2) all assessments currently involved in formal or informal protest, or bankruptcy be eliminated; 3) there must be less than 20 years from the issuance of the particular notice and demand; 4) the outstanding assessments not be the subject of an approved payment arrangement; and 5) the taxpayer is not deceased. The Division searches its electronic database on a weekly basis for those taxpayers that meet the above criteria.

6. Once candidates have been identified by the Division, the necessary information is sent to the Department of Motor Vehicles (DMV) to confirm that the taxpayer has a qualifying driver's license and is eligible for a notice of proposed driver license suspension.

7. After receipt of a match from DMV but prior to issuance of a proposed suspension notice, an additional compliance check is run by the Division to ensure that the case still meets

the aforementioned criteria and is still eligible for suspension. If so, the Division issues the proposed suspension notice to the taxpayer.

8. If the taxpayer does not respond to the Division or there has been no change in his or her status, the case is electronically sent to DMV for the license to be suspended.

9. Mr. McNamara avers that based on his review of the Division's records and his knowledge of its policies and procedures, issuance of the suspension notice to petitioner was proper.

### ***CONCLUSIONS OF LAW***

A. The Division has filed alternative motions, seeking dismissal under 20 NYCRR 3000.9(a), or summary determination under 20 NYCRR 3000.9(b). As the Division of Tax Appeals has subject matter jurisdiction in the instant matter, the Division's motion will be treated as one for summary determination (*see Matter of Ali*, Tax Appeals Tribunal, January 22, 2015).

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]).

Section 3000.9 of the Tax Appeals Tribunal's Rules of Practice and Procedure provides that a motion for summary determination is subject to the same provisions as a motion for summary judgment pursuant to Civil Practice Law and Rules § 3212. "The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case"

(*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985], *citing Zuckerman v City of New York*, 49 NY2d 557 [1980]). Inasmuch as summary judgment is the procedural equivalent

of a trial, it should be denied if there is any doubt as to the existence of a triable issue or where the material issue of fact is “arguable” (*Glick & Dolleck, Inc., v Tri-Pac Export Corp.*, 22 NY2d 439, 441 [1968]; *Museums at Stony Brook v Village of Patchogue Fire Dept.*, 146 AD2d 572 [1989]).

C. 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]) and the taxpayer must have fixed and final tax liabilities in excess of \$10,000.00.

D. The Division, through the factual assertions set forth in its motion papers, has established a prima facie showing that petitioner met the requirements for license suspension, to wit: the giving of notice of the proposed suspension referral and the existence of fixed and final outstanding tax liabilities in excess of \$10,000.00. The petition claims that since the tax assessed due for the years 2005 through 2009 on the April 18, 2014 Notice and Demand differs from that shown due on the Consolidated Statement of Tax Liabilities for those same years, the amounts reflected on such Consolidated Statement of Tax Liabilities cannot be considered fixed and final.

E. Petitioner’s argument is wholly without merit. The 60-Day Notice is predicated on fixed and final liabilities for the 2010 and 2011 tax years and not on liabilities for the years 2005 through 2009. As detailed in Finding of Fact 1, the Consolidated Statement of Tax Liabilities indicates that the liabilities for the years 2005 through 2009 were under review and therefore not fixed and final.

F. Petitioner also claims exemption from the license suspension referral because

he is paying court ordered spousal support and is subject to a receivership order pertaining to a divorce proceeding to which he is a party. Petitioner's right to challenge the 60-Day Notice issued pursuant to Tax Law § 171-v is specifically limited to 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]).

G. The grounds raised by petitioner do not fall within the confines set forth in Tax Law § 171-v(5). As noted by the Division in its motion papers, the language of Tax Law § 171-v(5) is very specific; having grounds similar to those enumerated in the statute does not serve to exempt petitioner from license suspension.

H. The Division's Motion for Summary Determination is granted, the September 16, 2013 Notice of Proposed Driver License Suspension Referral under Tax Law, Article 8, § 171-v is sustained, and the petition of Robert Conway is denied.

DATED: Albany, New York  
April 16, 2015

/s/ Kevin R. Law  
ADMINISTRATIVE LAW JUDGE