STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition of **GEOFFREY J. GARRAND** for Revision of Determinations or for Refund of Sales and Use Taxes under Articles 28 and 29 of the Tax Law for the Periods March 1, 2020 through February 28, 2021 and December 1, 2021 through August 31, 2022 and for Review of a Notice of Proposed Driver's License Suspension Referral under Tax Law § 171-v.	: : : : : : :	ORDER DTA NO. 851154

Petitioner, Geoffrey J. Garrand, filed a petition for revision of determinations or for refund of sales and use taxes under articles 28 and 29 of the Tax Law for the periods March 1, 2020 through February 28, 2021 and December 1, 2021 through August 31, 2022 and for review of a notice of proposed driver's license suspension referral under Tax Law § 171-v.

The Division of Taxation, appearing by its representative, Amanda Hiller, Esq. (Michele Ruscio, Esq., of counsel), filed a motion on April 14, 2026, seeking an order dismissing the petition or, in the alternative, granting 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, appearing pro se, responded by May 14, 2026, which date began the 90-day period for issuance of this order.

Based upon the motion papers, the affirmation and affidavit and exhibits submitted therewith, petitioner's response and all pleadings and documents submitted in connection with this matter, Barbara J. Russo, Administrative Law Judge, renders the following order.

ISSUE

Whether material questions of fact exist such that the Division of Taxation's motion for summary determination should be denied.

FINDINGS OF FACT

1. The Division of Taxation (Division) issued to petitioner, Geoffrey J. Garrand, the following notices of determination (collectively, the underlying notices):

Notice Date	Assessment ID Number	Tax Period Ended	Tax	Interest	Penalty	Payments/ Credits	Current Balance Due
03/10/22	L-055448942	5/31/20	$31,755.30	$3,421.80	$5,282.54	$26,452.96	$14,006.68
03/10/22	L-055448941	8/31/20	$49,144.38	$12,407.73	$13,760.33	$0.00	$75,312.44
03/10/22	L-055448940	11/30/20	$7,162.51	$1,465.69	$1,826.01	$0.00	$10,454.21
03/10/22	L-055448939	2/28/21	$7,763.17	$1,268.88	$1,701.44	$0.00	$10,733.49
12/06/22	L-057501009	2/28/22	$0.00	$38.06	$1,182.34	$0.00	$1,220.40
12/06/22	L-057501008	5/31/22	$0.00	$5.36	$632.26	$0.00	$637.62
12/06/22	L-057501007	8/31/22	$0.00	$2.64	$238.49	$0.00	$241.13

The underlying notices were addressed to petitioner at an address in Plattsburgh, New York.

2. On May 13, 2024, petitioner filed requests for conciliation conferences (requests) with the Division's Bureau of Conciliation and Mediation Services (BCMS) in protest of the underlying notices.[1]

3. BCMS issued a conciliation order dismissing request (CMS No. 000361570) (conciliation order), dated June 7, 2024, dismissing petitioner's requests for the underlying notices and stating, in part:

> "[t]he Tax Law requires that a request be filed within 90 days from the date of the statutory notice. Since the notices were issued on March 10, 2022 & December 6, 2022, but the request was not received until May 13, 2024, or in excess of 90 days, the request is late filed."

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[1] The requests included as exhibits with the Division's motion papers are dated May 13, 2023. However, petitioner concedes in his response to the motion that this date is incorrect and should be May 13, 2024.

4. The Division issued to petitioner a notice of proposed driver's license suspension referral (form DTF-454), collection case ID E-206909143-CL01-8 (notice of proposed driver's license suspension), dated June 14, 2024, advising that petitioner must pay his New York State tax debts or face the possible suspension of his driver's license pursuant to Tax Law § 171-v.

5. The notice of proposed driver's license suspension is addressed to petitioner at the same Plattsburgh, New York, address that appears on the underlying notices. Included with the notice of proposed driver's license suspension was a consolidated statement of tax liabilities (form DTF-967-E), also dated June 14, 2024, setting forth the following unpaid sales tax assessments:

Assessment ID Number	Tax Period Ended	Tax	Interest	Penalty	Payments/ Credits	Current Balance Due
L-057501009	2/28/22	$0.00	$47.52	$1,182.34	$0.00	$1,229.86
L-057501008	5/31/22	$0.00	$6.69	$632.26	$0.00	$638.95
L-057501007	8/31/22	$0.00	$3.30	$238.49	$0.00	$241.79
L-055448942	5/31/20	$31,755.30	$5,298.62	$0.00	$35,959.47	$1,094.45
L-055448941	8/31/20	$49,144.38	$21,149.90	$0.00	$0.00	$70,294.28
L-055448940	11/30/20	$7,162.51	$2,878.23	$0.00	$0.00	$10,040.74
L-055448939	2/28/21	$7,763.17	$2,863.50	$0.00	$184.00	$10,442.67

The consolidated statement of tax liabilities indicated a total balance due of $93,982.74.

6. The notice of proposed driver's license suspension indicated that a response was required within 60 days from its mailing, and if no response was received, the Division would notify the New York State Department of Motor Vehicles (DMV) to proceed with suspension of petitioner's driver's license. The notice of proposed driver's license suspension informed petitioner that New York State law limits the grounds for challenging the proposed suspension of his driver's license to the statutory exemptions listed in the notice. The last page of the notice of proposed driver's license suspension contains a section titled, "How to protest," and instructs the recipient on how to protest the notice of the proposed driver's license suspension.

7. Petitioner filed a petition with the Division of Tax Appeals on August 12, 2024. Attached to the petition was the June 7, 2024, conciliation order and the notice of proposed driver's license suspension. The petition challenges the merits of the underlying notices, states that petitioner has applied to the Division for relief from responsible person liability but has not received a response and requests that enforcement of the assessments be stopped pending his appeal. The petition does not raise any of statutory exemptions listed in the notice of proposed driver's license suspension as grounds for challenging such notice.

8. The Division filed its answer to the petition on October 23, 2024, and in turn brought the subject motion on April 14, 2026. The Division submitted with its motion, among other items, an affidavit, sworn to on April 13, 2026, of Todd Lewis, who is employed as a Taxpayer Services Administrator 2 with the Division's Civil Enforcement Division (CED). 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 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.

9. 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 171-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 of proposed driver's license suspension 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 less 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 utilized to search the Division's databases on a weekly basis, and a file is created of possible taxpayers to whom a 60-day notice of proposed driver's license suspension 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 in bankruptcy; an informal protest or protest before BCMS or the Division of Tax Appeals 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, a "DMV Data Match" 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 per 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 of proposed driver's license suspension will be issued to the taxpayer via first-class United States 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. Prior to sending the case to the DMV, the Division performs another compliance check to confirm that the case still meets the aforementioned criteria. If the taxpayer fails the Division's compliance check, the status will be updated to "on-hold" or "closed" depending on the reason and the taxpayer will be not sent to the DMV for suspension. If the taxpayer passes the Division's compliance check, the taxpayer will be added to a data file to be sent to the DMV for license suspension.

Such data file is sent daily, Monday through Friday, by the Division 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. With regard to 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 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 in case status can result from a taxpayer filing for bankruptcy or filing a request for conference with BCMS or a petition with the Division of Tax Appeals, if the taxpayer is deceased, if the taxpayer has paid all outstanding liabilities or has an approved payment arrangement, if the taxpayer provides documentation that they receive public assistance or supplemental security income or if the taxpayer demonstrates that the suspension would cause undue economic hardship. 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 resolution of the "on hold" status; however, the 60-day notice of proposed driver's license suspension would remain in the Division's system. If the status is changed to "closed," the 60-day notice of proposed driver's license suspension is cancelled.

10. A copy of the notice of proposed driver's license suspension at issue in this matter, the consolidated statement of tax liabilities described in finding of fact 5 and a payment document (form DTF-968.4), by which the petitioner could remit payment against the liabilities in question, were included with Mr. Lewis's affidavit. Mr. Lewis avers that the suspension process was followed by the Division in the instant matter concerning the notice of proposed driver's license suspension issued to petitioner. Mr. Lewis states that based upon his review of Division records and his personal knowledge of Departmental policies and procedures regarding

driver's license suspension referrals, the issuance of the notice of proposed driver's license suspension to petitioner on June 14, 2024, comports with statutory requirements. Mr. Lewis also asserts that he has "not found any grounds" for challenging the notice of proposed driver's license suspension pursuant to Tax Law § 171-v (5) and, therefore, the suspension notice has not been, and should not be, cancelled.

11. The affirmation of Michele Ruscio, Esq., dated April 9, 2026, also submitted in support of the Division's motion, asserts that the notice of proposed driver's license suspension was addressed to petitioner's address of record at the time said notice was issued on June 14, 2024. The affirmation did not assert whether the same address was petitioner's address of record when the underlying notices were issued and the Division did not submit any proof of petitioner's last known address at the time the underlying notices were issued.

12. The Division did not submit any proof of mailing or other method of issuance of the underlying notices.

13. In response to the Division's motion, petitioner argues, in part, that the Plattsburgh, New York, address listed on the underlying notices was not his correct address at the time the underlying notices were issued. Petitioner contends that the underlying notices were not mailed to his last known address and he did not receive them when they were issued.

CONCLUSIONS OF LAW

A. 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). A motion to dismiss the petition may be granted, as pertinent herein, if the Division of Tax Appeals lacks jurisdiction of the subject matter of the petition (***see*** 20 NYCRR 3000.9 [a] [1] [ii]). 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 and within 90 days of the conciliation order (***see*** Tax Law §§ 171-v [3]; 170 [3-a] [e]). 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.

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 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. Thus, the movant "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 the Tribunal noted in ***Matter of United Water New York*** (Tax Appeals Tribunal, April 1, 2004):

> "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 v Tri-Pac Export Corp.***, 22 NY2d 439, 441 [1968]). If material facts are in dispute, or if contrary inferences may be reasonably drawn from undisputed facts, then a full trial is warranted and the case should not be decided on a motion (***see Gerard v Inglese***, 11 AD2d 381, 382 [2d Dept 1960]). Upon such a motion, it is not for the court 'to resolve issues of fact or determine matters of credibility but merely to determine whether such issues exist' (***Daliendo v Johnson***, 147 AD2d 312, 317 [2d Dept 1989])."

C. The Division argues that its motion should be granted on the basis that petitioner has not raised any of the grounds listed in Tax Law § 171-v (5) to challenge a notice of proposed driver's license suspension issued pursuant to Tax Law § 171-v. Tax Law § 171-v (5) provides that a taxpayer may only challenge a notice of proposed driver's license suspension 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."

The Division contends that because petitioner has not raised any of the aforementioned grounds, there is no material issue of fact and summary determination should be granted in its favor. However, contrary to its assertion, the Division's own motion papers evidence the existence of a material issue of fact. Specifically, the affidavit of Todd Lewis, submitted by the Division in support of its motion, states repeatedly that a taxpayer is excluded from the driver's license suspension process if a request for conciliation conference is filed with BCMS for any of the listed assessments, which would make the balance of "fixed and final tax liabilities" fall below the $10,000.00 threshold for suspension. Mr. Lewis avers that such criteria is reviewed, first, in the initial process, then during the suspension process and, finally, during the post-suspension process. According to Mr. Lewis, during the initial process, all cases in formal or informal protest are excluded from selection for the issuance of a 60-day notice of proposed driver's license suspension and if a request for conciliation conference is filed during the later stages, the case status will be changed to on-hold or closed. A review of the evidence in the record shows that the process described by Mr. Lewis was not followed by the Division in this case.

Petitioner filed a request for conciliation conference with BCMS protesting the underlying notices on May 13, 2024, *prior* to the issuance of the notice of proposed driver's license suspension. The conciliation order was issued on June 7, 2024. Petitioner subsequently had 90 days to file a petition with the Division of Tax Appeals in protest of the conciliation order (***see*** Tax Law § 170 [3-a] [e]). On June 14, 2024, before petitioner's 90-day statutory time limit for filing a petition to protest the conciliation order expired, the Division issued the notice of proposed driver's license suspension. The Division offered no explanation as to why the suspension process for petitioner was initiated while the matter was under protest by petitioner, in contradiction to the process described by Mr. Lewis. Indeed, the Division has failed to show that the underlying liabilities were "fixed and final such that the taxpayer no longer has any right to administrative or judicial review" at the time the notice of proposed driver's license suspension was issued, since petitioner's time to protest the conciliation order had not yet expired (***see*** Tax Law §§ 171-v [1]; 170 [3-a][e]). Petitioner's liabilities were clearly not fixed and final as petitioner was protesting such liabilities. Inexplicably, the Division issued the notice of proposed driver's license suspension in the midst of such protest and then asserted that petitioner was limited to one of the grounds listed in Tax Law § 171. The Division's position is untenable. Petitioner had the right to continue his appeal of the underlying notices by challenging the conciliation order within the statutory time limit. Petitioner does not lose that right because the Division, in contravention of its own procedures, prematurely issued the notice of proposed driver's license suspension.

D. Petitioner raises an additional question of fact in response to the Division's motion. Petitioner argues that the assessments listed in the consolidated statement of tax liabilities attached to the notice of proposed driver's license suspension were not fixed and final because the underlying notices were not properly mailed to his last known address. Petitioner contends that his address at the time the underlying notices were issued was not the Plattsburgh, New York, address listed on those notices. Petitioner argues that because the underlying notices were not mailed to his last known address, the statutory 90-day period to protest those notices never began to run and, therefore, the assessments cannot be deemed fixed and final.

Tax Law § 171-v is titled "[e]nforcement of *delinquent tax liabilities* through the suspension of drivers' licenses" (emphasis 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]). A specific statutory predicate underlying this sanction is the establishment of 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 (***see id.*** [emphasis added]). Tax Law § 171-v (1) defines the term "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" (emphasis added). In the instant matter, the Division must first establish that the assessments asserted in the underlying notices are fixed and final such that petitioner no longer has any right to administrative or judicial review of the same. The Division argues that the assessments asserted in the underlying notices are fixed and final, contending that petitioner did not challenge these statutory notices within 90 days of their respective dates of issuance.

A taxpayer may protest a notice of determination, such as the underlying notices here, by filing a petition for a hearing with the Division of Tax Appeals within 90 days from the date of mailing of such notice (***see*** Tax Law § 1138 [a] [1]). Alternatively, a taxpayer may contest 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 the 90-day statutory time limit for filing either a petition or a request for a conciliation conference is strictly enforced (***see e.g. Matter of American Woodcraft***, Tax Appeals Tribunal, May 15, 2003). This is because, absent a timely protest, a notice of determination becomes a fixed and final liability and, consequently, the Division of Tax Appeals is without jurisdiction to consider the substantive merits of the protest (***see*** Tax Law § 1138 [a] [1]; ***Matter of Garitta***, Tax Appeals Tribunal, February 21, 2017).

Where the timeliness of a request for conciliation conference or a petition is at issue, the initial inquiry is whether the Division has met its burden of demonstrating the date and fact of mailing of the relevant statutory notice to petitioner's last known address (***see Matter of Garitta***; ***Matter of Katz***, Tax Appeals Tribunal, November 14, 1991). For purposes of the underlying notices at issue here, a last known address is defined as "the address given in the last return filed by him pursuant to the provisions of [article 28] or in any application made by him or, if no return has been filed or application made, then to such address as may be obtainable" (Tax Law § 1147 [a] [1]).

The Division has offered no evidence in its motion papers that the underlying notices were mailed to petitioner's last known address. The Division did not include the last return filed by petitioner before the underlying notices were issued or provide any other documentation in this regard. While the Division asserts that the notice of proposed driver's license suspension was mailed to petitioner's address of record on June 14, 2024, it makes no argument and provides no evidence that such address was petitioner's last known address at the time the underlying notices were issued on March 10, 2022, and December 6, 2022. Moreover, the record is devoid of any proof of mailing of the underlying notices. As such, the Division has offered insufficient evidence to establish the proper issuance of the underlying notices and the exhaustion or prohibition of petitioner's administrative or judicial review. In sum, there remain issues of fact and, therefore, summary determination is inappropriate.

E. The Division's motion is denied and the matter will be scheduled for a hearing in due course.

DATED: Albany, New York
August 6, 2026

/s/ Barbara J. Russo
ADMINISTRATIVE LAW JUDGE