

## Tax Collector in Mirror Is Closer Than It Appears: New York Acts to Suspend Taxpayers' Driver's Licenses

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This is America. We love the open road. We're a car culture. Remember when you turned 16? "Dad, the car keys, please."

This is also New York. We do big things. To pay for them, we pay high taxes. Remember that outstanding assessment? "Scofflaw, your driver's license, now."

That's right. Under a new initiative announced in August, New York will be suspending the New York state driver's license of any taxpayer who owes at least \$10,000 in back taxes. You may want to reread that last sentence.

As part of the executive budget for 2013-2014,<sup>1</sup> a new law was passed that empowers the New York Department of Taxation and Finance to hit delinquent taxpayers where it hurts — by yanking their driver's licenses unless they pay up.<sup>2</sup> The tax department is mailing out the first round of suspension notices — 16,000 of them — to delinquent taxpayers across the state. The new program is sure to have far-reaching effects and is just the next step in the tax department's continued use of aggressive enforcement techniques when it comes to encouraging taxpayer compliance.

<sup>1</sup>Chapter 59 of the Laws of 2013 (Part P); TSB-M-13(4)I.  
<sup>2</sup>N.Y. Tax Law section 171-v.

This column explains how the program works and who is at risk. It's safe to say, though, that if you owe taxes, and you don't buckle down, there will be no more buckling up.

### The Nuts and Bolts

Under the new law, the tax department is required to coordinate with New York's Department of Motor Vehicles (DMV) to establish a driver's license suspension program. As set forth in guidance, the stated purpose of the program is to "aid in the collection of past-due state tax liabilities by suspending the drivers' licenses of taxpayers with past-due tax liabilities of \$10,000 or more."<sup>3</sup> It is a collection program, not an audit, program. So the liability must be fixed and final, without any further rights to administrative or judicial review.<sup>4</sup> But the numbers are big. The law is projected to increase state collections by \$26 million this fiscal year and by as much as \$6 million annually thereafter.<sup>5</sup>

Driving without a valid license, of course, is not merely an inconvenience. It's a crime.<sup>6</sup>

The law is broad. It covers any taxes, surcharges, or fees, as well as penalties or interest due on those amounts, administered by the tax department that are owed by an individual with a New York driver's license.<sup>7</sup> Commercial driver's licenses are spared, but any other license issued by the DMV is at risk of suspension.<sup>8</sup>

The program is fairly cut and dry. The tax department will issue a 60-day notice alerting a taxpayer to what he owes and that he has 60 days to act before his license is suspended.<sup>9</sup> The notice will clearly identify the past-due liabilities and give the taxpayer sufficient information advising him how to

<sup>3</sup>TSB-M-13(4)I.

<sup>4</sup>N.Y. Tax Law section 171-v(1).

<sup>5</sup>See release from Gov. Andrew Cuomo (D) on the initiative to suspend driver's licenses of tax delinquents (Aug. 5, 2013).

<sup>6</sup>N.Y. Veh. and Traf. Law section 511.

<sup>7</sup>N.Y. Tax Law section 171-v(1).

<sup>8</sup>*Id.*

<sup>9</sup>N.Y. Tax Law section 171-v(3).

contact the state to take corrective action. A taxpayer may either challenge the notice or work out a payment arrangement, including entering into an installment payment plan. If a taxpayer fails to act, on the 61st day the tax department will instruct the DMV to suspend the license.<sup>10</sup> The DMV will then issue a 15-day notice. If the taxpayer does not act, his license will be suspended.<sup>11</sup>

The license suspension program also applies to taxpayers who are already on a payment plan but impermissibly fall behind. The law provides that when “a taxpayer fails to comply with the terms of a current payment arrangement more than once within a twelve month period,” the tax department is required to immediately instruct the DMV to suspend the taxpayer’s license.<sup>12</sup> In other words, those taxpayers don’t get the benefit of a 60-day grace period. Violating the terms of the installment payment plan is sufficient to warrant immediate suspension.

### Limited Right of Appeal

There is an opportunity to appeal, but it is limited. A taxpayer can challenge a suspension, or referral for suspension, only on very narrow grounds. First, a taxpayer can assert that he is not the individual to whom the notice was provided — that is, mistaken identity.<sup>13</sup> Second, he can argue that the past-due liability has already been satisfied.<sup>14</sup> Third, a taxpayer can claim that his wages are already being garnished for the payment of past-due child support under an income execution.<sup>15</sup> Those taxpayers are exempt from the program.<sup>16</sup> Fourth, a taxpayer can argue that he has a commercial driver’s license, which, as noted, is excepted from the program.<sup>17</sup> Fifth, a taxpayer can assert that the tax department incorrectly determined that he has failed to comply with the terms of a payment arrangement more than once within a 12-month period.<sup>18</sup>

A taxpayer has two other means of defense: He is not prohibited from otherwise seeking innocent spouse relief<sup>19</sup> or he can demonstrate that enforcement of the underlying tax liability has been stayed by the filing of a bankruptcy petition.<sup>20</sup>

The law makes clear, however, that a taxpayer has no right to sue in court. Further, the applicable

motor vehicle laws have been amended to clarify that a taxpayer has no recourse under the motor vehicle provisions that are otherwise available to a driver facing suspension for a nontax reason.<sup>21</sup> In other words, license suspension does not provide a fresh opportunity to contest the underlying liability. There is no second bite at the audit apple. Thus, once an assessment shuffles over to collections, if the \$10,000 threshold is met and the tax department provides notice, license suspension will be a matter of course, practically speaking. Usually, the only way to avoid that will be to set and follow a payment arrangement.

### Other Ways to Fight Back

That said, often the collections department or the Taxpayer Rights Office will take a look at old assessments that might not have a valid basis. Relief sometimes can be had by filing an administrative appeal in cases in which there might be inadequate proof that an assessment was ever even issued. So, as when receiving a collection notice, a taxpayer should ensure that the initial underlying assessment is valid and take corrective administrative action if he thinks it is not.

For instance, in *Matter of White Stone Enterprises Inc.*, a New York administrative law judge considered whether a sales tax assessment against a gas station had been properly issued, so that it had become fixed and final and therefore was subject to collection.<sup>22</sup> Following a routine audit, the tax department generated a notice alleging tax due. The taxpayer did not protest the notice within 90 days of the date listed on the notice, and so the tax department docketed a lien against the taxpayer and later seized the gas station, padlocking the doors. To reopen the station, the taxpayer paid a portion of the amount alleged to be due under protest and then filed a refund request. After a denial of the refund claims, the taxpayer filed suit. At trial, the ALJ sided with the taxpayer and concluded that the tax department failed to prove the fact and date of mailing of the notice.<sup>23</sup> Consequently, the ALJ determined that the notice could not serve as a basis for a valid assessment and that therefore the liability was not fixed and final and was not subject to collection.<sup>24</sup>

In *White Stone*, not only was the assessment thrown out even after the filing of a tax lien, but the taxpayer’s refund also was granted.<sup>25</sup> That case demonstrates that David can in fact slay Goliath

<sup>10</sup>N.Y. Tax Law section 171-v(4).

<sup>11</sup>N.Y. Veh. and Traf. Law section 510.4-f(2).

<sup>12</sup>N.Y. Tax Law section 171-v(4).

<sup>13</sup>N.Y. Tax Law section 171-v(5).

<sup>14</sup>*Id.*

<sup>15</sup>*Id.*

<sup>16</sup>N.Y. Tax Law section 171-v(3).

<sup>17</sup>N.Y. Tax Law section 171-v(5).

<sup>18</sup>*Id.*

<sup>19</sup>*Id.*

<sup>20</sup>*Id.*

<sup>21</sup>N.Y. Veh. and Traf. Law section 510.4-f(3).

<sup>22</sup>N.Y. Division of Tax Appeals, A.L.J. Unit, No. 820533 (2007).

<sup>23</sup>*Id.*

<sup>24</sup>*Id.*

<sup>25</sup>*Id.*

and that all hope is not lost simply because the collections unit takes coercive action. Indeed, under current law, the tax department likely would have issued responsible officer assessments against the officers and been able to suspend their driver's licenses if there was not payment. *White Stone* illustrates that even when a case is in collection, there are ways to mount a defense. In collections cases, that often means making sure that the tax department has followed its own internal procedures and properly issued the requisite notices. It's likely there will be more of those types of cases now that there are even more immediate consequences associated with suspended licenses.

### Restricted Use License

Now, you might be reading this and thinking that putting the brakes on an individual's ability to drive is counterproductive from a tax collection standpoint. After all, if you can't drive, you may not be able to get to work and earn a living. The tax department has already thought of that, however. Under the program, a taxpayer whose license is suspended may apply for a restricted use driver's license that allows him to drive to and from work, school, or medical treatment.<sup>26</sup>

However, a restricted use license is just that: restricted. No other forays are permitted. Those leisurely Sunday drives, or even going to the market, will be little more than a fond memory. Violating the terms of a restricted use license is a traffic infraction and can lead to revocation of the privilege of driving under a restricted use license for up to five years.<sup>27</sup> In that case, unless you pay your back taxes and have your regular license restored, consider yourself impounded.

### Driver's License Suspension Is Not Unprecedented

You also might be reading this and thinking that the program is outrageous or unprecedented — that

the New York tax department has finally gone off the deep end. To be fair, it's not, and it hasn't. For starters, federal law mandates that states have laws enabling them to withhold, suspend, or restrict the use of the driver's licenses of noncustodial parents who fail to meet their child support obligations.<sup>28</sup> So, the failure to live up to some financial obligations already serves as grounds for suspension of the privilege of driving.

Similarly, a few other states have laws providing for the suspension of the driver's licenses of delinquent taxpayers. Among those are California,<sup>29</sup> Louisiana,<sup>30</sup> and Massachusetts.<sup>31</sup> Accordingly, while that tactic is not common, it is not without precedent. We assume that probably doesn't make affected taxpayers feel that much better.

### Conclusion

For those individuals who live in Manhattan, you can always register for Citi Bike, the new bike-sharing program, or continue to use the subway to get around. For everyone else, the effects of the new law may be far-reaching. Many taxpayers could end up driving on suspended licenses and running the risk of arrest. Many more could end up obtaining, but then violating the strict terms of, a restricted use license. The new program is an aggressive one that is sure to generate additional collection receipts, but it is also certain to cause gridlock for many people. ☆

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<sup>26</sup>N.Y. Veh. and Traf. Law section 530.

<sup>27</sup>N.Y. Veh. and Traf. Law section 530(3) and (6).

<sup>28</sup>42 U.S.C. section 666(a)(16) (the Social Security Act).

<sup>29</sup>Cal. Bus. and Prof. Code section 494.5.

<sup>30</sup>La. Rev. Stat. Ann. section 47:296.2.

<sup>31</sup>Mass. Gen. Laws ch. 62C, section 47B.