STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
JACOB L. BRAUDE	:	DETERMINATION DTA NO. 851444
for Review of a Notice of Proposed Driver License Suspension Referral under Article 8 of the Tax Law.	:	

Petitioner, Jacob L. Braude, filed a petition challenging a notice of proposed driver license suspension referral under article 8 of the Tax Law.

The Division of Taxation, by its representative, Amanda Hiller, Esq. (Nelson F. Colberg, Financial Analyst 1), brought a motion on July 10, 2026, seeking dismissal or 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, by its representative, Balisok & Kaufman, PLLC (Joseph Y. Balisok, Esq., of counsel), did not file a response to the motion by the due date of August 10, 2026, 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, Alejandro Taylor, Administrative Law Judge, renders the following determination.

ISSUE

Whether the Division of Taxation has established that no material and triable issue of fact exists such that the petition should be dismissed or that summary determination may be granted in its favor.

FINDINGS OF FACT

1. On July 21, 2021, the Division of Taxation (Division) issued to Jacob L. Braude (petitioner), a statement of proposed audit change for tax year 2015. In the explanation section, the Division stated that "[w]e received your request for an extension and have extended the time to file your tax return. However, the extension is for filing only, it does not extend your time to pay any tax due." The Division proposed income tax due of $6,823.00, plus interest and penalties for late payment of tax and late filing of the return.

2. On July 22, 2021, the Division issued petitioner a statement of proposed audit change for tax year 2018, proposing income tax due of $10,189.00, plus interest and penalty for late payment and late filing of petitioner's return.

3. On July 28, 2021, the Division issued petitioner a statement of proposed audit change for tax year 2017 which proposed income tax due of $10,384.00, plus interest and penalties for late payment and late filing of the return. In the explanation section, the Division acknowledged petitioner's request for an extension to file petitioner's New York resident income tax return but noted that such extension did not extend to the time to pay any tax due.

4. On September 7, 2021, the Division issued a notice of deficiency to petitioner for tax year 2015 bearing assessment number L-053892054 and asserting $6,823.00 in tax due, plus interest and penalty.

5. On September 8, 2021, the Division issued a notice of deficiency to petitioner for tax year 2018 bearing assessment number L-053902995 and asserting $10,189.00 in tax due, plus interest and penalties.

6. On September 13, 2021, the Division issued a notice of deficiency to petitioner for tax year 2017 bearing assessment number L-053963314 and asserting $10,384.00 in tax due, plus interest and penalties.

7. Petitioner did not respond to the notices of deficiency issued for tax years 2015, 2017 or 2018. The Division issued a notice and demand for payment of tax due (notice and demand) to petitioner for the tax due for tax year 2015 on December 23, 2021. The Division also issued notices and demands to petitioner for outstanding tax due for tax year 2017 on December 30, 2021, and on December 27, 2021, for tax year 2018.

8. On July 19, 2022, the Division issued a notice and demand to petitioner for tax year 2021 bearing assessment number L-056589178 and demanding $7,906.00 in tax due, plus interest and penalty. According to the Division, petitioner had filed and self-reported income tax due for tax year 2021 without submitting payment at the time of filing.

9. On June 2, 2023, the Division issued a notice and demand to petitioner for tax year 2022 bearing assessment number L-058256151 and demanding $5,439.00 in tax due, plus interest and penalty. According to the Division, petitioner had filed and self-reported the tax due for tax year 2022 without submitting payment at the time of filing.

10. On December 13, 2024, the Division issued a notice of proposed driver's license suspension referral, form DTF-454, bearing collection case ID E-00570095-CL01-2 (60-day notice), to petitioner. The 60-day notice stated that the Division may suspend the driver's license of persons who have delinquent unpaid tax debts and that petitioner had 60 days to protest the notice. The 60-day notice also provided examples of situations provided for under statute that would exempt a taxpayer from a driver's license suspension, which include: the notice identified the incorrect taxpayer; the unpaid tax debts were paid in full; the taxpayer has a

commercial driving license; the taxpayer's wages are already being garnished to pay the tax debts; the Division improperly determined non-compliance with the terms of a payment arrangement established with the Division; there is a wage garnishment or payment arrangement in place with a child support collection unit for a child or combined child and spousal support order; the taxpayer receives public assistance; or receives Supplementary Security Income; or that the driver's license suspension would cause undue economic hardship. The 60-day notice included a consolidated statement of tax liabilities, dated December 13, 2024, that listed the tax bills subject to collection for tax years 2015, 2017, 2018, 2021 and 2022, as follows:

Assessment ID	Tax Period Ended	Tax Amount Assessed	Interest Amount Assessed	Penalty Amount Assessed	Assessment Payments/ Credits	Current Balance Due
L-058256151	12/31/22	$ 5,439.00	$ 1,092.21	$ 742.23	$ 0.00	$ 7,273.44
L-056589178	12/31/21	7,906.00	2,473.94	1,264.96	0.00	11,644.90
L-053963314	12/31/17	10,384.00	9,562.50	5,709.92	0.00	25,656.42
L-053902995	12/31/18	10,189.00	7,911.15	5,315.11	63.00	23,352.26
L-053892054	12/31/15	6,823.00	8,169.35	3,547.95	0.00	18,540.30
					Total	$ 86,467.32

11. On December 27, 2024, petitioner filed a petition with the Division of Tax Appeals in protest of the 60-day notice. Therein, petitioner states that he needs his driver's license due to personal and medical circumstances stemming from a recent surgery. The petition does not specifically raise any of the statutory exemptions listed in the 60-day notice.

12. On July 10, 2026, the Division filed a motion seeking dismissal of the petition or for summary determination (motion). Therein, the Division argues that because petitioner failed to request relief under any of the eight enumerated bases pursuant to Tax Law § 171-v (5), petitioner is not entitled to administrative or judicial review, and the Division of Tax Appeals lacks jurisdiction to review the petition. The Division also argues that, even if there is jurisdiction, there are no issues of material fact regarding the fixed and final tax liabilities or petitioner's failure to raise any of the enumerated exemptions under Tax Law § 171-v (5) that

would require a hearing. The Division submitted with its motion: the affirmation of Nelson F. Colberg, Financial Analyst 1 in the Division's Office of Counsel, dated July 8, 2026; the affidavit of Todd Lewis, Taxpayer Services Administrator 2 with the Division's Civil Enforcement Division (CED), sworn to on July 7, 2026; a copy of the 60-day notice; copies of the notices and demands for tax years 2015, 2017, 2018, 2021 and 2022; copies of the statements of proposed audit change for tax years 2015, 2017 and 2018; copies of the notices of deficiency for tax years 2015, 2017 and 2018; a copy of the petition in this matter; and a copy of the Division's answer in this matter, dated February 19, 2025.

13. In his affidavit, Mr. Lewis averred that he has been an employee of the Division, primarily within CED, since 1998, and has held his current position of Taxpayer Services Administrator 2 since January 1, 2026. 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 personal knowledge of the facts and a review of the Division's official records kept in the ordinary course of business.

14. In his affidavit, Mr. Lewis described the process by which taxpayers are selected for proposed driver's license suspensions. The Division searches its records weekly for taxpayers with fixed and final tax liabilities in excess of $10,000.00 and eliminates those taxpayers that have protested their assessments or filed for bankruptcy, taxpayers with approved payment arrangements, and deceased taxpayers. After confirmation of additional data from the Department of Motor Vehicles, a qualifying taxpayer is put into the suspension process. Mr. Lewis avers that he has found nothing within the Division's systems to indicate that petitioner

has demonstrated any grounds for challenging the proposed driver's license suspension under Tax Law § 171-v (5).

15. Petitioner did not respond to the Division's motion.

CONCLUSIONS OF LAW

A. The Division submitted a motion to dismiss the petition or for summary determination in this matter, seeking a determination in its favor or for other relief due to petitioner's failure to demonstrate entitlement to an exemption under any of the enumerated bases to avoid suspension of his driver's license (***see*** Tax Law § 171-v [5]). Petitioner timely filed a petition in this matter within 60 days from the date of mailing of the notice of proposed driver's license suspension (***see*** Tax Law § 171-v [3]). Since the petition was timely filed in this matter, the Division of Tax Appeals has jurisdiction over the petition; thus, a motion for summary determination, rather than a motion to dismiss, is the proper procedural vehicle here (***see Matter of Stein***, Tax Appeals Tribunal, May 2, 2019).

B. A motion for summary determination is properly 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 present 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. Section 3000.9 (c) of the Rules of Practice and Procedure of the Tax Appeals Tribunal (Rules) provides that a motion for summary determination is subject to the same provisions as a motion for summary judgement pursuant to Civil Practice Law and Rules (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 to the existence of a triable issue or where a 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, the issue is for the fact finders to decide on trial, and not for determination by a judge on 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], quoting ***Zuckerman v City of New York***, 39 NY2d at 562).

D. The Division argues that it should be granted summary determination on the basis that petitioner has not raised any of the grounds listed in Tax Law § 171-v (5) to challenge a proposed driver's license suspension. Tax Law § 171-v (5) provides that a taxpayer may only challenge a notice of proposed driver's license on the grounds that:

> "(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."

Petitioner argues that the suspension of his driver's license will cause undue personal and

medical hardship. However, this is not one of the eight enumerated grounds for relief under the statute. Furthermore, suspension of a driver's license does not deprive petitioner of his ability to drive, as petitioner could obtain a restricted use driver's license for necessary medical care (***see*** Vehicle and Traffic Law § 530; ***Matter of Jacobi v Tax Appeals Trib.***, 156 AD3d 1154, 1157 [3d Dept 2017], ***lv denied*** 31 NY3d 1061 [2018], ***cert denied*** 586 US 1021 [2018]). As a result, even if petitioner argues "undue economic hardship" pursuant to Tax Law § 171-v (5) (viii), a restricted use license specifically allows for driving to a medical examination and treatment (***id.***). Therefore, there is no material or triable issue of fact regarding petitioner's argument as set forth in the petition, as the need to drive to medical appointments is not a ground for relief under Tax Law § 171-v (5).

E. As found in the facts here, petitioner did not respond to the Division's motion. Therefore, it is deemed that petitioner has conceded the facts alleged within the motion (***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]). As a result, there is no material and triable issue of fact presented here, and summary determination should be granted in favor of the Division.

F. The Division of Taxation's motion for summary determination is granted, the petition of Jacob L. Braude is denied and the notice of proposed driver's license suspension referral, dated December 13, 2024, is sustained.

DATED: Albany, New York
November 5, 2026

/s/ Alejandro Taylor
ADMINISTRATIVE LAW JUDGE