

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

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In the Matter of the Petition :  
of :  
**JEFFREY S. FAUPEL** : DECISION :  
 : DTA NO. 826255 :  
for Review of a Notice of Proposed Driver :  
Licence Suspension Referral under Tax Law, :  
Article 8, § 171-v.<sup>1</sup> :  
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Petitioner, Jeffrey S. Faupel, filed an exception to the determination of the Administrative Law Judge issued on April 16, 2015. Petitioner appeared pro se. The Division of Taxation appeared by Amanda Hiller, Esq. (Michele W. Milavec, Esq., of counsel).

Petitioner did not file 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 the issuance of this decision began on June 29, 2015, the date that petitioner’s reply brief was received.

After reviewing the entire record in this matter, the Tax Appeals Tribunal renders the following decision.

***ISSUE***

Whether the notice of proposed driver license suspension referral should be sustained.

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<sup>1</sup> The title of the subject notice uses the phrase “driver license,” while the statute at issue, Tax Law § 171-v, uses the phrase “driver’s license.”

**FINDINGS OF FACT**

We find the facts as determined by the Administrative Law Judge except for findings of fact 2, 4 and the finding of fact originally numbered 7, which have been modified to more fully reflect the record. Additionally, the second finding of fact numbered 6 has been renumbered 7, finding of fact 7 has been renumbered 8, 8-a, 8-b and 8-c, and finding of fact 9 has not been included as it merely contains a statement of the Division of Taxation's (Division) position. We have also made an additional finding of fact numbered 9 below. The Administrative Law Judge's findings of fact, the modified and renumbered findings of fact and the additional finding of fact are set forth below.

1. The Division issued to petitioner, Jeffrey S. Faupel, a notice of proposed driver license suspension referral (form DTF-454), collection case ID: E-028961604-CL01-4, (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. This 60-day notice is dated August 30, 2013, and is addressed to petitioner in White Plains, New York. Included with the 60-day notice was a consolidated statement of tax liabilities (form DTF 967-E), also dated August 30, 2013, setting forth a list of four unpaid assessments subject to collection as follows:

Tax Type	Assessment ID	Period Ended	Tax Assessed	Interest	Current Balance
Sales	L-030671578-5	02/29/08	\$13,774.75	\$7,139.64	\$20,914.39
Sales	L-030408906-5	11/30/07	\$19,585.99	\$10,828.05	\$30,414.04
Sales	L-028961604-8	02/28/07	\$16,984.00	\$11,453.08	\$28,437.08
Sales	L-028961603-9	05/31/07	\$13,899.70	\$8,794.00	\$22,693.70
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2. The 60-day 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 (DMV) and petitioner's driver's license would be suspended. The front page of the 60-day notice informed petitioner that unless one of the exemptions on the back page of the 60-day notice applied to him, he was required to pay the tax due, or set up a payment plan, in order to avoid suspension of his license.

The back page of the 60-day notice is titled, "How to respond to this notice." The opening sentence directly beneath the title lists a phone number and instructs the recipient that "[I]f any of the following apply," he or she is to call the Division at that number. Furthermore, the recipient is advised that he or she may be asked to supply proof in support of his or her claim.

The first two headings under the title, "How to respond to this notice" are "Child support exemption" and "Commercial driver's license exemption." The third heading, "Other grounds," states that the recipient's driver's license will not be suspended if any of the following apply: "You are not the taxpayer named in the notice. The tax debts have been paid. The Tax Department [Division] is already garnishing your wages to pay these debts. Your license was previously selected for suspension for unpaid tax debts *and*: you set up a payment plan with the Tax Department [Division], *and* the Tax Department [Division] erroneously found you failed to comply with that payment plan on at least two occasions in a twelve-month period." Also under "Other grounds" is the statement that the recipient may contact the Division to establish that he or she is eligible for innocent spouse relief under Tax Law § 654, or that enforcement of the underlying tax debts has been stayed by the filing of a bankruptcy petition.

Under the heading, "Protests and legal actions," it is explained that if the recipient

protests with the Tax Department, or brings a legal action, he or she may only do so based upon the grounds listed above. Furthermore, under a heading titled, “If you do not respond within 60 days,” the recipient is informed the Division will provide DMV with the information necessary to suspend the recipient’s driver’s license, unless the recipient does one of the following within 60 days: resolves his or her tax debts or sets up a payment plan; notifies the Division of his or her eligibility for an exemption; or protests the proposed suspension of his or her license by either: filing a request for conciliation conference with the Division, or filing a petition with the Division of Tax Appeals.

3. By an order of suspension or revocation (order of suspension) dated November 6, 2013, DMV advised petitioner that his driver’s license would be suspended, effective November 20, 2013, based upon “delinquent unpaid tax debt with the NYS Department of Taxation and Finance. Case number E028961604.”

4. Petitioner filed a request for conciliation conference (request) challenging the proposed suspension of his license with the Division’s Bureau of Conciliation and Mediation Services (BCMS).<sup>2</sup> As a consequence of this filing, the foregoing order of suspension was placed on hold pending resolution of petitioner’s challenge. On February 12, 2014, a conciliation conference was held and, in turn, a conciliation order (CMS No. 259515), dated April 4, 2014, (conciliation order) was issued denying petitioner’s request and sustaining the proposed

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<sup>2</sup> It appears that petitioner filed his request prior to the issuance of the order of suspension, dated November 6, 2013, as the letter from BCMS acknowledging receipt of the request was dated November 5, 2013. Furthermore, pursuant to the 60-day notice, petitioner’s request was required to be filed by October 29, 2013 and there is no mention in the conciliation order of any issue of timeliness.

suspension of his license.

5. Following issuance of the conciliation order, DMV again issued an order of suspension, dated April 16, 2014, advising petitioner that his driver's license would be suspended, effective April 30, 2014, upon the same basis as was previously stated.

6. Petitioner challenged the conciliation order by filing a petition with the Division of Tax Appeals. The petition, mailed by certified mail, is dated as signed on April 26, 2014, bears a United States Postal Service (USPS) postmark dated April 30, 2014, and is date stamped as received by the Division of Tax Appeals on May 2, 2014. The petition lists the same White Plains, New York, address for petitioner as is set forth above on the 60-day notice, the order of suspension, the cover letter accompanying petitioner's BCMS request and the cover letter accompanying the BCMS conciliation order. As a consequence of this filing, DMV's April 16, 2014 order of suspension would appear to have been placed on hold, as before, pending resolution of petitioner's challenge.

7. The petition raises no challenge to the issuance or validity of the four identified tax assessments listed above as past-due fixed and final liabilities giving rise to the proposed suspension of petitioner's license. Likewise, the petition does not challenge the Division's issuance or petitioner's receipt of the 60-day notice. Instead, the petition, and petitioner's response to the motion described in finding of fact 8, seek to avoid license suspension upon the basis that petitioner requires a "full" driver's license in order to transport his spouse to and from work assignments, and so that he is able both to seek employment and to pursue employment

opportunities that may occur on weekends, early mornings or late at night.<sup>3</sup> Petitioner also asserted that he would be willing to have his wages garnished and applied to the fixed and final tax liabilities once he obtained full-time employment.

8. The Division filed its answer to the petition on July 16, 2014. The Division subsequently brought a motion, filed on December 1, 2014, seeking an order dismissing the petition or, in the alternative, granting summary determination pursuant to sections 3000.5, 3000.9 (a) (1) (i), (vii) and (b) of the Tribunal's Rules of Practice and Procedure.

8-a. In support of its motion, the Division submitted the affidavit of Matthew McNamara, who is employed as a Technology Specialist 3 in the Division's Civil Enforcement Division (CED), detailing the steps undertaken by the Division in carrying out the license suspension program authorized by Tax Law § 171-v. Mr. McNamara's duties involve maintaining and supporting the CED internal website, including the creation and modification of pages on the site, and tables within the server database, as well as troubleshooting website issues and training staff in various programming languages. Mr. McNamara is also involved in the creation and maintenance of programs and reports based on internal Division systems, and reports that both facilitate and report on the movement of cases, together with the creation of event codes based on criteria given by end users. Additionally, Mr. McNamara supervises a reporting team, ensuring procedural clarity and that all programs and reports are run in a timely fashion.

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<sup>3</sup> The order of suspension indicates, among other items, that petitioner may be eligible for a restricted use license, and advises petitioner to contact DMV concerning such eligibility. The record does not disclose whether petitioner has availed himself of this option.

8-b. Mr. McNamara's affidavit fully details the sequential actions or steps, to wit, 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 Tax Law, Article 8, § 171-v. 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 \$10,00.00; 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 in formal or informal protest, and all cases in bankruptcy status are eliminated; 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 under any of the following criteria:

- 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 in bankruptcy;

- the taxpayer is deceased; or
- the taxpayer is on an active approved payment plan.

b) The “DMV Data Match” involves the Division providing identifying information to 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. 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 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 8-b (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.<sup>4</sup>

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<sup>4</sup> 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

Such case data is sent daily, Monday through Friday, by the Division to DMV. 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, 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 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 8-b (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; 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-c. Mr. McNamara's affidavit also fully 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

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until the "on-hold" status is resolved. If the suspension is "closed," the 60-day notice will be canceled. If the taxpayer "passes" this final compliance check, the suspension by DMV will proceed.

60-day notice of proposed driver license suspension referral and 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 the issuance on August 30, 2013 to petitioner of the 60-day notice 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 has not been and should not be canceled.

9. Petitioner submitted with his exception, a document that was not part of the hearing record established before the Administrative Law Judge. The Secretary to the Tax Appeals Tribunal, by letter dated May 22, 2015, informed petitioner that any such evidence would not be considered by the Tribunal.

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

The Administrative Law Judge concluded that the Division of Tax Appeals had jurisdiction over the petition filed in this matter as it was timely filed. Therefore, the Administrative Law Judge found that at issue was the Division's motion for summary determination<sup>5</sup> and explained that such a motion "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]).

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<sup>5</sup> Although not specifically held, the implication of the Administrative Law Judge's discussion of this issue is that the Division's motion to dismiss the petition was denied.

The Administrative Law Judge explained that Tax Law § 171-v provides for the enforcement of past-tax liabilities through the suspension of drivers' licenses. The Administrative Law Judge concluded that the 60-day notice complied with the requirements of Tax Law § 171-v in that it was based upon petitioner's outstanding tax liabilities in the cumulative amount of \$102,459.21 and petitioner did not meet, or even raise, any of the specific grounds available for relief under the statute. Therefore, the Administrative Law Judge found that there were no facts in dispute and there was no legal basis upon which to grant the petition and granted the Division's motion for summary determination.

***ARGUMENTS ON EXCEPTION***

Petitioner continues to argue on exception that he needs an unrestricted driver's license in order to obtain full time employment and that he is willing to enter into a payment agreement, or have the Division garnish his wages, in order to satisfy the underlying past due tax liabilities once he has obtained such employment. Thus, petitioner argues that he has satisfied the statutory requirements for avoiding the suspension of his license because once he obtains employment, he is willing to agree to payment arrangements "satisfactory to the commissioner," or have his wages "garnished . . . for the payment of the past-due tax liabilities at issue . . ." (Tax Law § 171-v [3] [b], [4], [5] [iii]). Additionally, petitioner for the first time on exception, disagrees with the amount of underlying past due tax liabilities at issue for several reasons. First, petitioner asserts that he made payments regarding such liabilities, which were to be applied to the amount of tax due, but that the payments were first applied to interest due. Second, petitioner asserts that he filed for bankruptcy in 2011 and that his debts were discharged. While petitioner

concedes that the underlying tax at issue was not discharged, he argues that the interest should have been discharged.

The Division argues that the Administrative Law Judge correctly held that the 60-day notice was based upon petitioner's outstanding and unpaid tax liability in the amount of \$102,459.21 and that petitioner did not meet any of six specifically enumerated grounds set forth in Tax Law § 171-v (5) (i) through (vi) that would allow for relief from the suspension of his driver's license. In particular, the Division asserts that petitioner's statement that he is willing to have his wages garnished in the future does not meet such requirements. The Division asserts that petitioner raises the issues of the impact of alleged payments and a previous bankruptcy for the first time on exception, including an attempt to submit an additional document regarding the previous bankruptcy on exception and that, under Tribunal precedent, he may not do so.

### ***OPINION***

Procedurally, we agree with the conclusion of the Administrative Law Judge that the Division's motion to dismiss is not the proper vehicle for reaching a resolution of this matter and, accordingly, we decide the Division's alternative motion for summary determination. As we previously noted in *Matter of United Water New York*:

“Inasmuch 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 [1968]). If material facts are in dispute, or if contrary inferences may be reasonably drawn from undisputed facts, then a full trial is warranted and the case should not be decided on a motion (*see Gerard v. Inglese*, 11 AD2d 381 [1960]). Upon such a motion, it is not for the court ‘to resolve issues of fact or determine matters of credibility but merely to determine whether such issues exist’ (*Daliendo v. Johnson*, 147 AD2d 312 [1989]) (*Matter of United Water New York, Inc.*, Tax Appeals Tribunal, April 1, 2004).”

As there are no facts in dispute in this matter, we now review the application of Tax Law § 171-v, which provides for the enforcement of past due tax liabilities through the suspension of drivers' licenses. This is an issue of first impression for this Tribunal.

Tax Law § 171-v (3) requires the Division to notify a taxpayer that he or she is going to be included in the driver's license suspension program by first class mail to the taxpayer's last known address no later than 60 days prior to the Division informing DMV of the taxpayer's inclusion. This subdivision also states that no notice shall issue to a taxpayer whose wages are already being garnished by the Division for past-due tax liabilities, child support, or combined child and spousal support. The process as found herein adequately ensures that notices are issued no later than 60 days prior to a taxpayer being included in the driver's license suspension program.<sup>6</sup>

Tax Law 171-v also requires that the notification include: a clear statement of the past due tax liabilities, together with notice that the taxpayer's information will be provided to DMV 60 days after the mailing of the notice; a statement that the taxpayer can avoid license suspension by paying the debt or entering into a payment agreement acceptable to the Division and information as to how the taxpayer can go about this; a statement that a taxpayer can only protest the 60-day notice based upon the issues set forth in subdivision 5; and a statement that the suspension will remain in effect until the fixed and final liabilities are paid or a satisfactory payment arrangement is entered into. Subdivision 5 provides that a taxpayer may only challenge

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<sup>6</sup> There may be a slight inconsistency between the statute and the Division's process in that it appears there is no provision for ensuring that a taxpayer whose wages are already being garnished by the Division for past-due tax liabilities, child support, or combined child and spousal support is not sent a 60-day notice. However, as this provision is not relevant to current matter, and there are provisions in the 60-day notice for such taxpayers to avoid a license suspension referral by notifying the Division of such garnishments, we will not address this issue.

a driver's license suspension or referral 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]).

As evidenced by the 60-day notice, the Division has shown that all of the notice requirements of Tax Law § 171-v are met in its notice of proposed driver's license referral.

If the taxpayer has not challenged the notice on any of the above-grounds, paid the past due tax liabilities or made payment arrangements, by the conclusion of the 60-day period, the Division shall notify DMV that the driver's license shall be suspended (Tax Law § 171-v [4]). Again, the Division's procedures comply with the statutory requirements.

Finally, the Division has shown, and the petitioner has not contested, that the 60-day notice was issued in compliance with the Division's procedures.

The only factual allegations made by petitioner during the proceedings before the Administrative Law Judge were that he required his “full” driver's license in order to transport his wife to work, to both seek full-time employment and to pursue employment opportunities and that he would be willing to have his wages garnished and applied to the past due tax liabilities. Even if we assume these facts to be true, we do not see what they add to petitioner's case.

While not entirely clear, it appears that petitioner is arguing that he requires his “full” driver’s license, as opposed to a restricted use license. As noted by the Administrative Law Judge, the order of suspension issued in the present matter indicated that petitioner was eligible for a restricted use license, and advised petitioner to contact DMV concerning same (*see also* Vehicle and Traffic Law § 510 [4-f] [5] [allowing for a person whose license has been suspended for failure to pay past-due tax liabilities to apply for the issuance of a restricted use licence] and Vehicle and Traffic Law § 530 [5-b] [implying that a restricted use license cannot be denied to a person whose license has been suspended for failure to pay past-due tax liabilities]). A restricted use license may be issued if such a license is necessary for certain employment or education reasons for the person whose driver’s license has been suspended, or as required for medical treatment for that person or member of his or her household (Vehicle and Traffic Law § 530 [1]). Although the record does not indicate whether petitioner inquired about a restricted use license, petitioner appears to be arguing that a restricted use license would not solve his employment transportation issues. We note that it is not clear to us whether, under the relevant Vehicle and Traffic Law provisions, that is actually the case. However, in any event, there is no provision in the statutory language regarding the program to suspend drivers’ licenses for past-due tax liabilities that allows us to consider petitioner’s need for a driver’s licence.

With regard to petitioner’s contention that he is willing to have his wages garnished once he obtains full-time employment, as pointed out by the Division, this simply does not meet the requirement to enable petitioner to challenge his driver’s license suspension or referral on the grounds that his wages are currently being garnished by the Division for payment of the same past-due tax liabilities (Tax Law § 171-v [5] [ii]).

An additional issue on exception is petitioner's attempt to introduce both a document that was not part of the record before the Administrative Law Judge, and additional factual arguments. Petitioner was informed at the time of the submission of the document that evidence not in the record established by the Administrative Law Judge would not be considered (*see e.g. Matter of Schoonover*, Tax Appeals Tribunal, August 15, 1991). Accepting evidence after the record is closed is inconsistent with a fair and efficient hearing process, and also deprives the adversary of an opportunity to question the evidence on the record (*see e.g. Matter of Ippolito*, Tax Appeals Tribunal, August 23, 2012, *affd sub nom Matter of Ippolito v Commissioner of N.Y. State Dept. of Taxation & Fin.*, 116 AD3d 1176 [2014]). Furthermore, the document that petitioner attempted to submit was submitted in support of an application of payment argument being asserted for the first time on exception. Indeed, both petitioner's application of payment argument and his bankruptcy argument involve fact intensive issues that were not raised before the Administrative Law Judge. While this Tribunal has permitted the raising of new legal issues on exception, we have not allowed the raising of new factual issues after the record has been closed (*see Matter of Coram Diner Corp.*, Tax Appeals Tribunal, March 12, 2015; *Matter of Crow and Sutton Assoc.*, Tax Appeals Tribunal, January 10, 2013). Allowance of such new issues on exception is improper because it deprives the opposing party of the opportunity to offer evidence in opposition to the new factual claim (*see Matter of Friendly Motors*, Tax Appeals Tribunal, March 20, 1997 [petitioner's attempt to raise factual issue on exception concerning certain audited transactions disallowed]).

In conclusion, the Division has shown that its process regarding the suspension of drivers' licenses for past due tax liabilities is in conformity with the statutes governing such

program and that the 60 day notice issued to petitioner in the present case was issued pursuant to those procedures. In response, petitioner has provided only arguments not relevant to the issue to be decided in this cases.

Accordingly it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Jeffrey S. Faupel is denied;
2. The determination of the Administrative Law Judge is affirmed;
3. The petition of Jeffrey S. Faupel is denied; and,
4. The notice of proposed driver license suspension referral dated August 30, 2013 is sustained.

DATED: Albany, New York  
December 23, 2015

/s/ Roberta Moseley Nero  
Roberta Moseley Nero  
President

/s/ Charles H. Nesbitt  
Charles H. Nesbitt  
Commissioner

/s/ James H. Tully, Jr.  
James H. Tully, Jr.  
Commissioner