

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition :
of :
ANTHONY NASTASI : DECISION
For Review of a Notice of Proposed Driver License : DTA NO. 828087
Suspension Referral Under Tax Law, Article 8, § 171-v. :

Petitioner, Anthony Nastasi, filed an exception to the determination of the Administrative Law Judge issued on September 14, 2017. Petitioner appeared by Blank Rome, LLP (Joseph T. Gulant, Esq., of counsel). The Division of Taxation appeared by Amanda Hiller, Esq. (Kileen C. Davies, Esq., of counsel).

Petitioner filed a letter brief in support of his exception. The Division of Taxation filed a letter brief in opposition. Petitioner filed a letter brief in reply. Petitioner's request for oral argument was denied. The six-month period for the issuance of this decision began on January 17, 2018, the date petitioner's reply was received.

After reviewing the entire record in this matter, the Tax Appeals Tribunal renders the following decision.

ISSUE

Whether the Division of Taxation's notice of proposed driver license suspension referral issued to petitioner should be sustained.

FINDINGS OF FACT

We find the facts as determined by the Administrative Law Judge except for findings of fact

1 and 3, which have been amplified to more fully reflect the record. The Administrative Law Judge's findings of fact and the modified findings of fact are set forth below.

1. The Division of Taxation (Division) issued to petitioner, Anthony Nastasi, a notice of proposed driver license suspension referral (proposed suspension notice), dated March 9, 2016, which notified petitioner that new legislation allows New York State to suspend the drivers' licenses of persons who have delinquent unpaid tax debts. The proposed suspension notice informed petitioner of how to avoid such suspension, how to respond to the proposed suspension notice and what would ensue if he failed to take action. The proposed suspension notice allowed petitioner 60 days to respond. Attached to the proposed suspension notice was a consolidated statement of tax liabilities listing petitioner's tax assessments subject to collection, as follows:

Assessment No.	Tax period ended	Tax Amount Assessed	Interest Assessed	Penalty Assessed	Payments and credits	Current Balance Due
L-043660061-5	6/30/15	\$0.00	\$35.80	\$4,449.52	\$0.00	\$4,485.32
L-043476214-2	3/31/15	\$0.00	\$3,090.59	\$181,903.59	\$0.00	\$184,994.18
L-043148888-5	12/31/13	\$0.00	\$4,041.01	\$143,258.46	\$13,267.00	\$134,032.47
L-043148887-6	3/31/14	\$0.00	\$3,333.31	\$132,226.02	\$25,000.00	\$110,559.33
L-043148886-7	9/30/14	\$0.00	\$6,240.85	\$200,756.34	\$0.00	\$206,997.19
L-043148885-8	12/31/14	\$0.00	\$6,859.75	\$220,665.41	\$0.00	\$227,525.16
L-043124020-9	3/31/15	\$0.00	\$328.82	\$12,053.25	\$0.00	\$12,382.07
L-042899923-6	12/31/14	\$0.00	\$8,056.12	\$238,034.52	\$0.00	\$246,090.64
L-042739954-1	9/30/14	\$0.00	\$8,106.16	\$188,433.99	\$0.00	\$196,540.15
L-042169761-5	6/30/14	\$0.00	\$7,508.38	\$101,970.42	\$0.00	\$109,418.80
L-041864165-8	12/31/13	\$0.00	\$6,173.71	\$277,751.60	\$0.00	\$283,925.31
L-041864164-9	3/31/14	\$0.00	\$6,372.77	\$286,706.93	\$0.00	\$293,079.70
L-041505143-3	9/30/13	\$0.00	\$5,287.26	\$237,870.57	\$0.00	\$243,157.83

L-040129230-6	6/30/13	\$0.00	\$38,174.31	\$328,553.82	\$0.11	\$366,728.02
Total						\$2,619,916.17

2. On February 13, 2017, following the issuance of a conciliation order, dated November 18, 2016, sustaining the proposed suspension notice, petitioner filed a petition with the Division of Tax Appeals. The petition alleges that a suspension of petitioner's driver's license would cause a severe hardship to petitioner and that without the ability to drive, he would not be able to collect debts and raise funds necessary to pay his tax liabilities.

3. The Division filed its answer to the petition on April 12, 2017, and in turn brought a motion on May 22, 2017 seeking to dismiss the petition or, in the alternative, seeking summary determination in favor of the Division pursuant to sections 3000.5, 3000.9 (a) (i) and (b) of the Rules of Practice and Procedure of the Tax Appeals Tribunal. The Division submitted with its motion an affidavit, sworn to May 18, 2017, of Brandie M. Spohn, who is employed as a Business Systems Analyst 4 with the Division's Civil Enforcement Division (CED). Ms. Spohn'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. Her affidavit is based upon her 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. Ms. Spohn's affidavit details the steps undertaken by the Division in carrying out the license suspension program authorized by Tax Law, Article 8, § 171-v.

4. In her affidavit, Ms. Spohn 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 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 be eliminated; 3) there must be less than 20 years from the issuance of the particular notice and demand; 4) the outstanding assessments not be the subject of an approved payment arrangement; and 5) deceased taxpayers are excluded. The Division searches its electronic database on a weekly basis for those taxpayers who meet the above criteria. The Division also determines whether a taxpayer's wages are being garnished for the payment of past-due tax liabilities, past-due child support, or combined child and spousal support arrears, which would exclude a taxpayer from being selected for suspension.

5. 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.

6. After receipt of a match from DMV, but prior to issuance of a proposed suspension notice, an additional compliance check is run by the Division to ensure that the case still meets the aforementioned criteria and is still eligible for suspension. If so, the Division issues the proposed suspension notice to the taxpayer.

7. If the taxpayer does not respond to the Division or there has been no change in his or her status, the case is electronically sent to DMV for the license to be suspended.

8. Ms. Spohn avers that based on her review of the Division's records and her knowledge of its policies and procedures, issuance of the proposed suspension notice to petitioner was proper.

THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE

The Administrative Law Judge initially concluded that the Division of Tax Appeals had subject matter jurisdiction over the petition filed in this matter. Therefore, the Administrative Law Judge found that at issue was the Division's motion for summary

determination and explained that such a motion 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” (20 NYCRR 3000.9 [b] [1]). The Administrative Law Judge explained that the party bringing the motion is required to make a prima facie showing of entitlement to summary determination as a matter of law, and that the motion should be denied if there arguably exists a material issue of fact.

The Administrative Law Judge explained that Tax Law § 171-v provides for the enforcement of past-due tax liabilities in excess of \$10,000.00 through the suspension of drivers’ licenses. The Administrative Law Judge noted that petitioner had not raised any objections to the tax liabilities that provided the basis for the issuance of the proposed suspension notice in the present matter and thus concluded that, by operation of law, such tax liabilities are fixed and final and met the threshold requirements for issuance of the proposed suspension notice.

The Administrative Law Judge also found that petitioner did not raise any of the specific grounds available for relief under the statute. Rather, petitioner argued that the suspension of his driver’s license would cause hardship in that he would be unable to collect the debts necessary to pay the outstanding tax liabilities. The Administrative Law Judge found this argument unpersuasive in light of a finding by this Tribunal that Tax Law § 171-v does not provide any exceptions for financial hardship. Furthermore, the Administrative Law Judge noted that relief in the form of a restricted use driver’s license was available.

The Administrative Law Judge concluded that as there were no facts in dispute, nor any legal basis upon which to grant the petition, the Division’s motion for summary determination should be granted.

SUMMARY OF ARGUMENTS ON EXCEPTION

Petitioner continues to argue on exception that the suspension of his driver's license would cause him a significant hardship and would effectively prohibit him from collecting the very debts that are necessary to pay his outstanding tax liabilities, thus thwarting the purpose of the statute. Petitioner asserts that the Administrative Law Judge did not consider that petitioner may not qualify for a restricted use license and thus did not address the full extent of the hardship caused to petitioner by the suspension of his driver's license. Accordingly, petitioner urges this Tribunal to reverse the determination of the Administrative Law Judge, or remand the matter for further proceedings that would take into account petitioner's unique circumstances.

The Division calls the Tribunal's attention to the fact that petitioner did not dispute the basis of the notice of proposed suspension, its proper issuance or his receipt of the notice. The Division argues that petitioner did not raise any of the specifically enumerated statutory grounds upon which he can challenge the notice of proposed suspension and that the objection petitioner did raise, that of personal hardship, is not a ground upon which petitioner can challenge the notice of proposed suspension. Accordingly, the Division requests that the determination of the Administrative Law Judge be affirmed.

OPINION

Procedurally, we agree with the conclusion of the Administrative Law Judge that the Division's motion to dismiss is not the proper vehicle for reaching a resolution of this matter and, accordingly, we decide the Division's alternative motion for summary determination. As we previously 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 [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 [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 [1989]).”

In determining a motion for summary determination, the evidence must be viewed in a manner most favorable to the party opposing the motion (*see Rizk v Cohen*, 73 NY2d 98, 103 [1989]); *Museums at Stony Brook v Village of Patchogue Fire Dept.*, 146 AD2d 572, 573-74 [2d Dept 1989]; *see also Weiss v Garfield*, 21 AD2d 156, 158 [3d Dept 1964]). However, “[u]nsubstantiated allegations or assertions are insufficient to raise an issue of fact” (*Matter of Azzato*, Tax Appeals Tribunal, May 19, 2011, *citing Alvord & Swift v Muller Constr. Co.*, 46 NY2d 276 [1978]).

Tax Law § 171-v (3) requires the Division to notify a taxpayer that he or she is going to be included in the driver’s license suspension program by first class mail to the taxpayer’s last known address no later than 60 days prior to the Division informing DMV of the taxpayer’s inclusion. This subdivision also states that no notice shall be issued to a taxpayer whose wages are already being garnished by the Division for past-due tax liabilities, child support, or combined child and spousal support. The process as found herein adequately ensures that notices are issued no later than 60 days prior to a taxpayer being included in the driver’s license suspension program.

Tax Law § 171-v also requires that the notification include: a clear statement of the past due tax liabilities, together with notice that the taxpayer’s information will be provided to DMV 60 days after the mailing of the notice; a statement that the taxpayer can avoid license suspension by paying the debt or entering into a payment agreement acceptable to the Division and

information as to how the taxpayer can go about this; a statement that a taxpayer can only protest the proposed suspension notice based upon the issues set forth in Tax Law § 171-v (5); and a statement that the suspension will remain in effect until the fixed and final liabilities are paid or a satisfactory payment arrangement is entered into.

As evidenced by the proposed suspension notice, the Division has shown that all of the notice requirements of Tax Law § 171-v are met in its notice of proposed drivers license referral.

Tax Law § 171-v (5) provides that a taxpayer may only challenge a driver's license suspension or referral on 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.”

If the taxpayer has not challenged the notice on any of the above grounds, paid the past due tax liabilities or made payment arrangements by the conclusion of the 60-day period, the Division shall notify DMV that the driver's license shall be suspended (Tax Law § 171-v [4]). Again, the Division's procedures comply with the statutory requirements.

Finally, the Division has shown, and petitioner has not contested, that the proposed suspension notice was issued in compliance with the Division's procedures in the present matter.

The only factual allegation made by petitioner during the proceedings before the

Administrative Law Judge was that he needed his driver's license in order to collect the debts necessary to repay the liabilities listed on the consolidated statement of tax liabilities. Even assuming this were the case, proof of such circumstances would not allow petitioner to prevail in the instant matter (*Matter of Faupel*, Tax Appeals Tribunal, December 23, 2015 [*“there is no provision in the statutory language regarding the program to suspend drivers' licenses for past-due tax liabilities that allows us to consider petitioner's need for a driver's license”*] [emphasis added]).

As noted by the Administrative Law Judge, it appears that petitioner would be eligible for a restricted use license (*see* Vehicle and Traffic Law § 510 [4-f] [5] [allowing for a person whose license has been suspended for failure to pay past-due tax liabilities to apply for the issuance of a restricted use licence] and Vehicle and Traffic Law § 530 [5-b] [implying that a restricted use license cannot be denied to a person whose license has been suspended for failure to pay past-due tax liabilities]; *see also Matter of Jacobi*, 156 AD3d 1154, 1157 [3d Dept 2017], *lv denied* ___ NE3d ___ [2018]). A restricted use license may be issued if such a license is necessary for certain employment or education reasons for the person whose driver's license has been suspended, or as required for medical treatment for that person or member of his or her household (Vehicle and Traffic Law § 530 [1]).

Petitioner argues on exception that the Administrative Law Judge did not consider that petitioner may not be eligible for a restricted use license because the business that gave rise to the liabilities listed on the consolidated statement of tax liabilities is now defunct. However, the Administrative Law Judge did not premise her determination on the fact that petitioner would or would not be eligible for a restricted use driver's license, but rather mentioned the possibility only in that it lessened the effectiveness of petitioner's hardship argument. In any event, there is

also no provision in the statutory language regarding the program to suspend drivers' licenses for past-due tax liabilities that provides for any relief based upon hardship (*see Matter of Balkin*, Tax Appeals Tribunal, February 10, 2016). The only hardship relief even tangentially provided is set forth in Tax Law § 171 (Fifteenth), which allows the Division to compromise taxes in certain limited circumstances related to the financial hardship. An agreement to compromise taxes entered into under such statutory provision would have prevented the issuance of a notice of proposed suspension (*see Matter of Balkin; see also Berry v New York State Dept. of Taxation & Fin.*, 2017 WL 2671004 at 7 [Sup. Ct. NY County 2017], *affd* 2018 WL 3148826 [1st Dept 2018]). Furthermore, petitioner's ability to obtain a restricted use driver's license, while it might somewhat ameliorate any hardship caused by the actual suspension of petitioner's driver's license, does not have any bearing on whether the proposed suspension notice in this case should be sustained.

In conclusion, the Division has shown that its process regarding the suspension of drivers' licenses for past-due tax liabilities is in conformity with the statutes governing such program and that the proposed suspension notice issued to petitioner in the present case was issued pursuant to those procedures. In response, petitioner has provided only factual allegations and legal arguments that are not relevant to the issue to be decided in this case.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Anthony Nastasi is denied;
2. The determination of the Administrative Law Judge is affirmed;
3. The petition of Anthony Nastasi is denied; and
4. The notice of proposed driver license suspension referral dated March 9, 2016 is sustained.

DATED: Albany, New York
July 16, 2018

/s/ Roberta Moseley Nero
Roberta Moseley Nero
President

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

/s/ Anthony Giardina
Anthony Giardina
Commissioner