

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :

of :

JOSEPH STANILEWICZ :

For Review of a Notice of Proposed Driver License :
Suspension Referral Under Tax Law, Article 8, § 171-v :

DETERMINATION
DTA NOS. 827121
AND 827122

In the Matter of the Petition :

of :

CAROL STANILEWICZ :

For Review of a Notice of Proposed Driver License :
Suspension Referral Under Tax Law, Article 8, § 171-v . :

Petitioners, Joseph Stanilewicz and Carol Stanilewicz, filed petitions for review of notices of proposed driver license suspension referral under Tax Law, Article 8, § 171-v.

The Division of Taxation, by its representative, Amanda Hiller, Esq. (Hannelore F. Smith, Esq., of counsel), brought motions on October 26, 2015, to dismiss the petitions 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 motions were the affirmations of Hannelore F. Smith, Esq., dated October 26, 2015, and annexed exhibits. Petitioners, appearing by Cohen, LaBarbera & Landrigan, LLP (Aaron C. Fitch, Esq., of counsel), did not respond to the Division of Taxation's

motions. Based upon the motion papers 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 notices of proposed driver license suspension referral issued to petitioners should be sustained and the petitions dismissed.

FINDINGS OF FACT

1. The Division of Taxation (Division) issued to petitioners, Joseph Stanilewicz and Carol Stanilewicz, notices of proposed driver license suspension referral (the 60-Day Notices), dated October 8, 2014 and November 5, 2014, respectively, which notified petitioners that new legislation allows New York State to suspend the drivers' licenses of persons who have delinquent unpaid tax debts. The respective notices informed petitioners of how to avoid such suspension, how to respond to the notice and what would ensue if they failed to take action. Attached to the each of the 60-Day Notices was a Consolidated Statement of Tax Liabilities listing the assessment subject to collection.

2. The Consolidated Statement of Tax Liabilities attached to petitioner Joseph Stanilewicz's 60-Day Notice lists the following income tax assessments subject to collection:

Assessment No.	Tax period ended	Tax Amount Assessed	Interest Assessed	Penalty Assessed	Payments and credits	Current Balance Due
L-040423759-2	12/31/12	\$23,877.00	\$2,912.38	\$3,217.84	\$0.00	\$30,007.22
L-038826749-4	12/31/11	\$56,863.00	\$12,137.22	\$9,178.80	\$5,000.00	\$73,179.02
L-037172525-7	12/31/10	\$5,052.00	\$1,434.40	\$1,310.00	\$1,839.91	\$5,956.49

3. The Consolidated Statement of Tax Liabilities attached to petitioner Carol Stanilewicz's 60-Day Notice lists the following income tax assessments subject to collection:

Assessment No.	Tax period ended	Tax Amount Assessed	Interest Assessed	Penalty Assessed	Payments and credits	Current Balance Due
L-040423759-2	12/31/12	\$23,877.00	\$3,085.76	\$3,337.22	\$0.00	\$30,299.98
L-038826749-4	12/31/11	\$56,863.00	\$12,553.44	\$9,432.58	\$5,157.27	\$73,691.75

4. On August 5, 2015, following the issuance of conciliation orders, both dated May 8, 2015, sustaining the 60-Day Notices, petitioners filed petitions with the Division of Tax Appeals. The petitions allege that an offer in compromise is being reviewed by the Division and that it would be improper and inequitable to suspend petitioners' respective drivers' licenses while such offer is pending.

5. The Division filed its answers to the petitions on September 16, 2015 and in turn brought the subject motions on October 26, 2015. The Division submitted with its motions separate affidavits, both sworn to on October 26, 2015, made by Ronald Catalano, a Tax Compliance Manager 2 with its Civil Enforcement Division (CED). His responsibilities include overseeing the operations of the Training Unit of the CED's Operations Analysis and Support Bureau. His affidavits are based upon his personal knowledge of the facts in these matters and a review of the Division's official records, which are kept in the ordinary course of business.

6. In his affidavits, Mr. Catalano 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 have 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; and 4) the outstanding assessments not be the

subject of an approved payment arrangement. The Division searches its electronic database on a weekly basis for those taxpayers that meet the above criteria.

7. 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.

8. Mr. Catalano avers that based on his review of the Division's records and his knowledge of its policies and procedures, issuance of the suspension notices to petitioners was proper. Specifically, Mr. Catalano states that, based upon notices L-040423759-2, L-038826749-4 and L-037172525-7, the cumulative balance of tax, penalty, and interest owed by petitioner Joseph Stanilewicz on October 8, 2014 was greater than \$10,000.00, and Mr. Stanilewicz met all other compliance checks referenced in Finding of Fact 6 for proper issuance of the suspension notice. Likewise, with reference to Ms. Stanilewicz, Mr. Catalano states that, based upon notices L-040423759-2 and L-038826749-4, the cumulative balance of tax, penalty, and interest owed as of November 5, 2014 was greater than \$10,000.00, and that she met all other compliance checks.

CONCLUSIONS OF LAW

A. The Division 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, 562 [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. Petitioner's right to challenge the 60-Day Notice 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]).

E. In their respective petitions, petitioners did not raise a challenge based on any of the above-enumerated grounds. While petitioners may have an offer in compromise pending before the Division, filing of such does not forestall the issuance of 60-Day notices. The Division, through the factual assertions set forth in its motion papers, has established a prima facie showing that petitioners 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. To rebut this prima facie showing, it was incumbent upon petitioners to produce evidence in admissible form sufficient to raise an issue of fact requiring a hearing (*Zuckerman v City of New York*, 49 NY2d at 562 [1980]). Petitioners, however, did not respond to the Division's motion. Accordingly, they are deemed to have conceded that no question of fact requiring a hearing exists (*see Kuehne & Nagel, Inc., v. Baiden*, 36 NY2d 539 [1975]; *John William Costello Assocs. v. Standard Metals Corp.*, 99 AD2d 227 [1984], *lv dismissed* 62 NY2d 942 [1984]). Petitioners have presented no evidence to contest the facts alleged in the Division's affidavits; consequently, those facts are deemed admitted (*Kuehne & Nagel, Inc., v. Baiden*, at 544; *Whelan v. GTE Sylvania*, 182 AD2d 446, 449 [1st Dept 1992]).

F. The Division's motions for summary determination are granted, the October 8, 2014 and November 5, 2014 notices of proposed driver license suspension referral under Tax Law, Article 8, § 171-v are sustained, and the petitions of Joseph Stanilewicz and Carol Stanilewicz are denied.

DATED: Albany, New York
February 11, 2016

/s/ Kevin R. Law
ADMINISTRATIVE LAW JUDGE