

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
SURVIR S. SALARIA	:	DETERMINATION
For Review of a Notice of Proposed Driver License	:	DTA NO. 827886
Suspension Referral Under Tax Law, Article 8, § 171-v.	:	

Petitioner, Survir S. Salaria, 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. (Hannelore F. Smith, Esq., of counsel), brought a motion on February 14, 2017, 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 Hannelore F. Smith, Esq., dated February 14, 2017, and annexed exhibits. Petitioner, appearing pro se, requested and was granted additional time to file a response to the Division of Taxation's motion. On June 12, 2017, petitioner filed a response to the Division of Taxation's motion, and filed a cross motion to dismiss the notice of proposed driver license suspension referral, or in the alternative seeking summary judgment in favor of petitioner. The Division of Taxation filed a reply to petitioner's cross motion on July 3, 2017. Based upon the motion papers, the affidavits and documents submitted therewith, and all pleadings and documents submitted in connection with this matter, Barbara J. Russo, 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, Survir S. Salaria, a notice of proposed driver license suspension referral (suspension notice), dated August 27, 2015, 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 suspension notice informed petitioner of how to avoid such suspension, how to respond to the suspension notice and what would ensue if he failed to take action. Attached to the suspension notice was a consolidated statement of tax liabilities listing petitioner’s tax assessments subject to collection, as follows:

Assessment No.	Tax period ended	Tax Amount Assessed	Interest Assessed	Penalty Assessed	Payments and credits	Current Balance Due
L-041816771-7	12/31/12	\$0.00	\$409.27	\$8,005.08	\$10.48	\$8,403.87
L-041816770-8	3/31/13	\$0.00	\$334.49	\$6,533.65	\$0.00	\$6,868.14
L-041816769-8	6/30/13	\$0.00	\$260.17	\$5,081.93	\$0.00	\$5,342.10
Total						\$20,614.11

2. On October 12, 2016, following the issuance of a Conciliation Order, dated July 15, 2016, sustaining the suspension notice, petitioner filed a petition with the Division of Tax Appeals. The petition alleges that:

“1. The Commissioner of Taxation & Finance has not replied to petitioner’s letter dated September 18, 2015 in response to Notice of Proposed Drivers License Suspension Referral dated August 27, 2015 (copy attached) and letter dated October 3, 2015 (copy attached).

2. There are 2 shareholders of Venus Pharmaceuticals International, Inc. with 50% stock ownership each. The Commissioner of Taxation and Finance is not being transparent regarding the reasoning of determination of personal liability.

3. As the case involves extraordinary circumstances, the Commissioner of Taxation and Finance has not consulted with New York State government, federal government and related government organizations, before reaching to the determination.”

3. The Division filed its answer to the petition on December 7, 2016, and, in turn, brought the subject motion on February 14, 2017. The Division submitted with its motion an affidavit, sworn to February 10, 2017, made by Ronald Catalano, who is employed as a Tax Compliance Manager 2 with the Division’s Civil Enforcement Division (CED). Mr. Catalano’s responsibilities and duties include overseeing the operations of the Training Unit of the CED’s Operations Analysis and Support Bureau and working with the Office of Information Technology Services. His affidavit is based upon his personal knowledge of the facts in this matter and a review of the Division’s official records, which are kept in the ordinary course of business. Mr. Catalano’s affidavit details the steps undertaken by the Division in carrying out the license suspension program authorized by Tax Law § 171-v.

4. 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; 4) the outstanding assessments not be the subject of an approved payment arrangement; and 5) deceased taxpayers are excluded. The Division searches its electronic database on a weekly basis for taxpayers that meet the above criteria.

5. 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.

6. 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.

7. 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.

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 notice to petitioner was proper.

SUMMARY OF PETITIONER'S POSITION

9. Petitioner argues in opposition to the Division's motion and in support of his cross motion that there were two shareholders of Venus Pharmaceuticals International, Inc. (Venus), that he and another individual each owned 50% of Venus, and that each owner had equal responsibility for Venus's withholding liabilities. As such, petitioner contends that the Division's assessment of Venus's withholding liabilities against him is unfair.

Petitioner further contends that "the individual to whom the notice was provided is not the taxpayer at issue" pursuant to Tax Law § 171-v, arguing that the taxpayer at issue was "Venus with 2 equal (50% each) shareholders who are equally responsible and liable for any outstanding debts of Venus."

CONCLUSIONS OF LAW

A. The Division alternatively seeks 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 Liaquat Ali, Inc.*, Tax Appeals Tribunal, January 22, 2015). Petitioner's cross motion to dismiss or for summary determination will likewise be treated as one for summary determination.

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 [2d 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 suspension 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]).

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 [1980]).

In response to the Division's motion and in support of his cross motion, petitioner argues that he is not the taxpayer at issue pursuant to Tax Law § 171-v(i), contending that the taxpayer at issue was "Venus with 2 equal (50% each) shareholders who are equally responsible and liable for any outstanding debts of Venus." Tax Law § 171-v(i) provides as a ground for challenging a suspension notice that, "the individual to whom the notice was provided is not the taxpayer at issue." Contrary to petitioner's argument, Venus is not the taxpayer at issue herein. Rather, the taxpayer at issue, and to whom the notice, along with the consolidated statement of tax liabilities, was issued, is Survir S. Salaria. Petitioner does not contend that he is not Survir S. Salaria as named in the suspension notice. Instead, petitioner's argument amounts to a challenge of the merits of underlying tax assessments issued against him as a responsible person for the withholding taxes of Venus. While petitioner concedes that he is an owner and responsible person for Venus, he argues that another shareholder owned 50% of Venus and had equal responsibility for Venus's withholding liabilities.

However, even assuming that the facts as asserted by petitioner are true, such facts do not defeat the Division's motion for summary determination, because, as a matter of law, such facts are not relevant. Assuming the facts alleged by petitioner, that another shareholder held equal responsibility for Venus's withholding tax liabilities, such circumstances would not relieve petitioner of liability for the tax asserted in the consolidated statement of tax liabilities. Those liabilities are fixed and final, and petitioner's time to challenge the underlying merits of those assessments expired 90 days after the underlying notices of deficiency were issued (Tax Law §§ 681[b]; 689[b]).

Tax Law § 171-v(1) authorizes “a program to improve tax collection through the suspension of drivers’ licenses of taxpayers with past-due tax liabilities equal to or in excess of ten thousand dollars.” Tax liabilities are defined as including penalties and interest due on any tax amounts (Tax Law § 171-v[1]). The phrase “past-due tax liabilities” is specifically defined as “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 (Tax Law § 171-v[1]). Petitioner had opportunities to contest the assessments issued by the Division and chose, for whatever reason, not to avail himself of those opportunities (*see* Tax Law §§ 170[3-a], 689, 690, 2000 and 2016; *see also Matter of Balkin*, Tax Appeals Tribunal, February 10, 2016). Petitioner no longer has any right to any administrative or judicial review with regard to the propriety of, or the amount of the tax assessed by, the assessments listed on the consolidated statement of tax liabilities attached to the suspension notice. Therefore, such liabilities are fixed and final and properly the subject of the suspension notice (*see Matter of Balkin*).

Furthermore, even if another shareholder was equally responsible with petitioner for the underlying withholding tax liability, as asserted by petitioner, such circumstance would not affect the amounts asserted against petitioner in the suspension notice and attached consolidated statement of tax liabilities. It is well settled that the liability of an individual who is a person responsible for the withholding and payment of taxes under section 685(n) of the Tax Law is joint and several (*Matter of Phillips*, Tax Appeals Tribunal, May 11, 1995). Accordingly, the Division is free to recover the tax due from petitioner, from the corporation, or another responsible person as it chooses or is able. Thus, petitioner has identified no issue and has submitted no proof which would indicate that there is any merit whatsoever to his case.

F. The Division's Motion for Summary Determination is granted, petitioner's cross motion is denied, the petition of Survir S. Salaria is denied, and the August 27, 2015 Notice of Proposed Driver License Suspension Referral under Tax Law, Article 8, § 171-v is sustained.

DATED: Albany, New York
September 28, 2017

/s/ Barbara J. Russo
ADMINISTRATIVE LAW JUDGE