

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
CHASE A. CARO	:	ORDER
for Review of a Notice of Proposed Driver License	:	DTA NO. 826305
Suspension Referral under Tax Law, Article 8, 171-v.	:	

Petitioner, Chase A. Caro, filed a petition for review of a Notice of Proposed Driver License Suspension Referral, dated August 2, 2013 and issued pursuant to Article 8, § 171-v of the Tax Law.

The Division of Taxation, by its representative, Amanda Hiller, Esq. (Michele W. Milavec, Esq., of counsel), brought a motion dated December 1, 2014 seeking an order dismissing the petition, or in the alternative, summary determination in the above-referenced matter pursuant to Tax Law § 2006(6) and sections 3000.5, 3000.9(a) and 3000.9(b) of the Rules of Practice and Procedure of the Tax Appeals Tribunal. Petitioner, appearing pro se, was granted an extension of time to file a response by January 30, 2015. Based upon the motion papers, the affidavits and documents submitted therewith, and all pleadings and documents submitted in connection with this matter, Barbara J. Russo, Administrative Law Judge, renders the following order.

ISSUE

Whether the Notice of Proposed Driver License Suspension Referral should be sustained.

FINDINGS OF FACT

1. The Division of Taxation (Division) issued a Notice of Proposed Driver License Suspension Referral, Collection case ID number E-028684508-CL01-8, dated August 2, 2013, to petitioner, Chase A. Caro, advising of the possible suspension of petitioner's driver's license because personal income tax assessments issued to him remained unpaid, with a current total balance due in the amount of \$81,021.99. This notice indicated that a response was required within 60 days from its mailing or the Division would notify the New York State Department of Motor Vehicles and petitioner's driver's license would be suspended. The Notice of Proposed Driver License Suspension Referral included a Consolidated Statement of Tax Liabilities setting forth bills issued to petitioner that are subject to collection action, including the following assessment ID numbers and amounts due: L-028684509-2 with current balance due of \$28,287.45, L-028684508-3 with current balance due of \$18,571.80, L-028684507-4 with current balance due of \$13,638.53, L-028684506-5 with current balance due of \$15,932.63, and L-028684505-6 with current balance due of \$4,591.58. The Consolidated Statement of Tax Liabilities shows an assessment payment/credit in the amount of \$3,590.14 applied to assessment ID number L-028684509-2.

2. On June 3, 2014, petitioner filed a petition with the Division of Tax Appeals seeking an administrative hearing to review of the Notice of Proposed Driver License Suspension Referral. Petitioner argues in the petition that:

- “1. Erroneously upheld license suspension with payment arrangement in excess of legal amount offered/garnishment in place,
2. Amount due.”

Attached to the petition is a copy of a tax compliance levy, dated April 29, 2013. The levy was issued by the Division as judgment creditor against petitioner and sent to Professional

Examination Service, as garnishee. The levy states, “The judgment creditor is the state of New York, or any of its agencies or municipal corporations, AND/OR the debt enforced is for child support, spousal support, maintenance or alimony.” The levy shows a total amount due of \$79,635.66 and requires the garnishee to transfer to the Division property of the petitioner to satisfy the amount due.

3. In support of its motion the Division submitted, in part, the following: (i) a Notice of Proposed Driver License Suspension Referral dated August 2, 2013; (ii) a conciliation order dated April 18, 2014, issued by the Bureau of Conciliation and Mediation Services, sustaining the Notice of Proposed Driver License Suspension Referral; and (iii) an affidavit, dated December 1, 2014, of Matthew McNamara, Information Technology Specialist 3 in the Division’s Civil Enforcement Division (CED).

4. The affidavit of Matthew McNamara details the steps undertaken by the Division in carrying out the license suspension program authorized by Tax Law Article 8, § 171-v. Mr. McNamara’s duties involve maintenance of the CED internal website, and include creation and modification of pages on the site. His duties further involve the creation and maintenance of programs and reports run on a scheduled basis that facilitate and report on the movement of cases, including the creation of event codes based on criteria given by end users. Mr. McNamara’s affidavit details four sequential actions or steps taken by the Division in carrying out the license suspension program, to wit: the “Initial Process,” the “DMV Data Match,” the “Suspension Process,” and the “Post-Suspension Process.” 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 License Suspension Referral under

Tax Law § 171-v. This process involves first reviewing internally set selection criteria to identify taxpayers owing a cumulative and delinquent tax liability (tax, penalty and interest) in excess of \$10,000.00, and then reviewing additional data to determine whether any of such taxpayers are excluded from application of the driver's license suspension provisions of Tax Law § 171-v(5) under the following exclusion criteria:

- the taxpayer is deceased;
- the taxpayer is in bankruptcy;
- a formal or informal protest has been made with respect to any assessment(s) included in the cumulative balance of tax liability where the elimination of such assessment(s) would leave the balance of such liability below the \$10,000.00 threshold for license suspension;
- the taxpayer is on an active approved payment plan.

b) The "DMV Data Match" involves reviewing information on record with DMV for a 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. This review examines the following data: (1) social security number; (2) last name; (3) first name; (4) middle initial; (5) name suffix; (6) DMV client ID; (7) gender; (8) date of birth; (9) street; (10) city; (11) state; (12) zip code; (13) license class; and (14) license expiration date.

If, upon this review, the Division determines that a taxpayer has a qualifying driver's license, that taxpayer is put into the suspension process.

c) The "Suspension Process" commences with the Division performing a post-DMV data match review to confirm that the taxpayer continues to meet the criteria for suspension detailed above in Finding of Fact 4-a. If the taxpayer remains within the criteria for suspension, then a 60-Day Notice of Proposed Driver License Suspension Referral will be issued to the taxpayer via regular U.S. 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 DMV for license suspension.¹ Data is exchanged daily between the Division and DMV. Upon successful data procession and transfer, DMV will send a 15-day letter to the taxpayer, advising of the impending license suspension. In turn, if there is no response from the taxpayer, and 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 to "on-hold" status can result from events such as those set forth above in Finding of Fact 4-a (e.g., the filing of a protest, a bankruptcy filing, the creation and approval of an installment payment agreement). 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 DMV by the Division for resuspension until resolution of the "on-hold" status (the 60-Day Notice of Proposed Driver License Suspension Referral would remain in the Division's system). If the status is changed to "closed" the 60-Day Notice of Proposed Driver License Suspension Referral is canceled.

¹ Prior to license suspension, the Division performs another compliance check of its records. If, for any reason, a taxpayer "fails" the compliance criteria check, the case status will be updated to "on-hold" or "closed" (depending on the circumstances) and the suspension will be stayed. If the status is "on-hold" the 60-Day Notice of Proposed Driver License Suspension Referral remains on the Division's system but the suspension will not proceed until the "on-hold" status is resolved. If the suspension is "closed" then the 60-Day Notice will be canceled. If the taxpayer "passes" this final compliance check, the suspension by DMV will proceed.

5. A copy of the 60-Day Notice of Proposed Driver License Suspension Referral, the Consolidated Statement of Tax Liabilities described in Finding of Fact 1, and a Payment Document (Form DTF-968.4), by which petitioner could remit payment against the liabilities in question, were included with Mr. McNamara's affidavit. Mr. McNamara avers, based upon his knowledge of Division policies and procedures regarding driver's license suspension referrals, and upon his review of the Division's records, that on August 2, 2013 the Division issued to petitioner a Notice of Proposed Driver License Suspension Referral. Mr. McNamara states that such 60-Day Notice of Proposed Driver License Suspension Referral comports with statutory requirements, that petitioner has not raised any of the specifically listed grounds for challenging such a notice set forth at Tax Law § 171-v(5), and that therefore the 60-Day Notice of Proposed Driver License Suspension Referral has not been and should not be canceled.

CONCLUSIONS OF LAW

A. Tax Law § 171-v provides, in relevant part, as follows:

“(1) The commissioner shall enter into a written agreement with the commissioner of motor vehicles, which shall set forth the procedures for the two departments to cooperate in a program to improve tax collection through the suspension of driver's licenses of taxpayers with past due tax liabilities equal to or in excess of ten thousand dollars. For the purposes of this section, the term ‘tax liabilities’ shall mean any tax, surcharge, or fee administered by the commissioner, or any penalty or interest due on these amounts owed by an individual with a New York driver's license, the term ‘driver's license’ means any license issued by the department of motor vehicles, except for a commercial driver's license as defined in section five hundred one-a of the vehicle and traffic law, and the term ‘past due tax liabilities’ means 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.

* * *

(3) The department shall provide notice to the taxpayer of his or her inclusion in the license suspension program no later than sixty days prior to the date the department intends to inform the commissioner of motor vehicles of the

taxpayer's inclusion. . . . Notice shall be provided by first class mail to the taxpayer's last known address as such address appears in the electronic systems or records of the department. . . .

* * *

(5) Notwithstanding any other provision of law, and except as specifically provided herein, the taxpayer shall have no right to commence a court action or proceeding or to any other legal recourse against the department or the department of motor vehicles regarding a notice issued by the department pursuant to this section and the referral by the department of any taxpayer with past-due tax liabilities to the department of motor vehicles pursuant to this section for the purpose of suspending the taxpayer's driver's license. A taxpayer may only challenge such suspension or referral 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; 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 purposes of subdivision three of this section.

However, nothing in this subdivision is intended to limit a taxpayer from seeking relief from joint and several liability pursuant to section six hundred fifty-four of this chapter, to the extent that he or she is eligible pursuant to that subdivision, or establishing to the department that the enforcement of the underlying tax liabilities has been stayed by the filing of a petition pursuant to the Bankruptcy Code of 1978 (Title Eleven of the United States Code)."

B. In the instant matter, petitioner received a Notice of Proposed Driver License Suspension Referral advising of the possible suspension of his driver's license because five personal income tax assessments issued to him remained unpaid, with a total amount due on same of \$81,021.99. Petitioner filed a petition challenging the Notice of Proposed Driver License Suspension Referral. Petitioner argues that the license suspension is erroneous because a garnishment is in place. Included in petitioner's documents is a tax compliance levy ordering a

garnishment by Professional Examination Service. Additionally, the consolidated statement of tax liabilities attached to the Notice of Proposed Diver License Suspension Referral shows that a partial payment has been applied to the assessments.

C. As noted above, two of the specifically enumerated grounds for challenging a notice of proposed driver license suspension referral include: (1) the garnishment of the taxpayer's wages by the department for the payment of the past-due tax liabilities or for past-due child support or combined child and spousal support arrears (Tax Law § 171-v[5][iii]) and (2) the garnishment of a taxpayer's wages by the department for the payment of the past-due tax liabilities or for past-due child support or combined child and spousal support arrears pursuant to an income execution (Tax Law § 171-v[5][iv]).

D. The Division does not address petitioner's argument that a garnishment is in place and does not explain the tax compliance levy that appears to order a garnishment by Professional Examination Service. The Division makes the bald assertion that "petitioner has not raised any of the grounds listed above [in Tax Law § 171-v(5)] which are the only grounds for challenging the proposed suspension of the petitioner's driver's license pursuant to Tax Law § 171-v," despite the fact that petitioner has specifically raised the argument that a garnishment is in place.

Additionally, the affidavit of Mr. McNamara, included in the Division's documents, which describes the Divisions procedures for determining whether a taxpayer should be included in driver's license suspension referral process, states that the Division excludes from the suspension referral taxpayers who are deceased, in bankruptcy, have a new formal or informal protest to any assessment that makes the balance of fixed and final liabilities fall below the \$10,000.00 threshold, or are on an active approved payment plan. Absent from Mr. McNamara's list of exclusion criteria are taxpayers who are subject to a garnishment, despite Mr. McNamara's

acknowledgment that grounds for challenging a proposed driver's license suspension include the garnishment of a taxpayer's wages by the department for the payment of the past-due tax liabilities or for past-due child support or combined child and spousal support arrears and the garnishment of a taxpayer's wages by the department for the payment of the past-due tax liabilities or for past-due child support or combined child and spousal support arrears pursuant to an income execution. Moreover, contrary to Mr. McNamara's statement that petitioner has not alleged any grounds for challenging the notice, petitioner specifically raised the argument that he is subject to a garnishment. While Mr. McNamara states that he has reviewed the Division's systems and has not found any grounds for challenging the proposed suspension of petitioner's driver's license, in describing the procedures followed for selection criteria, he makes no mention of searching for garnishments in place and does not specifically state that he searched for the existence or absence of garnishments in petitioner's case. The Division simply fails to respond to petitioner's argument that he is subject to a garnishment.

E. A motion for summary determination "shall 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]).

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 CPLR 3212. "The proponent of a summary judgment motion 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 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]; *Museums at Stony Brook v. Vil. of Patchogue Fire Dept.*, 146 AD2d 572 [2d Dept 1989]). If material facts are in dispute, or if contrary inferences may be drawn reasonably from undisputed facts, then a full trial is warranted and the case should not be decided on a motion (*Gerard v. Inglese*, 11 AD2d 381, 382 [2d Dept 1960]). “To defeat a motion for summary judgment, the opponent must . . . produce ‘evidentiary proof in admissible form sufficient to require a trial of material questions of fact on which he rests his claim’” (*Whelan v. GTE Sylvania*, 182 AD2d 446, 449 [1st Dept 1992] *citing Zuckerman*).

Petitioner’s argument that a garnishment is in place raises a material issue of fact. This issue was not addressed by the Division. As such, summary judgment must be denied.

F. The Division of Taxation’s motion is denied and hearing will be scheduled in due course.

DATED: Albany, New York
April 2, 2015

/s/ Barbara J. Russo
ADMINISTRATIVE LAW JUDGE