

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition :  
of : DETERMINATION  
**MARC A. BRUNI** : DTA NO. 829797  
for Review of a Proposed Driver License :  
Suspension Referral Under Tax Law, Article :  
8, § 171-v. :

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

The Division of Taxation, by its representative, Amanda Hiller, Esq. (Hannelore F. Smith, Esq., of counsel), brought a motion on April 10, 2020, 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 April 10, 2020, and annexed exhibits. Petitioner, appearing pro se, did not file a response to the Division of Taxation's motion. The 90-day period for issuance of this determination began on April 10, 2020. Based upon the motion papers, the affidavits and documents submitted therewith, and all pleadings and documents submitted in connection with this matter, Dennis M. Galliher, 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 subject of this motion is a notice of proposed driver license suspension referral (form DTF-454), collection case ID: E-046022656-CL01-3 (60-day notice or notice) issued by the Division of Taxation (Division) to petitioner, Marc A. Bruni. The 60-day notice advised petitioner that he 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 December 18, 2019, and is addressed to petitioner at the same Staten Island, New York, address as appears on the petition filed with the Division of Tax Appeals. Included with the 60-day notice was a consolidated statement of tax liabilities (form DTF-967-E), also dated December 18, 2019, setting forth an unpaid personal income tax liability (Assessment ID L-046022656) for the year 2013 in the amount of \$15,634.00, plus penalty and interest, for a total liability of \$25,385.94.

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

4. The back page of the 60-day notice includes a section titled, “How to protest.”

That section advises as follows:

“New York State Law limits the grounds for challenging the suspension of your driver’s license to the statutory exemptions listed above. If you believe you are eligible for an exemption, and that your license should not be suspended, you can protest the proposed suspension of your driver’s license.

Unless you **formally protest** the proposed suspension of your license within 60 days from the date of this notice, we will recommend that DMV suspend your driver’s license and your right to formally protest will expire.

You may formally protest this letter by either:

- Filing Form CMS – 1 – MN, *Request for Conciliation Conference* [website listing] with the Tax Department; or
- Filing Form TA – 100, *Petition*, with the Division of Tax Appeals [website listing].” (emphasis as in original)

5. Consistent with Tax Law § 171–v (5), the notice identifies the bases upon which a challenge to a proposed driver’s license suspension may be made, and if successful, by which proposed suspension may be avoided.

6. Petitioner did not challenge the notice by filing a request for a conciliation conference with the Division’s Bureau of Conciliation and Mediation Services (BCMS). Instead, on January 3, 2020, the Division of Tax Appeals received a petition protesting the 60-day notice. The petition was delivered by United States Postal Service (USPS) priority mail, which was postmarked December 30, 2019.

7. In its motion, the Division submitted, as relevant here: (i) an affirmation, dated April 10, 2020, of Hannelore F. Smith, Esq., an attorney employed in the Division’s Office of Counsel; and (ii) an affidavit, of Todd Lewis, dated February 7, 2020.

8. Mr. Lewis has been employed by the Division since 1998, and has held a variety of positions, primarily within the Division's Civil Enforcement Division (CED).

He is currently employed as a Tax Compliance Manager 4 with the CED, where his 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 upon his review of the Division's official records, which are kept in the ordinary course of business.

9. 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 used 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 using 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:

- the taxpayer is deceased;
- the taxpayer is in bankruptcy;
- an informal protest has been added to any assessment which would make the balance of fixed and final liabilities fall below the \$10,000.00 threshold for suspension;
- a protest before the [BCMS], or any other appropriate court, has been added to any assessment which make the balance of fixed and final tax liabilities fall below the \$10,000.00 threshold for suspension;
- the age of any assessments) included in determining the cumulative amount of liability is more than 20 years from the Notice and Demand issue date;
- the taxpayer is on an active approved payment plan; or
- the 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.

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 Division sends the case electronically to DMV for license suspension. 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 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.

10. 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 of proposed driver license suspension referral and the consolidated statement of tax liabilities described in findings of fact 1 and 2, and a 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 the Division’s policies and procedures regarding driver’s license suspension referrals, the issuance of the 60-day notice to petitioner on December 18, 2019 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.

11. In its answer to the petition, at paragraphs seven, eight and nine thereof, and under the motion at issue herein, the Division asserts that petitioner has not contested the proper issuance, amount, validity or fixed and final status of the tax liability underlying the proposed suspension of his driver's license, and has not sought relief from such proposed suspension under any of the specifically enumerated grounds for such relief set

forth at Tax Law § 171-v (5). Thus, the Division maintains that petitioner 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.

12. The “Reasons for Dispute” set forth in section eight (8) of the petition state that petitioner frequently drives his elderly mother on “trips to the hospital + Advantage Care centers,” that he is “a low income individual on a disability pension from NYC,” that his “transportation means are imperative,” and that “suspension of his license would be a hardship as it would hinder his and his mother’s “way and quality of life’.”

13. Petitioner did not respond to the Division’s motion.

### ***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 notice of proposed driver license suspension referral, dated December 18, 2019, addressed to and advising petitioner 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 personal income tax assessment pertaining to petitioner and reflecting tax, interest and penalty due in the amount of \$25,385.94, remains outstanding and unpaid, and b) petitioner has not alleged and does not meet any of the enumerated grounds set forth at Tax Law § 171-v (5) allowing for relief from license suspension.



B. 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). Petitioner challenged the proposed suspension of his license by filing a petition with the Division of Tax Appeals. The petition, filed by USPS priority mail, was postmarked December 30, 2019, or some 12 days after the date of the 60-day notice (*see* findings of fact 2 and 6). As such, the petition was timely filed, and the Division of Tax Appeals has jurisdiction over the petition. Accordingly, a motion for summary determination under section 3000.9 (b) of the Rules, rather than a motion to dismiss, is the proper vehicle to consider petitioner's challenge.

C. 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. Pursuant to Tax Law § 171-v, a timely petition filed with the Division of Tax Appeals seeking to avoid the proposed suspension of a driver's license based upon a properly issued, outstanding and unsatisfied liability in excess of \$10,000.00, must be based on one of the following specifically enumerated 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;

(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;

(vii) the taxpayer receives public assistance or supplemental security income;

(viii) the taxpayer demonstrates that suspension of the taxpayer's driver's license will cause the taxpayer undue economic hardship.”(Tax Law § 171-v [5]).

E. As set forth above, petitioner did not respond to the Division's motion for summary determination. Therefore, it is deemed that petitioner has conceded that no question of fact requiring a hearing exists (*see Kuehne & Nagel v Baiden*, 36 NY2d 539 [1975]; *John William Costello Assocs. v Standard Metals Corp.*, 99 AD2d 227 [1st Dept 1984], *appeal dismissed* 62 NY2d 942 [1984]). Furthermore, petitioner has not raised any of the foregoing specifically enumerated substantive bases for relief from an otherwise facially valid notice of proposed license suspension (Tax Law § 171-v [5] [i] - [viii]).<sup>1</sup> 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).

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<sup>1</sup> The allegations set forth in the petition (*see* finding of fact 12) neither assert nor demonstrate that license suspension would result in “undue *economic* hardship,” under Tax Law § 171-v (5) (viii), but rather speak to petitioner's “way and quality of life.” To the extent petitioner alleges that he frequently drives his mother for medical purposes, petitioner may pursue obtaining a restricted use license (*see* Vehicle and Traffic Law § 510 [4 – f] [5]), which allows transportation for necessary medical treatment for the person or a member of his or her household (*see* Vehicle and Traffic Law § 530 [1]; *Matter of Nastasi*, Tax Appeals Tribunal, July 16, 2018).

F. The Division of Taxation's motion for summary determination is hereby granted, the petition Marc A. Bruni is denied, and the Division's notice of proposed driver license suspension, dated December 18, 2019, is sustained.

DATED: Albany, New York  
August 6, 2020

/s/ Dennis M. Galliher  
ADMINISTRATIVE LAW JUDGE