STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition of **MIRIAM SNYDER** for Revision of a Notice of Proposed Driver License Suspension Referral, dated November 8, 2013 and issued pursuant to Article 8, § 171-v of the Tax Law.	ORDER DTA NO. 826108

Petitioner, Miriam Snyder, filed a petition for revision of a Notice of Proposed Driver License Suspension Referral, dated November 8, 2013 and issued pursuant to Article 8, § 171-v of the Tax Law.[1]

The Division of Taxation, by its representative, Amanda Hiller, Esq. (Michele Milavec, Esq., of counsel), brought a motion filed September 17, 2014, seeking an order dismissing the petition or, in the alternative, granting summary determination in the above-referenced matter pursuant to sections 3000.5, 3000.9(a)(1)(i), (vii) and (b) of the Rules of Practice and Procedure of the Tax Appeals Tribunal. Accompanying the motion was the affirmation of Michele Milavec, Esq., dated September 16, 2014, and annexed exhibits, and the affidavit of Matthew McNamara, dated September 17, 2014, and an annexed exhibit. Petitioner, appearing pro se, submitted a response to the Division's motion on October 10, 2014. The 90-day period for issuance of this order began on October 17, 2014, the latest due date for the filing of a response to the Division's motion (20 NYCRR 3000.5[d]). Based upon the motion papers, the affidavits and documents

[1] The title of the subject notice uses the phrase "driver license," while the statute at issue, Tax Law § 171-v, uses the phrase "driver's license."

submitted therewith, petitioner's response, and all pleadings and documents submitted in connection with this matter, Dennis M. Galliher, Administrative Law Judge, renders the following order.

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 Division of Taxation (Division) issued to petitioner, Miriam Snyder, a Notice of Proposed Driver License Suspension Referral (Form DTF-454), Collection case ID: E-025598055-CL01-7, (60-Day Notice) advising that petitioner must pay her New York State tax debts or face the possible suspension of her driver's license pursuant to Tax Law § 171-v. This 60-Day Notice is dated November 8, 2013, and is addressed to petitioner in Bronx, New York, 10467. Included with the 60-Day Notice was a Consolidated Statement of Tax Liabilities (Form DTF 967-E), setting forth a list of four unpaid assessments, allegedly subject to collection and indicating a (then) current total balance due in the amount of $31,889.06, as follows:

Tax Type	Assessment ID Number	Tax Per. Ended	Tax Amt. Assessed	Interest Amt. Assessed	Penalty Amt. Assessed	Payments/ Credits	Current Balance
Income	L-028080145-6	12/31/03	$1,481.00	$1,693.35	$370.00	$0.00	$3,544.35
Income	L-027624035-5	12/31/02	$4,389.00	$5,924.02	$1,097.25	$0.00	$11,410.27
Income	L-025598055-2	12/31/00	$3,657.00	$6,789.69	$1,784.57	$0.00	$12,231.26
Income	L-023414207-1	12/31/01	$1,780.50	$2,532.37	$440.50	$50.19	$4,703.18

2. 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. Among the response options listed for petitioner to undertake within 60 days were the following:

> "-resolve your tax debts or set up a payment plan.
> -notify the Tax Department of your eligibility for an exemption, or
> -protest the proposed suspension of your license by:
> -filing a Request for a Conciliation Conference (Form CMS-1-MN, available of our Web site) with the Tax Department; or
> -filing a petition (Form TA-10) with the Division of Tax Appeals, available at www.nysdta.org."

3. By an Order of Suspension or Revocation (Order of Suspension) dated January 15, 2014, DMV advised petitioner that her driver's license would be suspended, effective January 29, 2014, based upon "delinquent unpaid tax debt with the NYS Department of Taxation and Finance–case number E-025598055." While petitioner denies having received the 60-Day Notice described above (***see*** Finding of Fact 5), she specifically admits receipt of this Order of Suspension from DMV.[2]

4. On January 27, 2014, and presumably in response to the foregoing Order of Suspension, petitioner filed a Request for Conciliation Conference (Request) with the Division's Bureau of Conciliation and Mediation Services (BCMS). In turn, by a Conciliation Order Dismissing Request (CMS No. 260513) dated February 7, 2014 (Dismissal Order), BCMS dismissed petitioner's Request as not timely filed, stating:

> "The Tax Law requires that a request be filed within 30 days from the mailing date of the statutory notice. Since the notice was issued on

[2] Included among petitioner's documents filed in this matter is a subsequent Order of Suspension, addressed to petitioner dated March 13, 2014 and effective March 27, 2014, and another Order of Suspension addressed to petitioner dated June 4, 2014 and effective June 18, 2014. The record does not disclose any information concerning the subsequent Orders of Suspension that were issued in addition to the initial (January 15, 2014) Order of Suspension.

> November 8, 2013, but the request was not mailed until January 27, 2014, or in excess of 30 days, the request is late filed."[3]

5. Petitioner challenged the Dismissal Order by filing a petition with the Division of Tax Appeals. The petition, mailed by certified mail, is dated as signed on February 19, 2014, bears a United States Postal Service (USPS) postmark dated February 19, 2014, and is date stamped as received by the Division of Tax Appeals on February 21, 2014. The petition, and many of the attachments thereto, lists the same Bronx, New York, address for petitioner as is set forth above on the 60-Day Notice, the Order of Suspension, and the cover letter accompanying the BCMS Dismissal Order.

6. The petition, with its attachments, consists of some 48 pages and raises numerous arguments and allegations. The petition challenges the proposed suspension of petitioner's driver's license. Further, clearly discerned from among petitioner's many allegations set forth in the petition, and clearly relevant to this matter, is petitioner's claimed denial of receipt of any notices. This denial is phrased generically as a challenge to "all non-validated NYS tax allegations" and all "fictitious assessments." In this regard, the petition specifically includes petitioner's denial of receipt of the 60-Day Notice dated November 8, 2013, and further includes petitioner's denial of receipt of any notice of the four assessments set forth in the Statement of Consolidated Tax Liabilities (***see*** Finding of Fact 1). It is these four assessments upon which the alleged outstanding

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[3] The Dismissal Order incorrectly specifies 30 days as the time period within which a protest against the 60-Day Notice must be filed. There is no dispute that the correct period for such filing is within 60 days from the mailing of the Notice (***see*** Tax Law § 171-v[3],[4]).

tax liability underlying the proposed license suspension is premised, and the petition specifically challenges these four assessments as listed therein by their respective assessment numbers.[4]

7. The Division filed its answer to the petition on April 23, 2014, and in turn brought the subject motion on September 17, 2014. The Division submitted with its motion an affidavit, dated September 17, 2014, made by Matthew McNamara, who is employed as a Business Systems Analyst 1 in the Division's Civil Enforcement Division (CED). Mr. McNamara's duties involve maintenance of the CED internal website, and include creation and modification of pages on the site itself. His duties further involve the creation and maintenance of programs and reports run on a scheduled basis that facilitate and report on the movement of cases, including the creation of event codes based on criteria given by end users. Mr. McNamara's affidavit details the steps undertaken by the Division in carrying out the license suspension program authorized by Tax Law Article 8, § 171-v.

8. Mr. McNamara's affidavit addresses four sequential actions or steps, to wit, the "Initial Process," the "DMV Data Match," the "Suspension Process" and the "Post-Suspension Process." 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. This process involves first reviewing internally set selection criteria to identify taxpayers owing a cumulative and delinquent tax liability (tax, penalty and interest) in excess of $10,000.00, and then reviewing additional data to determine whether any of such taxpayers are excluded from application of the driver's

[4] A number of additional assessment numbers and warrant ID numbers are set forth by petitioner in the petition. However, since the 60-Day Notice specifies only the four allegedly fixed and final assessments identified in Finding of Fact 1 as the basis for suspension, the additional assessments listed in the petition are not relevant to this motion and are not further addressed herein.

license suspension provisions of Tax Law § 171-v(5) under the following elimination (or exclusion) criteria:

> -the taxpayer is deceased.
> - the taxpayer is in bankruptcy.
> -the age of any assessment(s) included in determining the cumulative amount of liability is more than 20 years from the Notice and Demand issue date.
> -a formal or informal protest has been made with respect to any assessment(s) 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 on an active approved payment plan.

b) The "DMV Data Match" involves reviewing information on record with DMV for a taxpayer not already excluded under the foregoing criteria to determine whether that taxpayer has a qualifying driver's license potentially subject to suspension per Tax Law § 171-v. This review examines the following 14 data points:

> "(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) mailing address street, (10) city, (11) state, (12) zip code
> (13) license class
> (14) license expiration date."

If, upon this review, the Division determines that a taxpayer 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 Finding of Fact 8-a. If the taxpayer remains within the criteria for suspension, then a 60-Day Notice will by issued to the taxpayer. In describing the process of issuance of the 60-Day Notice, Mr. McNamara states:

> "The date of the correspondence trigger will be stored on the database as the day that the 60-Day Notice was sent, but an additional 10 days will be added to the date displayed on the page to allow for processing and mailing. Additionally, the status will be set to "Approved" and the clock will be set for seventy-five (75) days from the approval date.
>
> The taxpayer(s) is sent the 60 day notice (Form DTF-454) via regular U.S. mail to the taxpayer's mailing address."

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 or otherwise changed), the case will be electronically sent by the Division to DMV for license suspension.[5] Data is exchanged daily between the Division and DMV. If an issue of data transmission arises, an internal group within the Division (DMV-Failed Suspensions) will investigate and resolve the issue. Upon successful data processing and transfer, DMV will send a 15 day letter to the taxpayer, advising of the impending license suspension.[6] 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.

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[5] Prior to license suspension, the Division performs another "criteria for suspension" 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 remains on the Division's system but the suspension will not proceed until the "on-hold" status is resolved. If the suspension is "closed" then the 60-Day Notice will be canceled. If the taxpayer "passes" this final criteria compliance check, the suspension by DMV will proceed.

[6] The 15 day letter is presumably the Order of Suspension referred to in Finding of Fact 3.

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 Finding of Fact 8-a (e.g., the filing of a protest, a bankruptcy filing, the creation and approval of an installment payment agreement and the like). Similar to the process described in Footnote 5, 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 re-suspension until resolution of the "on-hold" status (the 60-Day Notice would remain in the Division's system). Although not specifically addressed in Mr. McNamara's affidavit, a change to "closed" status would presumably result from events such as payment of the underlying liabilities, establishing that such liabilities were invalid ab initio, or death of the taxpayer. If the subsequent event resulted in "closed" status, the 60-Day Notice would be canceled.

9. A copy of the 60-Day Notice at issue in this matter, the Consolidated Statement of Tax Liabilities described in Finding of Fact 1, and a Payment Document (Form DTF-968.4), by which petitioner could remit payment against the liabilities in question, were included with Mr. McNamara's affidavit. Mr. McNamara avers, based upon his knowledge of Division policies and procedures regarding driver's license suspension referrals, and upon his review of the Division's records, that on November 8, 2013 the Division issued to petitioner a 60-Day Notice. Mr. McNamara states that such 60-Day Notice comports with statutory requirements, that petitioner has not raised any of the specifically listed grounds for challenging such a notice set forth at Tax Law § 171-v[5]), and that therefore the 60-Day Notice has not been and should not be canceled.

10. In its answer to the petition, and under the motion at issue herein, the Division asserts that petitioner's Request (***see*** Finding of Fact 3) was not timely filed with BCMS, i.e., within 60 days from the issuance of the 60-Day Notice. Accordingly, the Division maintains that the February 7, 2014 Dismissal Order correctly dismissed petitioner's January 27, 2014 Request, and thus asserts that the 60-Day Notice is therefore presumed to be valid and correct. In turn, the Division maintains that petitioner has not sought relief from the suspension of her 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 her 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.

11. Petitioner's response to the Division's motion consists of additional copies of the materials initially submitted with her petition, and submitted again thereafter as part of her subsequent correspondence. These submissions have been labeled by petitioner, variously, as constituting a "reply order to show cause," a "reply and discovery motion to compell [sic]," a "reply counterclaim" and a "reply motion to strike." Taken together (and construed liberally) this subsequent correspondence may be collectively viewed as a repeatedly submitted "reply" to the Division's answer to the petition (***see*** 20 NYCRR 3000.4), and as a response to the subject motion. As noted previously, clearly discerned from these documents are: (a) petitioner's claim that she did not receive the 60-Day Notice and (b) petitioner's challenge to the issuance and validity of the four assessments underlying the 60-Day Notice and forming the basis for the proposed suspension of her driver's license.

CONCLUSIONS OF LAW

A. Tax Law § 171-v, effective March 28, 2013, 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 in the instant matter is a Notice of Proposed Driver License Suspension Referral, dated November 8, 2013, addressed to and advising petitioner of the possible suspension of her driver's license. This 60-Day Notice is in facial compliance with the terms of Tax Law § 171-v. That is, the Notice is specifically based on: a) the Division's claim that four income tax assessments pertaining to petitioner and reflecting tax, penalty and interest due in the cumulative amount of $31,889.06, remain outstanding and unpaid, and b) petitioner does not meet (and has not raised) 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 her license by filing a Request with BCMS. Her request was filed on January 27, 2014, some 12 days after (and presumably in response to) the January 15, 2014 Order of Suspension issued by DMV, and some two days before the January 29, 2014 effective date of license suspension listed on such Order of Suspension (***see*** Findings of Fact 3 and 4). Since petitioner's January 27, 2014 request was not filed within 60 days after the November 8, 2013 date set forth on the face of the 60-Day Notice, the Request was dismissed by BCMS as not timely filed.

C. Petitioner challenged the BCMS Order of Dismissal by filing a petition with the Division of Tax Appeals. There is no dispute that the petition was filed on February 19, 2014, a

date that falls well within the 90 day statutory time limit for filing a petition following the issuance of a conciliation order (Tax Law § 170[3-a][e]; 20 NYCRR 4000.5[c][4]). As noted, the Division brings a motion to dismiss the petition under section 3000.9(a) of the Rules of Practice and Procedure (Rules) or, in the alternative, a motion for summary determination under section 3000.9(b). Since the petition in this matter was timely filed, the Division of Tax Appeals has jurisdiction over the petition and, accordingly, a motion for summary determination under section 3000.9(b) of the Rules is the proper vehicle to consider the timeliness of petitioner's request for conciliation conference. This Order shall address the instant motion as such. Given the timely petition, the Division's motion to dismiss under section 3000.9(a) of the Rules is improperly brought.

D. 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]).

E. 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 v. Tri-Pac Export Corp.***, 22 NY2d 439, 441 [1968]; ***Museums at Stony Brook v. Vil. of Patchogue Fire Dept.***, 146

AD2d 572 [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***). As detailed hereafter, there exist material and triable issues of fact, and the Division is not entitled to summary determination in its favor.

F. The petition in this matter raises two questions. The first is whether the Division properly gave the requisite 60-day notice to petitioner of its intent to make a referral to DMV for license suspension action against petitioner, thereby triggering the period of limitation (time frame) within which petitioner was entitled to file a protest against such action. The second question is whether there exist past-due fixed and final tax liabilities owed by petitioner in an amount equal to or greater than $10,000.00, a foundational requirement for a valid referral and, ultimately, license suspension.

G. As to the first question presented, a taxpayer may protest a notice of proposed license suspension by filing a petition for a hearing with the Division of Tax Appeals within 60 days from the date of mailing of such notice (Tax Law § 171-v[3]). Alternatively, a taxpayer may protest such a notice by filing a request for a conciliation conference with BCMS "if the time to petition for such hearing has not elapsed" (Tax Law § 170[3-a][a]). It is well established that statutory time limits for filing either a petition or a request for a conciliation conference are strictly enforced and that, accordingly, protests filed even one day late are considered untimely (***see e.g. Matter of***

American Woodcraft, Tax Appeals Tribunal, May 15, 2003; ***Matter of Maro Luncheonette***, Tax Appeals Tribunal, February 1, 1996). This is because, absent a timely protest, a statutory notice to which protest rights attach (e.g., a 60-Day Notice) becomes fixed and final and, consequently, BCMS and the Division of Tax Appeals are without jurisdiction to consider the substantive merits of the protest (***see Matter of Lukacs***, Tax Appeals Tribunal, November 8, 2007; ***Matter of Sak Smoke Shop***, Tax Appeals Tribunal, January 6, 1989).

H. It is well settled that where the timeliness of a protest (here the timeliness of a request for conciliation conference) is at issue, the initial inquiry is whether the Division has given proper notice to the taxpayer. Specifically, the question presented is whether the Division has carried its burden of demonstrating the fact and date of proper mailing of the notice being protested (***see Matter of Katz***, Tax Appeals Tribunal, November 14, 1991; ***Matter of Novar TV & Air Conditioner Sales & Serv.***, Tax Appeals Tribunal, May 23, 1991). A notice is issued when it is properly mailed, and it is properly mailed when it is delivered into the custody of the USPS (***Matter of Air Flex Custom Furniture***, Tax Appeals Tribunal, November 25, 1992). In the case of a proposed driver's license suspension, Tax Law § 171-v(3) states that "[n]otice shall be provided by first class mail to the taxpayer's last known address as such address appears in the electronic systems or records of the [Division]."

I. The Division may meet its burden of proving proper mailing by providing evidence of its standard mailing procedure, corroborated by direct testimony or documentary evidence of mailing (***see Matter of Accardo***, Tax Appeals Tribunal, August 12, 1993). The mailing evidence is two-fold, and to prove the fact and date of mailing of the subject notice, the Division must make the following showing:

> "first, there must be proof of a standard procedure used by the Division for the issuance of the statutory 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 in question" (***Matter of United Water New York, Inc.***, Tax Appeals Tribunal, April 1, 2004; ***see Matter of Katz***).

J. The record on this motion includes no evidence by which mailing of the 60-Day Notice on November 8, 2013, as claimed, can be verified. The fact that the claimed date of mailing is set forth on the face of the Notice, coupled with the bare assertion by affidavit that the Notice was mailed on such date, is plainly insufficient to establish the fact of proper mailing (i.e., mailing by first class mail on the date claimed per Tax Law § 171-v[3]). In fact, the McNamara affidavit speaks of a "correspondence trigger date," an "additional ten days . . . to allow for processing and mailing," and a 75 day "clock" date. However, these terms are not further explained or tied in any manner to a description of the regular process by which such 60-Day Notices are mailed.[7] Without proof of the date on which the subject Notice was issued to petitioner, the 60-day period within which petitioner was entitled to file a protest was not triggered. In turn, when petitioner received actual notice of the proposed suspension of her license via the January 15, 2014 Order of Suspension (***see*** Finding of Fact 3), she filed her Request. That Request, filed on January 27, 2014 (i.e., 12 days after her admitted receipt of actual notice), fell well within the 60-day post-notice protest period afforded under Tax Law § 171-v(3), and thus constituted a timely protest (***see Matter of Hyatt Equities, LLC.***, Tax Appeals Tribunal, May 22, 2008; ***Matter of Riehm v. Tax***

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[7] The giving of notice via mailing by first class mail, per Tax Law § 171-v(3), differs from the more usual statutory requirement imposed upon the Division of giving notice via mailing by certified or registered mail (***see e.g.***, Tax Law §§ 1138[a][1]; 685[a]). Notwithstanding distinctions between these methods of mailing, including that the latter allows an expedient method to establish both physical delivery of the item allegedly mailed into the custody of the USPS and, via USPS Form 3811-A, subsequent delivery information (or confirmation) with respect to the item, it remains that the record herein provides no basis to support a conclusion that the 60-Day Notice concerning petitioner was in fact mailed to her as claimed on November 8, 2013 or on any other particular date.

Appeals Tribunal, 179 AD2d 970 [1992], ***lv denied*** 79 NY2d 759 [1992]). Accordingly, the Dismissal Order dated February 7, 2014 incorrectly dismissed petitioner's challenge as untimely.

K. Having concluded that petitioner timely protested the 60-Day Notice leads to the second, and more substantive, question presented. That is, while petitioner did not specifically raise any of the six enumerated bases for relief from an apparently otherwise facially valid proposed license suspension (***see*** Finding of Fact 8[a]; Tax Law § 171-v[5][i]-[vi]), petitioner did clearly dispute the receipt of notice and the validity of the four specified assessments underlying the proposed suspension (***see*** Finding of Fact 6). Thus, the remaining question is whether there exist "past-due tax liabilities," as defined, owed by petitioner that are, in the aggregate, equal to or greater than $10,000.00.

L. Tax Law Article 8, § 171-v, is titled "Enforcement of *delinquent tax liabilities* through the suspension of driver's licenses" (italics added). The stated aim of section 171-v is "to improve tax collection through the suspension of drivers' licenses of taxpayers with past-due tax liabilities equal to or in excess of ten thousand dollars" (Tax Law § 171-v[1]). The sanction imposed under Tax Law § 171-v is, as the title states, the suspension of a taxpayer's driver's license. The specific fundamental and foundational statutory predicates underlying this sanction are the giving of notice (i.e., the 60-Day Notice), and establishing the existence of "delinquent tax liabilities," specifically the existence of "*past-due tax liabilities*," owed by the taxpayer in an aggregate amount equal to or greater than $10,000.00 (italics added).

M. Tax Law § 171-v(1) defines the term "past-due tax liabilities" to mean "any tax liability or liabilities which have become fixed and final *such that the taxpayer no longer has any*

right to administrative or judicial review" (italics added). The record in this matter, as developed at this point in time, does not allow for a conclusion that there exist fixed and final tax liabilities owed by petitioner with respect to which she no longer has any right to administrative or judicial review. The Division specifies four assessments as comprising the past-due tax liabilities giving rise to the basis for license suspension (***see*** Finding of Fact 1). However, the Division has offered no evidence, in the face of petitioner's challenge, to establish either: a) the proper issuance of any of these four assessments, such that the burden of proving that a timely challenge against any or all of such assessments had been made would rest with petitioner, or b) that the assessments were of a type with respect to which there is no right to a pre-payment hearing, or where the right to such a hearing is specifically modified or denied (e.g., a notice and demand for payment issued under circumstances involving the filing of an income tax return without remittance of the tax reported as due thereon by the taxpayer, or the filing of a return on which there is a mathematical error (***see e.g.***, Tax Law §§ 173-a[3][c]; 2006[4]; ***Matter of Chait***, Tax Appeals Tribunal, April 22, 2010).[8]

N. As observed earlier, the twin predicates to a valid license suspension are the giving of proper notice of the proposed license suspension (the 60-Day Notice) and the existence of an aggregate past-due tax liability equal to or greater than $10,000.00. Meeting these twin predicates establishes the Division's authority to refer the taxpayer to the DMV for license

[8] The provision of Tax Law § 173-a(3)(c) stating that a notice and demand shall not be construed as a notice which gives a person the right to a hearing was enacted by Chapter 60 of the Laws of 2004 and applies to notices issued on or after December 1, 2004 (L 2004, ch 60, pt F, § 8). While the Consolidated Statement of Tax Liabilities lists the assessment ID numbers and tax years in question, it does not specify the type of assessments involved (e.g., notices of deficiency, notices and demands) or the dates on which such assessment documents were issued (i.e., before or after December 1, 2004). Hence, at this juncture, it is not possible to determine the potential applicability of Tax Law § 173-1(3)(c) as a bar to the right to a hearing.

suspension and, in turn, supports suspension of the license. It is at such point in time that the taxpayer's bases for challenging the referral and suspension are specifically limited to the six enumerated grounds set forth at Tax Law § 171-v(5)(i)-(vi), upon which license referral and suspension may be avoided, lifted, negated or cancelled. However, absent these two requisite foundational elements of: a) proper notice (affording the taxpayer a right to be heard) and, b) the existence of past due tax liabilities as defined *(any tax liability or liabilities which have become fixed and final such that the taxpayer no longer has any right to administrative or judicial review)*, there can be no valid suspension.

O. As concluded earlier, the Division's bare assertion and claim by affidavit that the 60-Day Notice was issued on the November 8, 2013 date set forth on its face, was simply insufficient to prove such claim (***see*** Conclusion of Law J). In the same manner, the Division's submission of a Statement of Consolidated Tax Liabilities, coupled with the bare assertion and claim by affidavit that the assessments listed thereon are fixed and final, without more, is likewise simply insufficient to prove such claim. As a result, the Division has not established that the statutory notices specified in Finding of Fact 1 are "past-due tax liabilities" as defined by Tax Law § 171-v(1) (***see*** Conclusion of Law M). Accordingly, and at this stage of the proceedings, the foundational predicate supporting the sanction of license suspension, i.e., the existence of "past-due tax liabilities," per Tax Law § 171-v(1), has not been met.

P. The Division of Taxation's motion is denied, without prejudice to the filing of any future motion, and the petition of Miriam Snyder shall proceed in due course.

DATED: Albany, New York
January 8, 2015

/s/ Dennis M. Galliher
ADMINISTRATIVE LAW JUDGE