

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition	:	
of	:	
JOSEPH Y. BALISOK	:	DETERMINATION
	:	DTA NO. 851293
for Review of a Notice of Proposed Driver's	:	
License Suspension Under Article 8 of the Tax	:	
Law.	:	
_____	:	

Petitioner, Joseph Y. Balisok, filed a petition for review of a notice of proposed driver's license suspension under article 8 of the Tax Law.

The Division of Taxation, by its representative, Amanda Hiller, Esq. (Michele Ruscio, Esq., of counsel), brought a motion on April 1, 2025, to dismiss the petition or, in the alternative, seeking summary determination in favor of the Division of Taxation 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. Accompanying the motion was the affirmation of Michele Ruscio, Esq., dated April 1, 2025, and annexed exhibits.

Petitioner, appearing pro se, did not file a response to the Division of Taxation's motion by May 1, 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, Alexander Chu-Fong, Administrative Law Judge, renders the following determination.

ISSUE

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

FINDINGS OF FACT

1. The Division of Taxation (Division) issued to petitioner, Joseph Y. Balisok, a notice of proposed driver's license suspension (form DTF-454), collection case ID: E-042181909-CL01-3 (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.

2. The 60-day notice is dated September 23, 2024, and is addressed to petitioner at his Brooklyn, New York, address. Included with the 60-day notice was a consolidated statement of tax liabilities (form DTF-967-E), also dated September 23, 2024, which identified the following unpaid personal income tax liabilities as of that date:

Assessment ID	Year	Tax Assessed	Interest	Penalty	Payments	Current Balance
L-051105399	2018	\$8,255.00	\$5,627.02	\$2,655.84	\$443.69	\$16,094.17
L-052452129	2019	\$10,239.00	\$5,032.80	\$2,610.69	\$0.00	\$17,882.49
Total:						\$33,976.66

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 that petitioner's driver's license would be suspended. The 60-day notice informed petitioner that in order to avoid suspension of his license, he was required to either pay the amount due, or make payment arrangements with the Division or respond by formally protesting the proposed suspension within 60 days and provide proof that one of the listed statutory exemptions applied.

4. The 60-day notice lists “**Statutory exemptions from driver’s license suspension,**” which include the following:

“You are not the right person to receive this notice or the person referred to in the notice is someone else.

“The taxes listed in the notice have already been paid in full.

· Commercial Driver’s License (CDL) – You have a commercial driver’s license. CDLs are not subject to suspension as part of this law.

· Income execution – The Tax Department is already garnishing your wages to pay these debts.

· Payment arrangements non-compliance – The Tax Department incorrectly determined that you did not comply with the terms of your payment arrangement two or more times within a twelve-month period.

· Child support – Your wages are being garnished, or you have made satisfactory payment arrangements with a child support collection unit for the payment of child support or combined child and spousal support from this state or any other state.

· Public assistance – You receive public assistance benefits. Public assistance refers to temporary assistance programs that provide either cash assistance or in-kind benefits to individuals and families (for example, SNAP, HEAP, Temporary Assistance).

· Supplementary Security Income (SSI) – You receive SSI benefits. SSI is a federal income supplement program (**not** Social Security benefits) and is designed to help aged, blind, and persons with disabilities with little or no income.

· Suspension of your driver’s license will cause undue economic hardship— You must complete Forms DTF-5.1, *Application for Undue Economic Hardship Exemption from Driver’s License Suspension Program*, and DTF-5, *Statement of Financial Condition*, to demonstrate this hardship.”

5. Immediately after the exemptions, the 60-day notice includes a section titled, “**How to protest,**” which provides 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 **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 protest will expire.

You may protest this letter by either:

- Filing Form CMS-1-MN, *Request for Conciliation Conference* (available on our website, search: *cms1mn*). Or you may call 518-530-4179 and request to have the form mailed to you. **Note:** Making this call does not extend your time to file the request; or
- Filing Form TA-100, *Petition* (available at www.dta.ny.gov), to request a Tax Appeals hearing.
- For information on how to file your protest, visit www.tax.ny.gov/protest/default.htm.”

6. The next section of the 60-day notice is titled, “**You should also contact the Tax Department if**” and states:

- “– You are eligible for innocent spouse relief under Tax Law § 654 for certain New York State income tax debts. See Publication 89, *Innocent Spouse Relief*, available on our website.
- Enforcement of the underlying tax debts has been stayed by the filing of a bankruptcy petition.
- You are interested in learning about other options that may be available to you to resolve your debt.
- **Note:** Contacting the Tax Department does not extend your time to protest.”

7. On November 4, 2024, petitioner challenged the 60-day notice by filing a timely petition with the Division of Tax Appeals. The petition lists the notice/assessment numbers being challenged as “L-052452129-1 & L-051105399-4.” The “Reason(s) for Dispute” section contains the following statement:

“I need my driver's license to get to work. I need my driver's license to get to my doctors [sic] office. I need my driver's license to take my kids to school and to pick them up from school. I need my driver's license to enable me to make a living.”

8. With its motion, the Division also submitted, as relevant here: (i) an affirmation, dated April 1, 2025, of Michele Ruscio, Esq., an attorney employed in the Division's Office of Counsel; and (ii) an affidavit, of Todd Lewis, sworn to on March 31, 2025.

9. 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 CED, where his 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 upon his review of the Division's official records, which are kept in the ordinary course of business.

10. 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 section 71-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. 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 could be sent. This process involves first using the criteria to identify taxpayers owing a cumulative and delinquent tax liability (tax, penalty and interest) of the relevant amount, 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;
- A request for review has been added to any assessment which would make the balance of fixed and final tax liabilities fall below the \$10,000 threshold for suspension;
- A protest before the Bureau of Conciliation and Mediation Services has been added to any assessment; which would make the balance of fixed and final tax liabilities fall below the \$10,000 threshold for suspension;
- A protest before the Division of Tax Appeals, Tax Appeals Tribunal, or any other appropriate court, has been added to any assessment which would make the balance of fixed and final tax liabilities fall below the \$10,000 threshold for suspension;
- The taxpayer is on an active approved payment plan.”

b) Thereafter, 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)

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 suspension process.

c) The "Suspension Process" includes performing a post-DMV data match review compliance check 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 will be issued to the taxpayer via United States Postal Service first-class 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. 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. 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 would remain in the Division’s system. If the status is changed to “closed,” the 60-day notice is cancelled.

11. 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 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 suspensions, the issuance of the 60-day notice to petitioner on September 23, 2024, 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, cancelled.

12. The Division asserts that petitioner has not contested the proper issuance, amount, validity or fixed and final status of the tax liabilities underlying the proposed suspension of his driver's license and he 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.

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 60-day notice, dated September 23, 2024, addressed to and advising petitioner of the possible suspension of his driver's license. This 60-day 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 personal income tax assessments pertaining to petitioner and reflecting tax, interest and penalty due in the total amount of \$33,976.66, remains outstanding and unpaid as of September 23, 2024, i.e., the date of issuance; 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 timely filing a 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 Division's proposed suspension of petitioner's driver's license.

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. 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]). "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 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" (see *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]).

E. 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 equal to or 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; 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]).

F. 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,

544 [1975]; *John William Costello Assoc. v Standard Metals Corp.*, 99 AD2d 227, 229 [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 60-day notice (Tax Law § 171-v [5] [i] - [viii]). 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).

G. The Division of Taxation's motion for summary determination is granted, the petition of Joseph Y. Balisok is denied and the Division's notice of proposed driver's license suspension, dated September 23, 2024, is sustained

DATED: Albany, New York
July 24, 2025

/s/ Alexander Chu-Fong
ADMINISTRATIVE LAW JUDGE