

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition :  
of :  
**AZIZ YAKOUB** : DETERMINATION  
for Review of a Notice of Proposed Driver License : DTA NO. 827667  
Suspension Referral under Tax Law, Article 8, :  
§ 171-v. :

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

On January 6, 2017, the Division of Taxation, by Amanda Hiller, Esq. (Karry Cullihan, 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 Karry Cullihan, Esq., and annexed exhibits. Petitioner, appearing by Ahmed Abdelhalim, CPA, did not file a response. Pursuant to 20 NYCRR 3000.5(d) and 3000.9(a)(4), the 90-day period for issuance of this determination commenced on February 5, 2017. After due consideration of the documents and arguments submitted, and all pleadings filed, 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 pursuant to Tax Law § 171-v should be sustained.

***FINDINGS OF FACT***

1. The subject of the motion of the Division of Taxation (Division) is the validity of petitioner, Aziz Yakoub's, protest of a notice of proposed driver license suspension referral (Collection case ID: E-037684046-CL01-6), dated March 23, 2016, and issued to petitioner pursuant to Tax Law § 171-v (suspension notice). The suspension notice informed petitioner that he had outstanding tax liabilities in excess of \$10,000.00 owed to the State of New York, and that unless he responded within 60 days of the mailing date of the suspension notice, his driver's license would be suspended. Attached to the notice was a Consolidated Statement of Tax Liabilities listing petitioner's tax assessments subject to collection, as follows:

Tax Type	Assessment ID Number	Tax Period Ended	Tax Amount	Interest Amount	Penalty Amount	Payment Credit	Current Balance
Sales	L-042739923-2	5/31/14	\$44,490.93	\$28,512.32	\$17,795.14	\$2,837.00	\$87,961.39
Sales	L-042739922-3	11/30/12	\$14,577.09	\$9,630.49	\$5,830.61	\$146.67	\$29,891.52
Sales	L-042739921-4	2/28/14	\$28,073.49	\$15,263.61	\$11,228.86	\$0.00	\$54,565.96
Sales	L-042739884-9	5/31/14	\$13,283.89	\$6,303.80	\$5,312.75	\$0.00	\$24,900.44

2. According to the suspension notice, an adequate response within the specified 60-day time period would consist of 1) resolution of the outstanding liability either by payment or establishment of a payment plan; 2) notification to the Division of petitioner's eligibility for an exemption; or 3) a protest of the suspension notice by the filing of a request for a conciliation conference with the Bureau of Conciliation and Mediation Services (BCMS) or a petition with the Division of Tax Appeals.

3. On June 7, 2016, the Division of Tax Appeals received a petition challenging the suspension notice. The petition also references the four sales tax assessments listed on the

March 23, 2016 Consolidated Statement of Tax Liabilities detailed in Finding of Fact 1.<sup>1</sup>

4. In support of its motion, the Division submitted the affidavit of Ronald Catalano, a Tax Compliance Manager 2 in its Civil Enforcement Division (CED) during the relevant time. His responsibilities include overseeing the operations of the Training Unit of the CED's Operations Analysis and Support Bureau. Mr. Catalano'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. 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.

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. Mr. Catalano avers that based on his review of the Division's records, his knowledge of its policies and procedures, and personal knowledge of the facts in this matter, issuance of the

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<sup>1</sup>It is observed that the notices forming the basis for the suspension notice were the subject of a determination wherein the petitions challenging those notices were dismissed for untimely filing (*see Matter of Yakoub*, Division of Tax Appeals, August 18, 2016). Those notices were all issued on April 21, 2015 and, by operation of law, became fixed and final 91 days thereafter (Tax Law § 1138 [a] [1]).

suspension notice to petitioner was proper.

8. The Division's motion papers assert 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 failed to raise any 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. 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, 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 [2nd Dept 1989]).

C. Tax Law § 171-v 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 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 the 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 his petition, petitioner did not raise a challenge based on any of the above-enumerated grounds. 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. To rebut this prima facie showing, it was incumbent upon petitioner 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). Petitioner, however, did not respond to the Division's motion. Accordingly, he is 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 [1st Dept 1984], *lv dismissed* 62 NY2d 942 [1984]). Petitioner has presented no evidence to contest the facts alleged in the Catalano affidavit; 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 motion for summary determination is hereby granted, the petition of Aziz Yakoub is dismissed, and the Division's March 23, 2016 notice of proposed driver license suspension is sustained.

DATED: Albany, New York  
April 27, 2017

/s/ Kevin R. Law  
ADMINISTRATIVE LAW JUDGE