

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition :  
of :  
**EDWARD J. DURAN** : DETERMINATION  
for Review of a Notice of Proposed Driver License : DTA NO. 826895  
Suspension Referral under Tax Law, Article 8, :  
§ 171-v. :

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Petitioner, Edward J. Duran, filed a petition for review of a notice of proposed driver license suspension referral under Tax Law, Article 8, § 171-v.<sup>1</sup>

On June 30, 2015, the Division of Taxation, by Amanda Hiller, Esq. (Hannelore F. Smith, Esq., of counsel), filed a motion seeking an order dismissing the petition or, in the alternative, granting summary determination of the proceeding pursuant to 20 NYCRR 3000.5, 3000.9(a)(1)(I) and 3000.9(b). Accompanying the motion was the affirmation of Hannelore F. Smith, and annexed exhibits. Petitioner, appearing pro se, did not respond to the motion. After due consideration of the documents submitted, Daniel J. Ranalli, Supervising Administrative Law Judge, renders the following determination.

***ISSUE***

Whether the Division of Taxation’s notice of proposed driver license suspension referral issued to petitioner pursuant to Tax Law § 171-v should be sustained.

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<sup>1</sup> 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.”

***FINDINGS OF FACT***

1. The subject of the motion of the Division of Taxation (Division) is the validity of petitioner's protest of a notice of proposed driver license suspension referral dated February 11, 2015, and issued to petitioner pursuant to Tax Law § 171-v (suspension notice). The suspension notice informed petitioner that he had outstanding tax liabilities in excess of \$10,000.00 owed to the State of New York, and that unless he responded within 60 days of the mailing date of the suspension notice, his driver license would be suspended. According to the suspension notice, an adequate response within that time period would consist of 1) resolution of the outstanding liability either by payment or establishment of a payment plan; 2) notification to the Division of petitioner's eligibility for an exemption; or 3) a protest of the suspension notice by the filing of a request for a conciliation conference with the Bureau of Conciliation and Mediation Services (BCMS) or a petition with the Division of Tax Appeals.

2. As of February 11, 2015, the date of the issuance of the suspension notice, the unpaid amount on the assessments, including penalty and interest, was \$58,171.65.

3. On April 13, 2015, petitioner filed a petition with the Division of Tax Appeals challenging the suspension notice.

4. Petitioner did not request a conciliation conference.

5. The Division also submitted the affidavit of Ronald Catalano, a Tax Compliance Manager 2 with its Civil Enforcement Division (CED) during the relevant time. His responsibilities include overseeing the operations of the Decision Support and Testing Unit of the CED's Operations Analysis and Support Bureau.

6. 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 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; and 4) the outstanding assessments 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.

7. 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.

8. 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.

### ***CONCLUSIONS OF LAW***

A. 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]).

B. Petitioner did not respond to the Division's motion. Accordingly, he is deemed to have conceded that no question of fact requiring a hearing exists (*see Kuehne & Nagel v. Baiden*, 36 NY2d 539 [1975]; *John William Costello Assocs. v. Standard Metals*, 99 AD2d 227 [1984], *lv dismissed* 62 NY2d 942 [1984]). Petitioner has presented no evidence to contest the

facts alleged in the Catalano affidavit; consequently, those facts may be deemed admitted (*see Kuehne & Nagel v. Baiden; Whelan v. GTE Sylvania*, 182 AD2d 446 [1992]).

C. Petitioner has timely protested the suspension notice. 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]). The liability represented by the notices of deficiency meets the threshold requirement for suspension of petitioner's drivers license pursuant to Tax Law § 171-v.

D. A taxpayer's right to challenge a notice issued pursuant to Tax Law § 171-v is specifically limited to a petition with the Division of Tax Appeals, and must be based 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 (Tax Law § 171-v[5]).

E. In the instant case, petitioner has failed to respond to the Division's motion, thereby failing to raise any of the grounds cited in Tax Law 171-v(5). Moreover, in his petition, petitioner similarly does not raise any of the grounds enumerated in the statute. Instead, petitioner solely argues that "I am in the process of retaining counsel to negotiate a settlement and I'm filing this petition to protest the proposed suspension of my driver's license." This argument fails to raise any grounds to challenge the statute. Accordingly, with no dispute as to the facts and no basis in law upon which to grant the petition, summary determination is appropriate.

F. The Division's motion for summary determination is hereby granted, the petition of Edward J. Duran is denied, and the Division's notice of proposed driver license suspension is sustained.

DATED: Albany, New York  
September 3, 2015

/s/ Daniel J. Ranalli  
ADMINISTRATIVE LAW JUDGE