

STATE OF NEW YORK
DIVISION OF TAX APPEALS

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In the Matter of the Petition	:	
	:	
of	:	
	:	
DONALD HANSON AND CECILIA HANSON	:	DETERMINATION
	:	DTA NO. 851074
	:	
for Review of Notices of Proposed Driver's	:	
License Suspension under Article 8 of the Tax	:	
Law.	:	
	:	

Petitioners, Donald Hanson and Cecilia Hanson, filed a petition for review of notices of proposed driver's license suspension under article 8 of the Tax Law.

The Division of Taxation, by its representative, Amanda Hiller, Esq. (Nelson F. Colberg), filed a motion on April 21, 2025, seeking dismissal of the petition or, in the alternative, summary determination in the above-referenced matter pursuant to Tax Law § 2006 (6) and sections 3000.5 and 3000.9 (a) and (b) of the Rules of Practice and Procedure of the Tax Appeals Tribunal. Petitioners, appearing by Schenck, Price, Smith & King, LLP (Douglas R. Eisenberg, Esq., of counsel), filed a response to the motion, by May 21, 2025, which date commenced the 90-day period for the issuance of this determination.

Based upon the motion papers and all pleadings and documents submitted in connection with this matter, Osborne K. Jack, Administrative Law Judge, renders the following determination.

ISSUE

Whether the Division of Taxation's notices of proposed driver's license suspension issued to petitioners should be sustained.

FINDINGS OF FACT

1. The Division of Taxation (Division) issued to petitioners, Donald Hanson and Cecilia Hanson, two separate notices of proposed driver's license suspension (form DTF-454). The notice issued to Donald Hanson contained collection case ID E-021720309-CL01-2 and the notice issued to Cecilia Hanson contained collection case ID E-023755691-CL01-6 (60-day notices). The 60-day notices advised petitioners that they must pay their New York State tax debts or face the possible suspension of their driver's license.

2. The 60-day notices are both dated July 8, 2024, and are addressed to petitioners at their Tuxedo Park, New York, address. Included with the 60-day notices was form DTF-967-E, consolidated statement of tax liabilities (consolidated statement), also dated July 8, 2024, setting forth assessment ID L-059393686 assessing additional personal income tax of \$966,241.00, interest of \$142,107.15 and penalty of \$79,343.00. The consolidated statement also reflected payments/credits of \$150,000.00 and a balance due, as of July 8, 2024, of \$1,037,691.15.

3. The 60-day notices indicated that a response was required within 60 days from their mailing and, if no response was received, the Division would recommend that the New York State Department of Motor Vehicles (DMV) suspend each petitioner's driver's license. The 60-day notices informed petitioners that to avoid suspension of their respective license, they were required to pay the amount due or file a formal protest of the proposed suspension within 60 days. The 60-day notices further informed petitioners that New York State law limits the grounds for challenging the proposed suspension of a driver's license to the statutory exemptions

listed in the notices. The last page of the 60-day notices contains a section titled, “How to protest” and instructs petitioners on how to protest the notices of proposed driver’s license suspension.

4. Petitioners filed a timely petition with the Division of Tax Appeals on July 17, 2024, protesting the 60-day notices. The petition raises no challenge to the Division’s issuance, or petitioners’ receipt, of the 60-day notices. Instead, the petition asserts that the Division determined that petitioners owe \$1,321,034.00 when in fact at the filing of the petition, they owed \$871,034.00.

5. The Division filed its answer to the petition on September 18, 2024, and brought the subject motion on April 21, 2025. The Division submitted with its motion an affidavit, sworn to on April 15, 2025, of Todd Lewis, who is employed as a Tax Compliance Manager 4 with the Division’s Civil Enforcement Division (CED). Mr. Lewis’ responsibilities and duties include overseeing the operations of 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.

6. 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 Tax Law § 171-v. 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 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; all cases in formal or informal protest, and all cases in bankruptcy status are eliminated; the age of the assessment used to determine the cumulative total must be fewer than 20 years from the notice and demand issue date; 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 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 for any of the following reasons: the taxpayer is deceased or is in bankruptcy; has an informal protest or protest before the Division’s Bureau of Conciliation and Mediation Services, the Division of Tax Appeals, the Tax Appeals Tribunal, or any other appropriate court, that has been added to any assessment which would make the taxpayer’s balance of fixed and final tax liabilities fall below \$10,000.00; or the taxpayer is on an active approved payment plan.

b) Next, DMV completes a data match process that involves the Division providing identifying information to the 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 pursuant to Tax Law § 171-v. The 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) DMV client ID; (6) gender; (7) date of birth; (8) mailing address: street; (9) mailing address: city; (10) mailing address: state; (11) mailing address: zip code; (12) license class; and (13) 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 license suspension process.

c) The suspension process commences with the Division sending a collection letter (form DTF-975) to the taxpayer and, after 30 days, performing a post-DMV compliance review to confirm that the taxpayer continues to meet the criteria for suspension detailed above. If the taxpayer remains within the criteria for suspension, then a 60-day notice will be issued to the taxpayer via first-class United States Postal Service 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 the DMV for license suspension. The Division sends this case data daily, Monday through Friday, to the DMV. The 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. Regarding the data records that were processed successfully, the DMV sends a 15-day letter to the taxpayer, advising of the impending license suspension. If there is no response from the taxpayer, and the 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 on 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, 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 the DMV by the Division for resuspension until the “on-hold” status is resolved; however, the 60-day notice would remain in the Division’s system. If the status is changed to “closed,” the 60-day notice is cancelled.

7. Mr. Lewis’ affidavit also details how the Division followed that process in the instant matter concerning the 60-day notices issued to petitioners. Copies of the 60-day notices and the consolidated statement of tax liabilities described in findings of fact 1 and 2, and a payment document (form DTF-968.11), by which petitioners could remit payment against the liability in question, were included with Mr. Lewis’s affidavit. Mr. Lewis avers that, based upon his review of the Division’s records and his personal knowledge of Departmental policies and procedures regarding notices of proposed driver’s license suspension, the issuance of the 60-day notices to petitioners on July 8, 2024, comports with statutory requirements. Mr. Lewis further asserts that petitioners have 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 notices should not be cancelled.

8. In its answer to the petition, and under the motion at issue herein, the Division asserts that petitioners have not sought relief from the suspension of their respective driver’s license under any of the eight specifically enumerated grounds for such relief set forth at Tax Law §

171-v (5) and, accordingly, have raised no basis for administrative or judicial review of the proposed suspension of their 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.

9. Petitioners, in their response to the Division's motion, state that because of additional payments, they now owe \$821,034.00. Petitioner, Donald Hanson, also states in an affidavit included with petitioners' response to the Division's motion, that suspension of his driver's license would severely inhibit his ability to get around and earn the money to pay the liability.

CONCLUSIONS OF LAW

A. As noted, the Division brings a motion to dismiss the petition under section 3000.9 (a) of the Rules of Practice and Procedure of the Tax Appeals Tribunal (Rules) or, in the alternative, a motion for summary determination under section 3000.9 (b). Petitioners challenged the proposed suspension of their license by filing a timely petition with the Division of Tax Appeals. Since the petition was timely filed, 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 the proposed driver's license suspension.

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]).

C. 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 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]). 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 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, 382 [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 v City of New York*, 49 NY2d at 562). As detailed hereafter, there are no material and triable issues of fact and the Division is entitled to summary determination in its favor.

D. 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 (*see* Tax Law § 171-v [3]). At issue are two separate notices of proposed driver’s license suspension, dated July 8, 2024, addressed to and advising petitioners of the possible suspension of their driver’s license. The notices facially comply with the provisions of Tax Law § 171-v, in that they are specifically based on: a) the Division’s claim that a personal income tax assessment pertaining to petitioners and reflecting

tax, interest and penalty due of \$1,037,691.15 remains outstanding and unpaid; and b) petitioners do not meet any of the eight specifically enumerated grounds set forth at Tax Law § 171-v (5) allowing for relief from license suspension.

E. A taxpayer's right to challenge a notice issued pursuant to Tax Law § 171-v must be based on one or more 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; (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; or (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]).

Here, petitioner, Donald Hanson, has averred that suspension of his driver's license would severely inhibit his ability to get around and earn the money to pay the liability. Petitioner points to no facts to support his claim. Moreover, a restricted use license is available to a taxpayer whose driver's license has been suspended for unpaid taxes (*see* Vehicle & Traffic Law § 510 [4-f] [5]). Such license is valid:

“(a) during the time the holder is actually engaged in pursuing or commuting to or from his business, trade, occupation or profession, (b) en route to and from a driver rehabilitation program or related activity specified by the commissioner at which his attendance is required, (c) to and from a class or course at an accredited school, college or university or at a state approved institution of vocational or technical training, (d) enroute to and from a medical examination or treatment as part of a necessary medical treatment for such participant or member of his household, as evidenced by a written statement to that effect from a licensed medical practitioner, or (e) enroute to and from a place, including a school, at

which the child or children of the holder are cared for on a regular basis and which is necessary for the holder to maintain such holder's employment or enrollment at an accredited school, college or university or at a state approved institution of vocational or technical training and shall contain the terms and conditions under which it is issued and is valid" (Vehicle & Traffic Law § 530 [3]).

Petitioner did not demonstrate how a restricted use license would affect his ability to drive and earn money to pay the liability. Thus, he failed to carry his burden of showing that the proposed driver's license suspension would cause him undue economic hardship (*see Matter of Jacobi*, Tax Appeals Tribunal, May 12, 2016).

F. Petitioners also argue that the amount of tax the Division alleges remains unpaid is incorrect. They claim that the amount outstanding is \$821,034.00 not \$1,037,691.15 as reflected in the consolidated statement. However, the amount petitioners acknowledge they owe far exceeds the \$10,000.00 threshold required for the issuance of a 60-day notice (*see* Tax Law § 171-v [1]). Accordingly, petitioners' claim is immaterial and has no bearing on the outcome of this matter.

G. The Division of Taxation's motion for summary determination is hereby granted, the petition of Donald Hanson and Cecilia Hanson is denied and the notices of proposed driver's license suspension, dated July 8, 2024, are sustained.

DATED: Albany, New York
August 14, 2025

/s/ Osborne K. Jack
ADMINISTRATIVE LAW JUDGE