

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
ANTHONY NASTASI : DETERMINATION
For Review of a Notice of Proposed Driver License : DTA NO. 828087
Suspension Referral Under Tax Law, Article 8, § 171-v. :
:

Petitioner, Anthony Nastasi, 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. (Kileen C. Davies, Esq., of counsel), brought a motion on May 22, 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 Kileen C. Davies, Esq., dated May 22, 2017, and annexed exhibits. Petitioner, appearing by Blank Rome, LLP (Joseph T. Gulant, Esq., of counsel), filed a response to the Division of Taxation's motion on June 21, 2017, which date began the three month period for issuance of this determination. 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, Anthony Nastasi, a notice of proposed driver license suspension referral (suspension notice), dated March 9, 2016, which notified petitioner that new legislation allows New York State to suspend the drivers' 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-043660061-5 | 6/30/15 | \$0.00 | \$35.80 | \$4,449.52 | \$0.00 | \$4,485.32 |
| L-043476214-2 | 3/31/15 | \$0.00 | \$3,090.59 | \$181,903.59 | \$0.00 | \$184,994.18 |
| L-043148888-5 | 12/31/13 | \$0.00 | \$4,041.01 | \$143,258.46 | \$13,267.00 | \$134,032.47 |
| L-043148887-6 | 3/31/14 | \$0.00 | \$3,333.31 | \$132,226.02 | \$25,000.00 | \$110,559.33 |
| L-043148886-7 | 9/30/14 | \$0.00 | \$6,240.85 | \$200,756.34 | \$0.00 | \$206,997.19 |
| L-043148885-8 | 12/31/14 | \$0.00 | \$6,859.75 | \$220,665.41 | \$0.00 | \$227,525.16 |
| L-043124020-9 | 3/31/15 | \$0.00 | \$328.82 | \$12,053.25 | \$0.00 | \$12,382.07 |
| L-042899923-6 | 12/31/14 | \$0.00 | \$8,056.12 | \$238,034.52 | \$0.00 | \$246,090.64 |
| L-042739954-1 | 9/30/14 | \$0.00 | \$8,106.16 | \$188,433.99 | \$0.00 | \$196,540.15 |
| L-042169761-5 | 6/30/14 | \$0.00 | \$7,508.38 | \$101,970.42 | \$0.00 | \$109,418.80 |
| L-041864165-8 | 12/31/13 | \$0.00 | \$6,173.71 | \$277,751.60 | \$0.00 | \$283,925.31 |
| L-041864164-9 | 3/31/14 | \$0.00 | \$6,372.77 | \$286,706.93 | \$0.00 | \$293,079.70 |

| | | | | | | |
|---------------|---------|--------|-------------|--------------|--------|-----------------------|
| L-041505143-3 | 9/30/13 | \$0.00 | \$5,287.26 | \$237,870.57 | \$0.00 | \$243,157.83 |
| L-040129230-6 | 6/30/13 | \$0.00 | \$38,174.31 | \$328,553.82 | \$0.11 | \$366,728.02 |
| Total | | | | | | \$2,619,916.17 |

2. On February 13, 2017, following the issuance of a Conciliation Order, dated November 18, 2016, sustaining the suspension notice, petitioner filed a petition with the Division of Tax Appeals. The petition alleges that a suspension of petitioner's driver's license would cause a severe hardship to petitioner and that without the ability to drive, he would not be able to collect debts and raise funds necessary to pay his tax liabilities.

3. The Division filed its answer to the petition on April 12, 2017, and in turn brought the subject motion on May 22, 2017. The Division submitted with its motion an affidavit, sworn to May 18, 2017, of Brandi M. Spohn, who is employed as a Business Systems Analyst 4 with the Division's Civil Enforcement Division (CED). Ms. Spohn's responsibilities and duties include overseeing the operations of the CED's Operations Analysis and Support Bureau and working with the Office of Information Technology Services. Her affidavit is based upon her 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. Ms. Spohn's affidavit details the steps undertaken by the Division in carrying out the license suspension program authorized by Tax Law, Article 8, § 171-v.

4. In her affidavit, Ms. Spohn 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 those taxpayers that meet the above criteria. The Division also determines whether a taxpayer's wages are being garnished for the payment of past-due tax liabilities, past-due child support, or combined child and spousal support arrears, which would exclude a taxpayer from being selected for suspension

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. Ms. Spohn avers that based on her review of the Division's records and her 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, 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 equal to or in excess of ten thousand dollars through the suspension of drivers’ licenses. Tax liabilities are defined as including penalties and interest due on any tax amounts, and “past-due tax liabilities” are defined as those which have become fixed and final such that the taxpayer no longer has any right to administrative or judicial review thereof (Tax Law § 171-v[1]). 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]). Petitioner has raised no issues herein regarding the propriety of, or the amount

of the tax assessed by, the assessments listed on the March 9, 2016 consolidated statement of tax liabilities attached to the suspension notice. Accordingly, by operation of the definition in the statute, such liabilities are fixed and final and meet the threshold requirement for issuance of a 60-day notice proposing the suspension of petitioner's driver's license pursuant to Tax Law § 171-v.

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 and response to the Division's motion, 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]).

Petitioner, however, has presented no evidence to contest the facts alleged in the Spohn affidavit and the exhibits attached thereto. Instead, petitioner argues only that the suspension of his driver's license would cause a hardship and he would be unable to collect debts and raise funds necessary to pay his tax liabilities. In addressing a similar argument based on financial hardship, the Tax Appeals Tribunal has stated:

“To the extent that petitioner is arguing that the Division should provide relief to taxpayers based upon financial hardship, we note that such relief is not provided for in Tax Law § 171-v” (*Matter of Balkin*, Tax Appeals Tribunal, February 10, 2016).

The Tribunal further noted in response to arguments based on hardship and due process that:

“[the] petitioner in the present matter may apply for a restricted use license (Vehicle and Traffic Law § 510 [4-f] [5] [allowing for a person whose license has been suspended for failure to pay past-due tax liabilities to apply for the issuance of a restricted use license] and Vehicle and Traffic Law § 530 [5-b] [implying that a restricted use license cannot be denied to a person whose license has been suspended for failure to pay past-due tax liabilities]). A restricted use license may be issued if such a license is necessary for certain employment or education reasons for the person whose driver's license has been suspended, or as required for medical treatment for that person or member of his or her household (Vehicle and Traffic Law § 530 [1]). These provisions ameliorate the necessity for petitioner to be provided with another opportunity for notice and a hearing” (*id.*; *see also Matter of Jacobi*, Tax Appeals Tribunal, May 12, 2016).

As such, petitioner's argument is unpersuasive.

F. The Division's Motion for Summary Determination is granted, the petition of Anthony Nastasi is denied, and the March 9, 2016 Notice of Proposed Driver License Suspension Referral under Tax Law, Article 8, § 171-v is sustained.

DATED: Albany, New York
September 14, 2017

/s/ Barbara J. Russo
ADMINISTRATIVE LAW JUDGE