

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition :
of :
LINDA M. JARVIS : DECISION
for Review of a Notice of Proposed Driver’s License : DTA NO. 827955
Suspension Referral under Tax Law § 171-v. :

Petitioner, Linda M. Jarvis, filed an exception to the order of discontinuance of the Administrative Law Judge issued on December 3, 2018. Petitioner appeared pro se. The Division of Taxation appeared by Amanda Hiller, Esq. (Hannelore Smith, Esq., of counsel).

On January 15, 2019, the Tax Appeals Tribunal issued a notice of intent to dismiss exception on the ground that it lacks jurisdiction to consider petitioner’s exception to the order of discontinuance. The parties were granted until February 19, 2019 to respond to the notice of intent to dismiss. Neither party responded. The six-month period for issuance of this decision thus began on February 19, 2019.

On its own motion, after reviewing the entire record in this matter, the Tax Appeals Tribunal renders the following decision.

ISSUE

Whether the Tax Appeals Tribunal lacks jurisdiction to consider petitioner’s exception.

FINDINGS OF FACT

We find the following facts.

1. On November 23, 2016, petitioner, Linda M. Jarvis, filed a petition with the Division of

Tax Appeals. The petition protests a notice of proposed driver's license suspension referral dated July 8, 2015, by asserting that the assessment underlying the proposed license suspension is not fixed and final and also by contesting the amount actually due under that assessment.

2. The Division of Taxation (Division) subsequently filed its answer to the petition, dated January 11, 2017, in which it requested that the petition be dismissed, or in the alternative denied.

3. On March 23, 2017, the Division filed with the Supervising Administrative Law Judge a notice of motion, with supporting papers, seeking an order dismissing the petition, or in the alternative, granting summary determination in its favor. Petitioner filed a letter in opposition to the Division's motion on September 15, 2017.

4. On December 7, 2017, the Administrative Law Judge issued an order denying the Division's motion. The Administrative Law Judge found that there existed material issues of fact relating to the calculation of petitioner's outstanding tax liability attributable to the assessment underlying the proposed driver's license suspension and the status of petitioner's article 78 appeal of the Tax Appeals Tribunal decision addressing the merits of that assessment (*Matter of Jarvis*, Tax Appeals Tribunal, July 22, 2010).

5. On January 12, 2018, the Administrative Law Judge held a pre-hearing conference call, during which the Division's representative agreed to provide petitioner with a computation of the adjustments made to the underlying assessment and details of any prepayments and payments that had been applied to such liability.

6. By letter dated March 23, 2018, the Division's representative advised the Administrative Law Judge that certain adjustments to the underlying assessment had not, to that point, been appropriately applied. The representative further advised that, upon proper

recalculation of petitioner's liability, the Division determined that petitioner did not meet the liability threshold for the driver's license suspension program. The Division enclosed for filing with its letter a properly executed notice of cancellation and discontinuance of proceeding pertaining to the present matter, also dated March 23, 2018. The March 23, 2018 letter indicated that a copy thereof was mailed to petitioner's former representative (her spouse).

7. In response to the Division's notice of cancellation and discontinuance, the Administrative Law Judge issued an order of discontinuance, dated December 3, 2018, in which she ordered that the driver's license suspension referral be canceled and the proceeding discontinued with prejudice. Petitioner's exception followed on January 2, 2019.

OPINION

Petitioner filed her petition in protest of the notice of proposed driver's license suspension referral dated July 8, 2015. That notice was subsequently canceled. The Administrative Law Judge thus properly issued the December 3, 2018 order of discontinuance.

Petitioner argues in her exception that the order of discontinuance should not have been issued because it did not address the remaining open issues in this proceeding (i.e., whether the underlying assessments had become fixed and final and the amount of the liabilities assessed). Such issues would be relevant in the present matter only if the notice of proposed driver's license suspension referral remained in dispute. That is, in order to sustain such a notice, the underlying assessments must be fixed and final and equal to or in excess of \$10,000.00 (Tax Law § 171-v [1]). However, the notice of proposed driver's license suspension referral has been canceled. The issues raised in the petition are thus moot.

Petitioner also argues in her exception that the process culminating in the issuance of the order of discontinuance did not conform to the motion procedures as set forth in this Tribunal's

Rules of Practice and Procedure (*see* 20 NYCRR 3000.5). Petitioner is correct in her assertion that the order of discontinuance does state that it is being issued on the motion of the Division, and that there was, in fact, no motion filed by the Division requesting such relief. Rather, the Division filed with the Division of Tax Appeals a properly executed notice of cancellation and discontinuance of proceeding pertaining to the present matter, dated March 23, 2018. In a letter accompanying this notice, the Division explained that it had now determined that petitioner did not meet the liability requirements of the driver's license suspension program and, accordingly, that the Division was cancelling the notice of proposed driver's license suspension issued to petitioner. With regard to the defects in this process, while the order of discontinuance is inaptly worded in that the Division did not file a motion, we see no prejudice to petitioner resulting from her participation in the process since the end result was the cancellation of the notice that was the subject of her petition.

Therefore, as the statutory document that was the subject of petitioner's petition has been canceled, this Tribunal has no jurisdiction to consider petitioner's exception.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

On the Tax Appeals Tribunal's own motion, the exception of Linda M. Jarvis is dismissed.

DATED: Albany, New York
August 15, 2019

s/ Roberta Moseley Nero
Roberta Moseley Nero
President

/s/ Dierdre K. Scozzafava
Dierdre K. Scozzafava
Commissioner

/s/ Anthony Giardina
Anthony Giardina
Commissioner