

Tax Section

Report on New York State's Driver's License Suspension Program

Tax #2
(Tax Section #1344)

May 5, 2016

The Tax Section of the New York State Bar Association is pleased to submit this report which comments on New York State Tax Law Section 171-v. This law adds a new enforcement tool to the New York State Department of Taxation and Finance (the “**Department**”) for collection of delinquent New York State tax liabilities by authorizing the suspension of a tax debtor’s driver’s license if arrangements are not made by the tax debtor to pay the delinquent taxes. Any individual whose tax liability is \$10,000 or greater is subject to revocation of his or her driver’s license, regardless of the financial condition of the taxpayer. There is no hardship exemption.

The Report analyzes whether the law (a) satisfies federal or New York State constitutional provisions, (b) is in conflict with longstanding federal and New York State protections to debtors, and (c) should include a hardship exemption. The Report concludes that the Driver’s License Suspension Program has the potential for conflict with (or effectively undermining) longstanding federal and state protections which place limits on collections by the Department against New York tax debtors. This is because the law provides the Department a new and potent tool to force taxpayers into payment arrangements to pay their tax debts from assets and income sources that would not otherwise be available to the Department for levy. Without a hardship exemption, there is no guidance on how the law should be administered by the Department to avoid conflict with longstanding debtor protection laws to avoid overly harsh outcomes, especially as applied to indigent taxpayers. For example, some tax debtors may be earning so little in wages or have so little income or assets that they are not financially able to enter into even a low level installment payment agreement or a low sum Offer in Compromise to pay their tax liabilities without compromising their ability to pay basic living expenses. Nonetheless, the program can be used to force payments of tax debt from such indigent individuals under threat of loss of their drivers licenses even though there are laws in place that would protect them from tax levy on their income and assets.

These cases demonstrate that the license suspension law can be applied in a way that allows the Department to make an end-run around longstanding debtor protection laws. The Report concludes that the driver’s license suspension law is in conflict with longstanding debtor protection laws when applied to taxpayers who will experience financial hardship if required to enter into a payment agreement with the Department for the payment of their tax debts.

To avoid conflict with these debtor protection laws, the Report recommends that the Department implement an administrative exemption from Section 171-v to provide hardship relief to tax debtors who would suffer financial hardship if required to enter into an Installment Payment Agreement (or Offer in Compromise) to pay the tax liability. Given the high stakes of losing one's driver's license if arrangements are not made to resolve the New York tax debt, focus needs to be placed on implementing both a hardship exemption in the Driver's License Suspension Program and a "currently non-collectible" status (similar to the one under federal tax law) for taxpayers where even a low level installment payment plan (or small Offer in Compromise) would create a financial hardship. These programs need objective standards to ensure reliable and uniform application at all levels of the Department.

As to legislative action, the Report recommends that the law be amended to include an expressly stated hardship exemption. The Report also concludes that to the extent the law applies to tax debts preceding its enactment, it may not pass constitutional muster if challenged and the reviewing court adopts the reasoning applied in the recent California federal district court case of *Berjikian v. Franchise Tax Board*, 93 F. Supp. 3d 1151 (C.D. Cal. 2015), which rules on California's drivers license suspension law. If the New York State Legislature desires to preemptively amend the law to address the constitutional issues raised in *Berjikian*, the law should be amended either by: (1) making it apply prospectively to tax liabilities that become final after the effective date of the law or (2) adding a hearing right to challenge any pre-enactment tax assessments on which the drivers license suspension is based.

What is notable from this Report is that this law is an extraordinarily powerful tool and one that must be utilized with great care. As the body required to administer the law, the Department is encouraged to consider the equities of each case and utilize appropriate discretion. Likewise, the legislature should consider potential changes to the law that would mitigate the potentially harsh application of the law, such as carving out a hardship exemption and ensuring that procedural protections are put in place consistent with constitutional requirements. We also believe that the legislature should consider increasing the threshold that triggers the application of the law. Such a powerful and harsh sanction should be reserved for high value cases such as taxpayers owing a much higher amount of tax debt (*e.g.*, \$100,000) or who have engaged in egregious conduct (*e.g.*, hiding assets). We also believe that the law will be applied more equitably if the legislature gives more discretion to the Commissioner regarding whether to use license suspension in a particular case. Any law that imposes sanctions that restrict such a fundamental need as an individual's mobility must be crafted and administered with sensitivity to these considerations.

We welcome the opportunity to serve as a resource for you on these recommended administrative procedures and proposed legislation.

Section Chair: Stephen B. Land, Esq.