

STATE OF NEW YORK  
TAX APPEALS TRIBUNAL

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In the Matter of the Petition	:	
of	:	
<b>JOHN LANZIONE</b>	:	DECISION
	:	DTA NO. 850217
for Review of a Notice of Proposed Driver License Suspension Referral under Article 8 of the Tax Law.	:	

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Petitioner, John Lanzione, filed an exception to the determination of the Administrative Law Judge issued on October 5, 2023. Petitioner appeared by Barclay Damon LLP (David G. Burch, Esq., of counsel). The Division of Taxation appeared by Amanda Hiller, Esq. (Nelson F. Colberg).

Petitioner filed a brief in support of his exception. The Division of Taxation filed a letter brief in opposition. Petitioner filed a letter brief in reply. Oral argument was not requested. The six-month period for issuance of this decision began on January 26, 2023, the date that the reply brief 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. These facts are set

forth below.

1. The Division of Taxation (Division) issued to petitioner, John Lanzione, a notice of proposed driver license suspension referral (form DTF-454), collection case ID E-047467189-CL01-2 (60-day notice), advising that petitioner must pay his New York State tax debts or face the possible suspension of his driver's license pursuant to Tax Law § 171-v.

2. This 60-day notice is dated February 28, 2020, and is addressed to petitioner at his Clayton, New York, address. Included with the 60-day notice was a consolidated statement of tax liabilities (form DTF-967-E), also dated February 28, 2020, setting forth two unpaid assessments. Assessment ID L-050613554 asserted additional personal income tax due for tax year 2008 and included tax in the amount of \$700.00, plus interest of \$889.52, plus penalty of \$14.00. Assessment ID L-050697931 asserted additional personal income tax due for tax year 2009 and included tax in the amounts of \$6,264.49, plus interest of \$6,932.47, plus penalty of \$93.96. These assessments total \$14,894.44.

3. The 60-day notice indicated that a response was required within 60 days from its mailing, and if no response was received, the Division would notify the New York State Department of Motor Vehicles (DMV) to proceed with suspension of petitioner's driver's license. The 60-day notice informed petitioner that New York State law limits the grounds for challenging the proposed suspension of his driver's license to the statutory exemptions listed in the notice. The last page of the 60-day notice contains a section titled, "How to protest" and instructs the recipient on how to protest the notice of the proposed driver's license suspension.

4. Petitioner requested a conciliation conference before the Bureau of Conciliation and Mediation Services (BCMS) protesting the 60-day notice. By conciliation order dated May 6, 2022, the conferee sustained the notice of proposed driver license suspension referral.

5. Thereafter, petitioner filed a petition with the Division of Tax Appeals on August 3, 2022. Attached to the petition was the May 6, 2022, conciliation order. The petition raises no challenge to the Division's issuance, or petitioner's receipt, of the 60-day notice. Instead, the petition protests the underlying liability, retroactive application of interest to that liability and asserts that suspension of his driver's license would cause him undue economic hardship.

6. The Division filed its answer to the petition on October 5, 2022, amended the same on January 13, 2023, and in turn brought the subject motion on March 15, 2023. The Division submitted with its motion an affidavit, dated March 2, 2023, of Todd Lewis, who is employed as a Tax Compliance Manager 4 with the Division's Civil Enforcement Division (CED). Mr. Lewis'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. 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.

7. Mr. Lewis's affidavit details the sequential actions, i.e., the initial process, the DMV data match, the suspension process and the post-suspension process undertaken by the Division in carrying out the license suspension program authorized by section 171-v of the Tax Law. 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. First, the Division internally sets the following selection criteria: the taxpayer has an outstanding cumulative balance of tax, penalty and interest in excess of \$10,000.00; all cases in formal or informal protest, and all cases in bankruptcy status are eliminated; the age of the assessment used to determine the cumulative total

must be less than 20 years from the notice and demand issue date; all cases where taxpayers have active approved payment plans are excluded; and any taxpayer with a “taxpayer deceased” record on his or her collection case is excluded.

Next, the criteria are utilized to search the Division’s databases on a weekly basis, and a file is created of possible taxpayers to whom a 60-day notice of proposed driver license suspension referral could be sent. This process involves first utilizing the criteria to identify taxpayers owing a cumulative and delinquent tax liability (tax, penalty, and interest) in excess of \$10,000.00 in the relevant time frame, and then for each such identified candidate, determining whether that candidate would be excluded for any of the following reasons: the taxpayer is deceased or in bankruptcy; an informal protest or protest before BCMS has been added to any assessment which would make the taxpayer’s balance of fixed and final tax liabilities fall below \$10,000.00; the taxpayer is on an active approved payment plan; the taxpayer’s wages are being garnished for the payment of past-due tax liabilities, child support, or combined child and spousal arrears; the taxpayer receives public assistance or supplemental income<sup>1</sup>; or the taxpayer demonstrates that suspension of the taxpayer’s driver’s license will cause the taxpayer undue economic hardship.

Prior to license suspension, the Division performs another compliance check of its records. If, for any reason, a taxpayer’s data 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

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<sup>1</sup> Most likely refers to Supplemental Security Income (SSI) (see Tax Law § 171-v [5] [vii]).

proceed until the “on-hold” status is resolved. If the suspension is “closed,” the 60-day notice will be canceled. If the taxpayer’s data passes the compliance check, the suspension by the DMV will proceed.

b) Next, the DMV completes a data match process that involves the Division providing identifying information to the DMV for each 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. The DMV then conducts a data match of the information provided by the Division with its information and returns the following information to the Division: (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.

Once the Division determines that a taxpayer included in the DMV data match has a qualifying driver’s license, that taxpayer is put into the license suspension process.

c) The suspension process commences with the Division sending a collection letter (form DTF-975) to the taxpayer and, after 30 days, performing a post-DMV compliance review to confirm that the taxpayer continues to meet the criteria for suspension detailed above. If the taxpayer remains within the criteria for suspension, then a 60-day notice of proposed driver license suspension referral (form DTF-454) will be issued to the taxpayer via first-class United States mail with certificate of mailing.

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 the DMV for

license suspension. Such case data is sent daily, Monday through Friday, by the Division to the DMV. The DMV then sends a return data file to the Division each day confirming data records that were processed successfully and indicating any data records with an issue. The Division investigates those data records with an issue. With regard to the data records that were processed successfully, the DMV sends a 15-day letter to the taxpayer, advising of the impending license suspension. In turn, if there is no response from the taxpayer, and the 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 (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 the DMV by the Division for resuspension until resolution of the "on-hold" status; however, 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.

8. Mr. Lewis's affidavit also details how that process was followed by the Division in the instant matter concerning the 60-day notice issued to petitioner. A copy of the 60-day notice of proposed driver license suspension referral and the consolidated statement of tax liabilities described in findings of fact 1 and 2, and a payment document (form DTF-968.4), by which

petitioner could remit payment against the liability in question, were included with Mr. Lewis's affidavit. Mr. Lewis avers that, based upon his review of Division records and his personal knowledge of Departmental policies and procedures regarding driver's license suspension referrals, the issuance of the 60-day notice to petitioner on February 28, 2020, comports with statutory requirements. Mr. Lewis further asserts 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, therefore, the 60-day notice has not been and should not be canceled.

***THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE***

The Administrative Law Judge set forth the law concerning the proposed suspension of a driver's license as part of the enforcement of uncollected taxes, penalties, and fines and addressed petitioner's timely appeal from the denial of his challenge to the suspension at the BCMS conference. The Administrative Law Judge reviewed the standard to be met by the Division to sustain a motion to dismiss the petition under section 3000.9 (a) of the Tax Appeals Tribunal's Rules of Practice and Procedure (Rules) or, in the alternative, a motion for summary determination under section 3000.9 (b). The Administrative Law Judge reviewed the permissible grounds for challenging the notice of planned suspension of a driver's license pursuant to Tax Law § 171-v and rejected petitioner's claim of economic hardship as unsupported by facts. The Administrative Law Judge further noted that the use of a restricted use license was not so restrictive as to prevent petitioner from conducting his business. Accordingly, the Administrative Law Judge determined that there were no triable issues of fact and granted summary determination against petitioner.

***ARGUMENTS ON EXCEPTION***

Petitioner contends that he will experience hardship if his driver's license is suspended

and argues that this Tribunal should reverse the Administrative Law Judge's determination or order a hearing. Petitioner also contends that interest on penalties cannot be assessed for a period before the notice of tax liability was served, which calculation would reduce his overall liability below the \$10,000.00 threshold for suspension of a driver's license.

The Division urges this Tribunal to adopt the reasoning of the Administrative Law Judge and asserts that petitioner has no legal basis pursuant to Tax Law § 173-a (2) to challenge the notices of additional taxes nor interest and penalties since he failed to report the adjustments made by the Internal Revenue Service (IRS) for tax years 2008 and 2009, within 90 days as was required by Tax Law § 659. The Division further contends that petitioner has failed to establish that the suspension of his driver's license will cause undue economic hardship and notes that petitioner may apply for a restricted use driver's license.

#### ***OPINION***

Tax Law § 171-v provides that if certain criteria are met, the enforcement of tax liabilities may include the suspension of New York State drivers' licenses. The law further provides that the Division must provide 60 days' notice to a taxpayer of its planned suspension referral to DMV and include the basis for the planned suspension (Tax Law § 171-v [3]). As the Administrative Law Judge noted, the notice of the proposed driver license suspension referral to DMV was dated February 28, 2020, was addressed to petitioner, and advised him of the possible suspension of his driver's license based on the assessment to petitioner of outstanding tax, interest, and penalty in the amount of \$14,894.44, and petitioner's ineligibility for relief from the suspension under the grounds listed in Tax Law § 171-v (5) (i) - (viii).

The Division brought a motion to dismiss the petition pursuant to section 3000.9 (a) of our Rules or, in the alternative, a motion for summary determination under section 3000.9 (b).

The Rules provide that 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” and such motion is subject to the same provisions as a motion for summary judgment pursuant to CPLR 3212 (20 NYCRR 3000.9 [b] [1], [c]). “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]). “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 challenged the notice of proposed driver license suspension referral under Tax Law § 171-v (5) (viii), which provides relief from the planned suspension if “the taxpayer demonstrates that suspension of the taxpayer’s driver’s license will cause the taxpayer undue economic hardship” (Tax Law § 171-v [5]). Petitioner contends that the suspension of his driver’s license would cause him undue economic hardship because he would not be able to operate his business, which requires several thousand miles of driving yearly, and that a restricted license would make it impossible for him to drive to different locations required for his work. Petitioner’s argument is unsupported by facts or law. Simply contending that his work would be prevented by the lack of a driver’s license is insufficient to prevent a referral for suspension when the Vehicle & Traffic Law provides for expansive business uses of a restricted use license, which petitioner may obtain despite the planned suspension for unpaid taxes. Moreover, contending that a restricted use driver’s license would prevent their children’s

attendance at school is inaccurate. The law provides that a restricted use license permits driving, among other circumstances: “during the time the holder is actually engaged in pursuing or commuting to or from his business, trade, occupation or profession, . . . to and from a class or course at an accredited school, college or university or at a state approved institution of vocational or technical training, . . . or . . . enroute to and from a place, including a school, at which the child or children of the holder are cared for on a regular basis and which is necessary for the holder to maintain such holder’s employment” (Vehicle & Traffic Law § 530 [3]).

Petitioner has offered no evidence that this expansive permitted use of a restricted use driver’s license would prevent him from pursuing his business and would cause him undue economic hardship. Given these expansive provisions, there is simply no basis for petitioner’s claim that the law does not include “commuting for the purpose of conducting his work.” Certainly, a restricted use license would prevent driving to some non-enumerated musical events or parties as petitioner complains. But the expansive exceptions for use of a restricted use license are not designed to remove all of the penalty the law envisions as part of its tax enforcement program.

Petitioner also argues that interest should not have accrued on any tax due until after the notice of additional tax liability was issued, which calculation would reduce the overall liability below the \$10,000.00 threshold required for inclusion in the driver’s license suspension program pursuant to Tax Law § 171-v [1]. However, as the Administrative Law Judge correctly noted, Tax Law § 659 requires a taxpayer to report any change or corrections to a federal income tax calculation made by the IRS within 90 days, after which period, the Division may issue an assessment without constraint by the general limitations period on assessments of tax (Tax Law § 683 [c] [1] [C]). Petitioner failed to comply with this provision. Because Tax Law § 684 [i] permits the assessment of interest on an underpayment of tax at any time during the period

within which the related tax may be assessed, the Division did not err in assessing interest on the federal changes to income in tax years 2008 and 2009.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of John Lanzione is denied;
2. The determination of the Administrative Law Judge is affirmed;
3. The petition of John Lanzione is denied; and
4. The notice of proposed driver license suspension referral, dated February 28, 2020, is sustained.

DATED: Albany, New York  
July 11, 2024

/s/ Jonathan S. Kaiman  
Jonathan S. Kaiman  
President

/s/ Cynthia M. Monaco  
Cynthia M. Monaco  
Commissioner

/s/ Kevin A. Cahill  
Kevin A. Cahill  
Commissioner