

STATE OF NEW YORK
DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
HARRISON MAAS : DETERMINATION
for Review of a Notice of Proposed Driver License : DTA NO. 826429
Suspension Referral under Tax Law, Article 8, § 171-v. :

Petitioner, Harrison Maas, 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 affidavit of Michele W. Milavec, Esq., dated January 5, 2015, and annexed exhibits. Petitioner, appearing pro se, filed a response to the Division of Taxation's motion by its due date of February 5, 2015, 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, Harrison Maas, at his New York, New York, address, a Notice of Proposed Driver License Suspension Referral (the

suspension notice), dated October 4, 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 he 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 his driver's license would be suspended. The notice was sent to the same address used by petitioner on the petition he 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-037083488-4	12/31/10	\$11,724.48	\$2,637.50	\$2,807.04	\$337.74	\$16,831.28
L-032737385-2	12/21/02	\$10,676.00	\$14,298.35	\$9,200.50	0.00	\$34,174.85
Total						\$51,006.13

2. In protest of the suspension notice, petitioner requested a conciliation conference before the Bureau of Conciliation and Mediation Services (BCMS), which was conducted on March 13, 2014. The conferee sustained the statutory notice, i.e., the suspension notice, by the issuance of a Conciliation Order dated May 9, 2014 (CMS No. 260047).

3. On August 5, 2014, petitioner filed a timely petition with the Division of Tax Appeals challenging the conclusion reached by the conciliation conferee regarding the suspension notice. The petition made the following assertions and allegations:

“(1) Commissioner did not credit Petitioner for income taxes paid to other states.

(2) Petitioner was forced to provide receipts and other documentation for 2002 and 2003, when there was no obligation for Petitioner to retain tax records for a period so far ago.

(3) Petitioner has applied for and requested an installment payment plan, which New York State has been considering for over one year.

(4) Petitioner should not have his driver's license suspended when he has offered to pay the full amount.”

4. Attached to the petition were numerous pieces of correspondence addressing the assessments that form the basis for the suspension notice, as follows:

A) The first, dated May 8, 2013 and signed by petitioner, identifies the assessments (L-032737385-2 and L-037083488-4, in addition to a third assessment not pertinent to this matter) and requests an installment plan be established. The letter states:

“Pursuant to a levy on the JP Morgan accounts of Barbara Maas, \$29,829.25 was paid to you earlier this month, leaving a balance of \$47,557.54. . . . We hereby request a six-year installment payment agreement with monthly payments of approximately \$661 per month. . . .”

B) The next letter, dated May 22, 2013, addressed to the Division and signed by petitioner states the following:

“Pursuant to a telephone conversation with Tax Compliance Agent A. Richards, enclosed is a check for \$661, representing the first installment payment pursuant to a proposed installment agreement covering income taxes owed by Harrison D. and Barbara E. Maas . . . for the years 2002, 2003 and 2010) [sic], Collection ID E-094115244, Assessment Ids L-032737385-2, L-032737386-1 and L-037083488-4.

Please contact the undersigned at [telephone number]. Thank you in advance.”

A check in the amount of \$661.00, dated May 20, 2013, paid to the order of the Commissioner of Taxation and Finance, referencing tax year 2002, was attached to the correspondence.

C) A letter dated October 24, 2013, from petitioner to Ms. L. Williams of the Division, stated that it was being sent with “certain documents in connection with our request for an installment agreement.”

D) With a letter dated November 12, 2013, petitioner provided his 2011 New York State return, and there was a discussion about obtaining a copy of his federal return to forward to the Division in hopes of proceeding with an installment payment plan.

E) Shortly after a conciliation conference took place at BCMS, petitioner sent a letter dated March 24, 2014, to the Collections and Civil Enforcement Division and BCMS, indicating that petitioner needed a period of time to determine the status of his request for an installment plan.

5. 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, held 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.

6. 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."

7. 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 October 4, 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

8. In his response, petitioner asserts that:

a) he has contested and appealed each and every assessment issued by the Division, continues to do so, and no determination to suspend petitioner's driver's license should be made until all appeals and contests have been finally determined; and

b) he and his wife have formally requested an installment plan to pay any and all amounts determined by the Division to be due and owing; and

c) he needs to continue to be able to drive in the State of New York for the following reasons:

1) Petitioner's wife is completely disabled and in chronic pain and must visit doctors and attend physical therapy on a weekly basis. Unable to utilize public transportation or private livery, she depends entirely on petitioner's ability to drive her to these appointments; and

2) Petitioner is president of the New York City Audubon Society, a non-paid position, and must travel to natural areas in and around New York City not served by mass transit.

9. 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; 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. Although petitioner asserts that he desires to set up a payment plan, the Division maintains that petitioner has failed to do so to date. The Division argues 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 he 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 his 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, which was conducted on March 13, 2014. Pursuant to the issuance of the Conciliation Order dated May 9, 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 he 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 August 5, 2014, thus, the Division of Tax Appeals has jurisdiction over the petition and, accordingly, may entertain the

Division's 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 that 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 October 4, 2013, and petitioner does not deny receipt of the notice. In fact, he 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 him, received by him, or are invalid for some other reason. Instead, petitioner maintains that he has contested each assessment, formally requested an installment payment plan, and should be granted an exception to the driver's license suspension based on his wife's medical needs. The fact that he may have contested his assessments does not rise to the level of payment. Although there was an indication from several letters that petitioner sought an installment payment plan for taxes due and thought such request had been approved, it appears to still be in process with the Division and has not reached the stage of approval, let alone satisfaction of the liabilities. Even petitioner's special circumstances concerning his wife's medical needs is not a covered reason under the Tax Law to protest the suspension notice. Petitioner's remedy now is limited to the challenges presented in Tax Law § 171-v(5), and the arguments that he has set forth are not within the enumerated challenges available to him. Thus, all the arguments maintained by petitioner are rejected.

D. 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 his 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, his 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.

E. The Division of Taxation's motion to dismiss is granted; the petition of Harrison Maas is hereby dismissed; and the Notice of Proposed Driver License Suspension Referral dated October 4, 2013, is sustained.

DATED: Albany, New York
April 16, 2015

/s/ Catherine M. Bennett
ADMINISTRATIVE LAW JUDGE