

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition :  
of :  
**STUART KALINSKY** : DETERMINATION  
for Review of a Notice of Proposed Driver's License : DTA NO. 828297  
Suspension Referral Issued on June 1, 2017 pursuant :  
to Tax Law § 171-v. :

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Petitioner, Stuart Kalinsky, filed a petition for review of a notice of proposed driver license suspension referral issued on June 1, 2017, pursuant to § 171-v of the Tax Law.

On January 18, 2019, the Division of Tax Appeals issued to petitioner a notice of intent to dismiss petition pursuant to 20 NYCRR 3000.9 (a) (4). The parties were given until February 18, 2019 to respond to said notice. On February 7, 2019, the Division of Taxation, appearing by Amanda Hiller, Esq. (Karry L. Culihan, Esq., of counsel), submitted a letter in support of the dismissal. Petitioner, appearing pro se, did not submit a response by February 18, 2019, which date triggered the 90-day deadline for issuance of this determination. After due consideration of the documents submitted, Herbert M. Friedman, Jr., Supervising Administrative Law Judge, renders the following determination.

***FINDINGS OF FACT***

1. Petitioner, Stuart Kalinsky filed a petition that was received by the Division of Tax Appeals on August 2, 2017. The envelope containing the petition bears a United States Postal Service (USPS) postmark dated July 28, 2017.

2. The petition protests assessment numbers L-046069582, L-045315026, and a notice of

proposed driver's license suspension referral (suspension notice) issued on June 1, 2017.<sup>1</sup>

3. Petitioner did not indicate in section IX of the petition that a conciliation conference had been requested with the Division of Taxation's (Division's) Bureau of Conciliation and Mediation Services (BCMS) regarding the suspension notice. In fact, petitioner filed a simultaneous request for a conciliation conference with BCMS on July 28, 2017. BCMS issued a conciliation order (CMS number 000276195) on April 13, 2018, dismissing petitioner's request and sustaining the statutory notice.<sup>2</sup>

4. The Supervising Administrative Law Judge of the Division of Tax Appeals mailed a letter to both parties on December 21, 2018, informing them that as a conciliation order was issued to petitioner after the filing of the petition and the petition was filed prior to the conclusion of the conciliation proceeding at BCMS, the petition was premature. To date, petitioner has not withdrawn his petition, and a new petition has not been filed since the issuance of the conciliation order.

5. On January 18, 2019, Herbert M. Friedman, Supervising Administrative Law Judge of the Division of Tax Appeals issued a notice of intent to dismiss petition (notice of intent) to petitioner on the basis that the petition was premature, and as filed, the petition was insufficient to confer jurisdiction upon the Division of Tax Appeals to address the merits of the petition.

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<sup>1</sup> Petitioner's challenge to assessment numbers L-046069582 and L-045315026 was severed into a separate petition, DTA number 828296. This matter, DTA number 828297, pertains only to the notice of proposed driver's license suspension referral issued on June 1, 2017.

<sup>2</sup> As the Division of Tax Appeals was unaware of the BCMS proceedings, the petition was deemed to be in proper form. The petition was acknowledged and sent to the Division of Taxation for preparation of an answer on August 29, 2017. After submission of an answer on November 8, 2017, the Division of Taxation filed a notice of motion on September 14, 2018. The affirmation in support of the motion by Karry L. Culihan, Esq., stated that a request for conciliation conference was filed on July 28, 2017, and after the completion of a conciliation conference, a conciliation order was issued on April 13, 2018. The motion documentation also included a copy of the conciliation order.

6. In response to the notice of intent to dismiss petition, the Division's representative submitted a letter dated February 6, 2019, stating, in pertinent part, that as the request for conciliation conference and petition were filed concurrently, the BCMS proceedings were not final at the time the petition was filed; therefore, the petition was premature.

### ***CONCLUSIONS OF LAW***

A. In *Matter of Victory Bagel Time, Inc.* (Tax Appeals Tribunal, September 13, 2012), the Tax Appeals Tribunal held that the standard to employ for reviewing a notice of intent to dismiss petition is the same as that used for reviewing a motion 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]).

C. As an alternative to proceeding directly to a formal hearing in the Division of Tax Appeals, a taxpayer may request a conciliation conference with BCMS (*see* Tax Law § 170 [3-a] [b]). A conciliation conference provides parties with an informal opportunity to resolve disagreements and can narrow the scope or eliminate the need for a hearing in the Division of Tax Appeals (*see* 20 NYCRR 4000.5 [c] [1] [i]). Pursuant to Tax Law § 170.3-a (a), BCMS shall be responsible for providing conciliation conferences. Once a conciliation order is rendered, in the absence of a showing fraud, malfeasance or misrepresentation of a material fact, such order will be binding on the Division of Taxation and the requester (*see* 20 NYCRR 4000.5 [4]). Tax Law § 170.3-a (e) provides that a conciliation order will not be binding on the requester if such person petitions for a hearing concerning the statutory notice within ninety days

after the conciliation order is issued, or, for a conciliation order affirming a written notice described in paragraph (h) of this subdivision, within thirty days after the conciliation order is issued, notwithstanding any other provision of law to the contrary. The filing of a request for conference tolls the statute of limitations for filing a petition (*see* Tax Law § 170 [3-a] [b]).

D. In this case, petitioner filed a request for conciliation conference and petition concurrently. A conciliation order addressing the suspension notice was issued after the petition was filed. Accordingly, the petition is premature and the Division of Tax Appeals is without jurisdiction to consider its merits (*see* Tax Law § 170 [3-a]).

E. IT IS ORDERED, on the supervising administrative law judge's own motion, that the petition be, and it is hereby, dismissed with prejudice as of this date.

DATED: Albany, New York  
May 9, 2019

/s/ Herbert M. Friedman, Jr.  
SUPERVISING ADMINISTRATIVE LAW JUDGE