

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition :  
of :  
**AZARD A. KHAN** : DETERMINATION  
for Review of a Notice of Proposed Driver License : DTA NO. 827094  
Suspension Referral under Tax Law, Article 8, :  
§ 171-v. :

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Petitioner, Azard A. Khan, filed a petition for review of a notice of proposed driver license suspension referral under Tax Law, Article 8, § 171-v.

On October 8, 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) and 3000.9(b). Accompanying the motion was the affirmation of Hannelore F. Smith, and annexed exhibits, and the affidavit of Ronald Catalano. Petitioner did not respond to the motion. After due consideration of the documents submitted, Arthur S. Bray, 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 by summary determination.

***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 September 19,

2014, 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's 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. Attached to the suspension notice was a consolidated statement of tax liabilities for petitioner, also dated September 19, 2014 (consolidated statement). The consolidated statement set forth one unpaid assessment subject to collection as follows:

Tax Type	Assessment ID	Period Ended	Tax Assessed	Interest	Penalty	Assessment Payments/ Credits	Current Balance Due
Income	L-033384071-1	12/31/07	\$40,116.00	\$23,120.17	\$17,111.68	\$31,019.82	\$49,328.03

3. Petitioner requested a conciliation conference before BCMS and the matter was assigned CMS number 263934. By order dated April 24, 2015, BCMS sustained the suspension notice.

4. On July 23, 2015, the Division of Tax Appeals received the petition in this matter and the attached Notice and Demand for payment. On the cover of the petition, petitioner listed "CMS NO 263934." The petition also stated that the amount of tax contested is "\$52,538.92."

As grounds for the challenge, petitioner wrote that in 2006 and 2007 he had financial difficulties due to gambling and credit card debts. During this time, he refinanced his mortgage, which greatly increased his debt-to-income ratio and made it impossible to satisfy his financial obligations. He and his wife attempted to sell property in 2007 to pay current debts, but the resulting income was insufficient to pay all of the debts including the credit card debts. In February 2008, his employment was terminated. As a result, he was presented with large credit card and income tax debts that he was unable to satisfy. Petitioner's spouse was the only one working and responsible for maintaining the household. According to petitioner, after filing for taxes in 2007, he and his wife were unable to pay the taxes because the tax liability was high due to the sale of property. After he was laid off, prospective employers were hesitant to hire him because of the federal and state tax liens that had been placed against him. In November 2009, petitioner filed for bankruptcy. However, the tax liability was not included in the discharge of indebtedness. Petitioner states that he has only been able to obtain part-time employment at \$8.00 an hour and he has had difficulty managing his monthly bills.

5. In support of the instant motion, the Division submitted the affidavit of 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.

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; 4) the outstanding assessments not be the subject of an approved payment arrangement and 5) any taxpayer whose record shows that they are deceased will be excluded. 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. He states that the cumulative balance of tax, penalty, and interest owed by petitioner on September 19, 2014 was greater than \$10,000.00, and that petitioner met all other compliance checks for proper issuance of the suspension notice.

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

A. As noted, the Division brings a motion to dismiss the petition under section 3000.9(a) of the Rules of Practice and Procedure (Rules) or, in the alternative, a motion for summary determination under section 3000.9(b). Since the petition in this matter was timely filed, the Division of Tax Appeals has jurisdiction over the petition and, accordingly, a motion for summary determination under section 3000.9(b) of the Rules is the proper vehicle to consider the timeliness of petitioner's request for a conciliation conference. This determination shall address

the instant motion as such. Given the timely petition, the Division's motion to dismiss under section 3000.9(a) of the Rules is improperly brought.

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]).

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 assessment meets the threshold requirement for suspension of petitioner's driver's 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. Tax Law § 171-v(3)(d) states that the notice to a taxpayer shall include, "a statement that the suspension of the taxpayer's driver's license shall continue until the past-due tax liabilities are fully paid or the taxpayer makes payment arrangements satisfactory to the commissioner . . . ."

F. Petitioner argues that the Division should not proceed with the suspension of his license because his failure to satisfy his tax obligations was due to financial hardships. However, assertions of hardship do not raise any of the grounds set forth in Tax Law § 171-v(5). Accordingly, it is concluded that there is no dispute as to the facts and no basis in law to grant the petition. As a result, the granting of summary determination is appropriate.

G. The Division's motion for summary determination is hereby granted, the petition of Azard A. Khan is denied, and the Division's notice of proposed driver license suspension is sustained.

DATED: Albany, New York  
January 14, 2016

/s/ Arthur S. Bray  
ADMINISTRATIVE LAW JUDGE