

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
ERIC M. MANGANELLI : ORDER
: DTA NO. 826961
For Review of a Notice of Proposed Driver License :
Suspension Referral Under Tax Law, Article 8, § 171-v :
and for Redetermination of a Deficiency or for Refund of :
Personal Income Tax under Article 22 of the Tax Law :
for the Year 2008. :

Petitioner, Eric M. Manganelli, filed a petition for review of a Notice of Proposed Driver License Suspension Referral under Tax Law, Article 8, § 171-v and for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 2008.

The Division of Taxation, by its representative, Amanda Hiller, Esq. (Hannelore F. Smith, Esq., of counsel), brought a motion on September 24, 2015, 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 September 23, 2015, and annexed exhibits. Petitioner, appearing pro se, did not file a response to the Division of Taxation's motion. Based upon the motion papers and documents submitted therewith, and all pleadings and documents submitted in connection with this matter, Kevin R. Law, 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 and the petition dismissed.

FINDINGS OF FACT

1. The Division of Taxation (Division) issued to petitioner, Eric M. Manganelli, a Notice of Proposed Driver License Suspension Referral (the 60-Day Notice), dated March 11, 2015, which notified petitioner that new legislation allows New York State to suspend the driver's licenses of persons who have delinquent unpaid tax debts. The notice informed petitioner of how to avoid such suspension, how to respond to the notice and what would ensue if he failed to take action. Attached to the notice was a Consolidated Statement of Tax Liabilities listing the following income tax assessment subject to collection:

Assessment No.	Tax period ended	Tax Amount Assessed	Interest Assessed	Penalty Assessed	Payments and credits	Current Balance Due
L-042119610-8	12/31/08	\$10,832.00	\$5,996.25	\$408.32	\$0.00	\$16,936.57

2. On or about May 12, 2015, petitioner filed a petition with the Division of Tax Appeals. The petition identifies the protested assessment as L-042119610-8 and E-041330917-CL01-9 and the tax year as 2008. It lists the amount in controversy as \$10,832.00. The petition alleges that the Division is improperly assessing \$10,832.00 in tax for the year 2008 and references a letter dated May 5, 2015, a copy of which is attached to the petition.

3. The May 5, 2015 letter is addressed to the Division's Assessment Receivable Unit and references L-042119610-8. The May 5, 2015 letter explains that the Division sent the notice to a former address despite being notified of petitioner's current address. The letter expresses petitioner's disagreement with the amount assessed and contends that the Division is holding an

overpayment of taxes from the year 2010 that began as an overpayment of withheld taxes in the year 2008.

4. The petition alleges that the 60-Day Notice is premature because notice L-042119610-8, which is the predicate for the 60-Day Notice, is a disputed bill and requests a stay of the 60-Day Notice pending resolution of notice L-042119610-8.

5. The Division filed its Answer to the petition on July 1, 2015. The Answer addresses the 60-Day Notice but does not address notice L-042119610-8 other than to list the balance due as reflected on the Consolidated Statement of Tax Liabilities referenced in Finding of Fact 1.

6. On September 24, 2015 the Division brought the subject motion. The Division submitted with its motion an affidavit, sworn to on September 23, 2015, by Ronald Catalano, a Tax Compliance Manager 2 with its Civil Enforcement Division (CED). His responsibilities include overseeing the operations of the Training Unit of the CED's Operations Analysis and Support Bureau. 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.

7. In his affidavit, Mr. Catalano describes the Division's process for selection of candidates who could be sent notices of proposed driver license suspension pursuant to Tax Law § 171-v. The initial search criteria includes that 1) the taxpayer must have an outstanding balance of tax, penalty, and interest in excess of \$10,000.00; 2) all assessments currently involved in formal or informal protest, or bankruptcy must be eliminated; 3) there must be less than 20 years from the issuance of the particular notice and demand; and 4) the outstanding assessments must not be the subject of an approved payment arrangement. The Division searches its electronic database on a weekly basis for those taxpayers that meet the above criteria.

8. Once candidates have been identified by the Division, the necessary information is sent to the Department of Motor Vehicles (DMV) to confirm that the taxpayer has a qualifying driver's license and is eligible for a notice of proposed driver license suspension.

9. Mr. Catalano avers that based on his review of the Division's records and his knowledge of its policies and procedures, issuance of the suspension notice to petitioner was proper. Based upon notice L-042119610-8 he states that the cumulative balance of tax, penalty, and interest owed by petitioner on March 11, 2015 was greater than \$10,000.00, and that petitioner met all other compliance checks referenced in Finding of Fact 7 for proper issuance of the suspension notice.

10. Mr. Catalano also notes that, had petitioner requested that his overpayment from the year 2010 be applied to petitioner's liability for 2008 rather than being treated as an estimated tax payment for 2011, petitioner's outstanding balance for 2008 would have amounted to \$12,793.74.

11. The Division did not submit any proof of mailing or other method of issuance of notice L-042119610-8 referenced in the petition and underlying the suspension notice.

CONCLUSIONS OF LAW

A. The Division has filed alternative motions, seeking dismissal under 20 NYCRR 3000.9(a), or summary determination under 20 NYCRR 3000.9(b). As the Division of Tax Appeals has subject matter jurisdiction in the instant matter, the Division's motion will be treated as one for summary determination (*see Matter of Ali*, Tax Appeals Tribunal, January 22, 2015).

B. A motion for summary determination may 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 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]).

Section 3000.9(c) of the Tax Appeals Tribunal's Rules of Practice and Procedure 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]). Inasmuch 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, Inc., v Tri-Pac Export Corp., 22 NY2d 439, 441 [1968]; Museums at Stony Brook v Village of Patchogue Fire Dept., 146 AD2d 572 [1989]*). In this case, it is determined that summary determination is inappropriate.

C. 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]) and the taxpayer must have fixed and final tax liabilities in excess of \$10,000.00.

D. Petitioner's right to challenge the 60-Day Notice issued pursuant to Tax Law § 171-v is specifically limited to 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; or

(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" (Tax Law § 171-v[5]).

E. Petitioner did not raise a challenge based on any of the above-enumerated grounds and did not file a response to the Division's motion; however, the petition questions the Division's ability to issue the 60-Day Notice, alleging that the underlying assessment is disputed and asks that the 60-Day Notice be held off until the underlying tax dispute is resolved. The petition references a letter purportedly sent to the Division wherein petitioner alleged that said notice was sent to the wrong address and further questions the amount of tax assessed in said notice. Here, propriety of the 60-Day Notice hinges on whether petitioner has "past-due liabilities" in excess of \$10,000.00.¹ The petition in this matter mounts a challenge to the underlying tax notice, notice L-042119610-8, thus raising questions as to its timeliness and issuance. In addition, petitioner raises questions as to whether the notice L-042119610-8 was issued to his last known address. In such a case, it becomes necessary for the Division to demonstrate proper mailing (*Matter of Katz*, Tax Appeals Tribunal, November 14, 1991). In this case the Division is required to produce more than the blanket statement that notice L-042119610-8 is no longer subject to administrative or judicial review and is subject to collection.

¹ Tax Law § 171-v (1) defines past-due tax liabilities as "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."

F. The Division's Motion is denied without prejudice to the filing of any future motion, and the petition of Eric M. Manganelli shall proceed in due course.

DATED: Albany, New York
January 14, 2016

/s/ Kevin R. Law
ADMINISTRATIVE LAW JUDGE