

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
GREGORY BESS : DETERMINATION
for Review of a Notice of Proposed Driver License : DTA NO. 828630
Suspension Referral under Tax Law § 171-v. :
:

Petitioner, Gregory Bess, filed a petition for review of a notice of proposed driver license suspension referral under Tax Law § 171-v.

The Division of Taxation, appearing by its representative, Amanda Hiller, Esq. (Hannelore F. Smith, Esq., of counsel), filed a motion on September 6, 2018, seeking an order dismissing the petition or, in the alternative, granting summary determination in the above-referenced matter pursuant to sections 3000.5, and 3000.9 (a) and (b) of the Rules of Practice and Procedure of the Tax Appeals Tribunal. Petitioner, appearing by Buxbaum Sales Tax Consulting, LLC (Michael Buxbaum, CPA), was granted an extension to respond to the Division of Taxation's motion and responded on December 7, 2018. Pursuant to 20 NYCRR 3000.5 (d), the 90-day period for issuance of this order commenced December 7, 2018. Based upon the motion papers, the affidavits and documents submitted, 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 pertaining to petitioner should be sustained.

FINDINGS OF FACT

1. The Division of Taxation (Division) issued to petitioner, Gregory Bess, a notice of proposed driver license suspension referral (form DTF-454), Collection case ID: E-038490177-CL01-7 (60-day notice or notice), advising that petitioner must pay his New York State tax debts or face the possible suspension of his driver's license pursuant to Tax Law § 171-v.

2. The 60-day notice is dated May 17, 2017, and is addressed to petitioner at his Elmont, New York, address. Included with the 60-day notice was a consolidated statement of tax liabilities (form DTF-967-E), also dated May 17, 2017, setting forth one unpaid assessment subject to collection action. The assessment was for sales tax, assessment ID L-045805770, for the tax period ended November 30, 2013. The assessment was for tax in the amount of \$294,845.78, interest in the amount of \$271,081.16, penalty in the amount of \$117,937.92, and a payment/credit in the amount of \$4,166.00, for a total balance due of \$679,698.86.

3. The 60-day notice indicated that a response was required within 60 days from its mailing, or the Division would notify the New York State Department of Motor Vehicles (DMV) and petitioner's driver's license would be suspended. The front page of the 60-day notice informed petitioner that unless one of the exemptions on the back page of the 60-day notice applied, he was required to either pay the amount due, or set up a payment plan, in order to avoid suspension of his license.

4. The back page of the 60-day notice is titled, "How to respond to this notice." The opening sentence directly beneath the title lists a phone number and instructs the recipient that

“[i]f any of the following apply,” he or she is to call the Division at that number. Furthermore, the recipient is advised that he or she may be asked to supply proof in support of his or her claim.

5. The first two headings under the title, “How to respond to this notice,” are “child support exemption” and “commercial driver’s license exemption.” The third heading, “Other grounds,” states that the recipient’s driver’s license will not be suspended if any of the following apply:

- “- You are not the taxpayer named in the notice.
- The tax debts have been paid.
- The Tax Department [Division] is already garnishing your wages to pay these debts.
- Your license was previously selected for suspension for unpaid tax debts *and*: you set up a payment plan with the Tax Department [Division], *and* the Tax Department [Division] erroneously found you failed to comply with that payment plan on at least two occasions in a twelve-month period.”

Also listed under “Other grounds” is the statement that the recipient may contact the Division to establish that he or she is eligible for innocent spouse relief under Tax Law § 654, or that enforcement of the underlying tax debts has been stayed by the filing of a bankruptcy petition.

6. Under the heading, “Protests and legal actions,” it is explained that if the recipient protests with the Tax Department, or brings a legal action, he or she may only do so based upon the grounds listed above. Furthermore, under a heading titled, “If you do not respond within 60 days,” the recipient is informed the Division will provide DMV with the information necessary to suspend the recipient’s driver’s license, unless the recipient does one of the following within 60 days: resolves his or her tax debts or sets up a payment plan; notifies the Division of his or her eligibility for an exemption; or protests the proposed suspension of his or her license by either

filing a request for conciliation conference with BCMS, or a petition with the Division of Tax Appeals.

7. Petitioner requested a conciliation conference before the Bureau of Conciliation and Mediation Services (BCMS) protesting the 60-day notice. By conciliation order dated January 12, 2018, the conferee sustained the notice.

8. Thereafter, petitioner filed a petition with the Division of Tax Appeals on March 15, 2018. The petition states that petitioner “was granted a courtesy conference with local district office . . . and the amount assessed has been significantly reduced.” Petitioner also contends that the Division did not comply with Tax Law § 171-v (3), which requires the notice to be mailed to petitioner’s last known address by first class mail with:

- “1) a clear statement of the past-due tax liabilities, together with the notice that the taxpayer’s information will be provided to DMV 60 days after the mailing of the notice; and
- 2) a statement that the taxpayer can avoid license suspension by paying the debt or entering into a payment agreement acceptable to the Division and information as to how the taxpayer can go about this for the past-due tax liabilities.”

9. Attached to the petition were copies of the January 12, 2018 conciliation order, both the front and back pages of the May 17, 2017 60-day notice, and the May 17, 2017 consolidated statement of tax liabilities.

10. The Division submitted with its motion an affidavit, dated September 4, 2018, of Todd Lewis, who is employed as a Tax Compliance Manager 4 with the Division’s Civil Enforcement Division (CED). Mr. Lewis’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. 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.

11. Mr. Lewis's affidavit details the sequential actions, i.e., the initial process, the DMV data match, the suspension process and the post-suspension process undertaken by the Division in carrying out the license suspension program authorized by § 171-v of the Tax Law. These steps are summarized as follows:

a) The "Initial Process" involves the Division's identification of taxpayers who may be subject to the issuance of a 60-day notice of proposed driver license suspension referral under Tax Law § 171-v. First, the Division internally sets the following selection criteria: the taxpayer has an outstanding cumulative balance of tax, penalty and interest in excess of \$10,000.00; the age of the assessment used to determine the cumulative total must be less than 20 years from the notice and demand issue date; all cases in formal or informal protest, and all cases in bankruptcy status are eliminated; all cases where taxpayers have active approved payment plans are excluded; and any taxpayer with a "taxpayer deceased" record on his or her collection case is excluded.

Next, the criteria are utilized to search the Division's databases on a weekly basis, and a file is created of possible taxpayers to whom a 60-day notice of proposed driver license suspension referral could be sent. This process involves first utilizing the criteria to identify taxpayers owing a cumulative and delinquent tax liability (tax, penalty and interest) in excess of \$10,000.00 in the relevant time frame, and then for each such identified candidate, determining whether that candidate would be excluded under any of the following criteria:

- a formal or informal protest has been made with respect to any assessment included in the cumulative balance of tax liability where the elimination of such assessment(s) would leave the balance of such liability below the \$10,000.00 threshold for license suspension;
- the taxpayer is in bankruptcy;

- the taxpayer is deceased; or
- the taxpayer is on an active approved payment plan.

b) the “DMV Data Match” involves the Division providing identifying information to DMV for each taxpayer not already excluded under the foregoing criteria to determine whether the taxpayer has a qualifying driver’s license potentially subject to suspension per Tax Law § 171-v. DMV then conducts a data match of the information provided by the Division with its information and returns the following information to the Division: (1) social security number; (2) last name; (3) first name; (4) middle initial; (5) name suffix; (6) DMV client ID; (7) gender; (8) date of birth; (9) street; (10) city; (11) state; (12) zip code; (13) license class; and (14) license expiration date.

Once the Division determines that a taxpayer included in the DMV Data Match has a qualifying driver’s license, that taxpayer is put into the suspension process.

c) The “Suspension Process” commences with the Division performing a post-DMV data match review to confirm that the taxpayer continues to meet the criteria for suspension detailed above in (a). If the taxpayer remains within the criteria for suspension, then a 60-day notice of proposed driver license suspension referral will be issued to the taxpayer via regular United States mail.

After 75 days with no response from the taxpayer, and no update to the case such that the matter no longer meets the requirements for license suspension (i.e., the case is not on hold or closed), the case will be electronically sent by the Division to DMV for license suspension.¹

¹ Prior to license suspension, the Division performs another compliance check of its records. If, for any reason, a taxpayer “fails” the compliance criteria check, the case status will be updated to “on-hold” or “closed” (depending on the circumstances) and the suspension will be stayed. If the status is “on-hold,” the 60-day notice of

Such case data is sent daily, Monday through Friday, by the Division to DMV. DMV then sends a return data file to the Division each day confirming data records that were processed successfully, and indicating any data records with an issue. The Division investigates those data records with an issue. With regard to the data records that were processed successfully, DMV sends a 15-day letter to the taxpayer, advising of the impending license suspension. In turn, if there is no response from the taxpayer, and DMV does not receive a cancellation record from the Division, the taxpayer's license will be marked as suspended on the DMV database.

d) The "Post-Suspension Process" involves monitoring events subsequent to license suspension so as to update the status of a suspension that has taken place. Depending upon the event, the status of a suspension may be changed to "on-hold" or "closed." A change to "on-hold" status can result from events such as those set forth above in (a) (e.g., the filing of a protest, a bankruptcy filing, or the creation and approval of an installment payment agreement). Where a subsequent event causes a case status change to "on-hold," the license suspension would be revoked by DMV and the matter would not be referred back to DMV by the Division for resuspension until resolution of the "on-hold" status; however, the 60-day notice of proposed driver license suspension referral would remain in the Division's system. If the status is changed to "closed," the 60-day notice of proposed driver license suspension referral is canceled.

12. Mr. Lewis's affidavit also fully details how that process was followed by the Division in the instant matter concerning the 60-day notice issued to petitioner. A copy of the 60-day notice and the consolidated statement of tax liabilities described in findings of fact 1 and 2, and a

proposed driver license suspension referral remains on the Division's system but the suspension will not proceed until the "on-hold" status is resolved. If the suspension is "closed," the 60-day notice will be canceled. If the taxpayer "passes" this final compliance check, the suspension by DMV will proceed.

payment document (form DTF-968.4), by which petitioner could remit payment against the liability in question, were included with Mr. Lewis's affidavit. Mr. Lewis avers that, based upon his review of Division records and his personal knowledge of Departmental policies and procedures regarding driver's license suspension referrals, the issuance of the 60-day notice to petitioner on May 17, 2017 comports with statutory requirements, petitioner has not raised any of the specifically listed grounds for challenging such a notice set forth at Tax Law § 171-v (5) and, therefore, the 60-day notice has not been, and should not be, canceled.

13. To show proof of proper mailing of the notice, the Division also submitted with its motion papers: (i) an affidavit, dated September 4, 2018, of Deena Picard, a Data Processing Fiscal Systems Auditor 3 and Acting Director of the Division's Management Analysis and Project Services Bureau (MAPS); (ii) a copy of a "USPS Receipt of Mailing for - DTF-454-DMV Drivers License Susp'd" postmarked May 17, 2017 (mail log); (iii) an affidavit, dated September 5, 2018, of Fred Ramundo, a supervisor in the Division's mail room; (iv) a copy of the May 17, 2017 notice addressed to petitioner; (v) a copy of the petition, and its attached exhibits, filed with the Division of Tax Appeals on March 15, 2018; and (vi) a copy of petitioner's electronically filed 2016 New York resident income tax return, dated January 18, 2017, which lists the same address for petitioner as that listed on the 60-day notice and the petition. The 2016 income tax return was the last return filed with the Division by petitioner before this notice was issued.

14. The affidavit of Deena Picard sets forth the Division's general practice and procedure for processing statutory notices. Ms. Picard is the Acting Director of MAPS, which is responsible for the receipt and storage of records regarding first class mail that was sent with a

certificate of mailing, and is familiar with CARTS and the Division's past and present procedures as they relate to statutory notices. The 60-day notices and other statutory notices are generated from CARTS and are predated with the anticipated date of mailing. The first page of the 60-day notice bears the taxpayer's mailing address and a departmental return address on the front, and taxpayer instructions for responding on the back. CARTS also generates a consolidated statement of tax liabilities and a payment document for each 60-day notice. Each 60-day notice, with appropriate enclosures, is a discrete unit within the batch of notices. The first page of the 60-day notice is the first sheet in the unit.

15. Each batch of statutory notices is accompanied by a computer generated mail log. Each page of a mail log lists an initial date that is approximately 10 days in advance of the anticipated date of mailing. Following the Division's general practice, this date was manually changed on the first and last pages of the mail log, in the present case, to the actual mailing date of "5/17/17." In addition, as described by Ms. Picard, generally all pages of a mail log are banded together when the documents are delivered into possession of the USPS and remain so when returned to the Division. According to Ms. Picard, the pages of a mail log stay banded together unless otherwise ordered. The page numbers of the mail log run consecutively, starting with "PAGE: 1," and are noted in the upper right corner of each page.

16. The mail log lists each notice in the order the notices are generated in the batch. Each notice is assigned a standard mail sequence number. The standard mail sequence numbers are listed under the first heading "Sequence No." The assessment numbers are listed under the second heading "Reference No." The names and addresses of the recipients are listed under "Name of Addressee, Street, and PO Address."

17. The 60-day notices that are ready for mailing are received by the Division's Outgoing Mail Processing Center, where they are assigned to a mail room staff member, who operates the mail inserter machine. The assigned staff member places the materials onto a mail inserter machine, which puts each 60-day notice and associated documents into a windowed envelope so that the addresses from the 60-day notice show through the windows. The inserter machine weighs, seals and affixes postage to each envelope in the order the notices are listed on the mail log. The envelopes are then placed in order into mail trays and delivered to a designated area for outgoing first class mail with a certificate of mailing. A staff member then reviews the mailings, comparing the first and last pieces of mail to the mail log. The total postage fee is computed and a postage meter tape is affixed to the last page of the mail log. A staff member then delivers the envelopes and the mail log to one of the various USPS branches located in the Albany, New York, area. A USPS employee affixes a postmark and also places his or her initials or signature on the mail log, indicating receipt by the post office.

18. The May 17, 2017 mail log consists of 18 pages and lists 259 sequence numbers along with corresponding assessment numbers, names and addresses. Each page of the mail log includes 15 such entries, with the exception of page 18, which contains 6 entries. Ms. Picard notes that the copy of the mail log that is attached to her affidavit has been redacted to preserve the confidentiality of information relating to taxpayers who are not involved in this proceeding. A USPS representative affixed a postmark dated May 17, 2017 to the each page of the mail log, and initialed page 18. On page 18, the last page of the May 17, 2017 mail log, the following preprinted text appears: on the first line, the heading "TOTAL NUMBER OF DOCUMENTS FOR MAILING;" next to which the preprinted number "259" appears, followed by the heading

“TOTAL POSTAGE:” that contains no entry; next, a two line statement “I AFFIRM THAT THE ABOVE DOCUMENTS HAVE BEEN RECEIVED FROM THE OPERATIONS SECTION AND FORWARDED TO THE MAILROOM: SIGNED FOR BY CARTS CONTROL UNIT EMPLOYEE:” appears, along with signature of a CARTS Control employee and the handwritten date “5/12/17;” a signature of a mail room employee and the handwritten date “5-12-17” appears beneath the statement “I AFFIRM THAT THE ABOVE LISTED DOCUMENTS HAVE BEEN INSERTED INTO MAILING ENVELOPES AND HAD POSTAGE APPLIED.” The handwritten dollar amount of \$101.01 appears in the upper right corner of page 18, and several US Postage Pitney Bowes metered tapes dated “May 17 2017” are affixed near the bottom of the page.

19. Page 3 of the mail log, indicates that a 60-day notice with sequence number P0000031000001000003, and reference number E-038490177, was mailed to petitioner at the Elmont, New York, address listed on the subject notice.

20. The affidavit of Fred Ramundo describes the Division’s mail room’s general operations and procedures. Mr. Ramundo has been in his position since 2013 and, as a result, is familiar with the practices of the mail room with regard to statutory notices. The 60-day notices are mailed by first class mail with a certificate of mailing, and the mail log is the document that records each piece of first class mail with a certificate of mailing. Mr. Ramundo attests that the mail log is signed by the Division’s CARTS Control staff and mail room staff as confirmation of processing and mailing on the date of mailing. He further attests that the May 17, 2017 mail log conforms to the USPS form 3665, Certificate of Mailing.

21. As noted, a USPS postmark dated May 17, 2017 appears on page 18, the last page of the mail log attached to the Picard affidavit as exhibit “A.” According to Mr. Ramundo, the

affixation of the postmark and the USPS employee's initials indicate that all of the 259 articles of mail listed on the mail log, including the article addressed to petitioner, were received by the USPS for mailing on May 17, 2017.

22. The Division also submitted with its motion, a copy of a consolidated statement of tax liabilities, dated August 30, 2018, listing an unpaid assessment subject to collection action, assessment ID L-045805770, for the tax period ended November 30, 2013, in the amount of \$142,637.97, interest in the amount of \$187,101.38, penalty in the amount of \$57,053.98, and a payment/credit in the amount of \$6,099.00, for a total balance due of \$380,694.33.

23. The Division asserts that the May 17, 2017 notice complies with Tax Law § 171-v (3), and 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 raised no 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. 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]). At issue is a 60-day notice, dated May 17, 2017, addressed to petitioner, advising him of the possible suspension of his driver's license. This notice is in facial compliance with the terms of Tax Law § 171-v, in that it is specifically based on: a) the Division's claim that a sales tax assessment pertaining to petitioner and reflecting tax, interest and penalty due in the amount of \$679,698.86, remains

outstanding and unpaid; and b) petitioner does not meet any of the six specifically enumerated grounds set forth at Tax Law § 171-v (5) (i) - (vi) allowing for relief from license suspension.

B. Petitioner initially challenged the proposed suspension of his license by filing a timely request for conciliation conference with BCMS, which issued a conciliation order denying the request and sustaining the 60-day notice. Petitioner, in turn, challenged the BCMS conciliation order by filing a timely petition with the Division of Tax Appeals. Therefore, the Division of Tax Appeals has jurisdiction over the petition.

C. As noted, the Division brings a motion to dismiss the petition under section 3000.9 (a) of the Tax Appeals Tribunal's Rules of Practice and Procedure (Rules) or, in the alternative, a motion for summary determination under section 3000.9 (b). A motion for summary determination "shall 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" (20 NYCRR 3000.9 [b] [1]).

D. Section 3000.9 (c) of the Rules provides that a motion for summary determination is subject to the same provisions as a motion for summary judgment pursuant to CPLR 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]). 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, 573 [2d Dept 1989]). If material facts are in dispute, or if contrary

inferences may be drawn reasonably from undisputed facts, then a full trial is warranted and the case should not be decided on a motion (*Gerard v Inglese*, 11 AD2d 381 [2d Dept 1960]). “To defeat a motion for summary judgment, the opponent must . . . produce ‘evidentiary proof in admissible form sufficient to require a trial of material questions of fact on which he rests his claim’” (*Whelan v GTE Sylvania*, 182 AD2d 446, 449 [1st Dept 1992], citing *Zuckerman*).

E. A taxpayer’s right to challenge a notice issued pursuant to Tax Law § 171-v is specifically limited, and must be based on one of 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]).

F. Petitioner contends that the May 17, 2017 notice was not in compliance with Tax Law § 171-v (3). Specifically, petitioner argues that the notification must be made by first class mail to the taxpayer’s last known address and must contain:

- “1) a clear statement of the past-due tax liabilities, together with the notice that the taxpayer’s information will be provided to DMV 60 days after the mailing of the notice; and

2) a statement that the taxpayer can avoid license suspension by paying the debt or entering into a payment agreement acceptable to the Division and information as to how the taxpayer can go about this for the past-due tax liabilities” (*see* finding of fact 8).

G. The evidence required of the Division in order to establish proper mailing of a statutory notice is two-fold: first, there must be proof of a standard procedure used by the Division for the issuance of notices by one with knowledge of the relevant procedures, and second, there must be proof that the standard procedure was followed in the particular instance (*see Matter of Katz*, Tax Appeals Tribunal, November 14, 1991; *Matter of Novar TV & Air Conditioner Sales & Serv.*, Tax Appeals Tribunal, May 23, 1991). The Division may meet its burden of establishing proper mailing by providing evidence of its standard mailing procedures, corroborated by direct testimony or documentary evidence of mailing (*see Matter of Accardo*, Tax Appeals Tribunal, August 12, 1993).

H. In this case, the Division has met its burden of establishing proper mailing. Specifically, the Division was required to mail the 60-day notice to petitioner by first class mail at his last known address. As indicated by the mail log, and by the affidavits of Deena Picard and Fred Ramundo, Division employees involved in and possessing knowledge of the process of generating, reviewing and issuing of 60-day notices, the Division has offered adequate proof to establish the fact that the 60-day notice in issue was actually mailed to petitioner at his last known addresses by first class mail on May 17, 2017, the date appearing on the mail log. The affidavits described the various stages of producing and mailing 60-day notices and attested to the authenticity and accuracy of the copy of the 60-day notice and the mail log submitted as evidence of actual mailing. These documents established that the general mailing procedures described in the Picard and Ramundo affidavits were followed with respect to the 60-day notice

issued to petitioner. Petitioner's name and address, as well as the numerical information on the face of the 60-day notice, appear on the mail log, which bears a USPS date stamp of May 17, 2017. There are 259 mail sequence numbers listed on the mail log, and the USPS employee who initialed the mail log indicated, by writing and circling the number "259" on page 18 of the mail log and initialing that page, that the post office received 259 items for mailing. In short, the Division established that it mailed the 60-day notice by first class mail on May 17, 2017 (*see Matter of Auto Parts Ctr.*, Tax Appeals Tribunal, February 9, 1995). Additionally, the Division has established that the 60-day notice was mailed to petitioner's last known address, in that the notice lists the same address as that listed on his last filed return (*see* finding of fact 13).

I. Attached to the petition was a copy of the May 17, 2017 60-day notice received by petitioner. The front page of the 60-day notice reads:

"Unless you respond within **60 days** from the date this notice was mailed, we will provide the New York State Department of Motor Vehicles with your name, social security number, and other identifying information, and your driver's license will be suspended.

This suspension will remain in effect until you pay the amount due or make arrangements with the Tax Department for payment."

The back page of the 60-day notice reiterates this information under the heading "**If you do not respond within 60 days.**" The next page of the attachment to the petition is a consolidated statement of tax liabilities, dated May 17, 2017, which lists petitioner's unpaid tax bill subject to collection action (assessment ID number L-045805770, for the tax period ended November 30, 2013, with a current balance due [as of May 17, 2017] of \$679,698.86) (*see* finding of facts 2 - 6).

J. In sum, the Division has established that the 60-day notice was properly mailed to petitioner at his last known address on May 17, 2017, and the 60-day notice was in accordance with Tax Law § 171-v (3).

K. Petitioner also argues that he attended a courtesy conference with a local district office and his past-due tax liability had been significantly reduced. The Division submitted an updated consolidated statement of tax liabilities, dated August 30, 2018, which showed a reduced current balance due of \$380,694.33 for assessment ID number L-045805770. However, petitioner has offered no proof in admissible form that any payment arrangement has been entered into and the reduced balance still far exceeds the \$10,000.00 threshold described in Mr. Lewis's affidavit. Therefore, petitioner has not raised any of the foregoing six specifically enumerated substantive bases for relief from an otherwise facially valid notice of proposed license suspension (Tax Law § 171-v [5] [i] - [vi]). Thus, with no dispute as to the facts and no basis in law upon which to grant the petition, summary determination is appropriate (*see Matter of Faupel*, Tax Appeals Tribunal, December 23, 2015).

L. The Division of Taxation's motion for summary determination is hereby granted. The petition of Gregory Bess is denied, and the Division's notice of proposed driver license suspension, dated May 17, 2017, is sustained.

DATED: Albany, New York
February 28, 2019

/s/ Barbara J. Russo
ADMINISTRATIVE LAW JUDGE