STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
JEFFREY S. BALKIN	:	DECISION DTA NO. 826366
For Review of a Notice of Proposed Driver License Suspension Referral Under Tax Law § 171-v.	:	

Petitioner, Jeffrey S. Balkin, filed an exception to the determination of the Administrative Law Judge issued on April 19, 2015. Petitioner appeared pro se. The Division of Taxation appeared by Amanda Hiller, Esq. (Michele W. Milavec, Esq., of counsel).

Petitioner filed a brief in support of his exception. The Division of Taxation filed a letter brief in opposition. Petitioner filed a reply brief. Oral argument was not requested. The six-month period for the issuance of this decision began on August 10, 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 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, except for findings of fact 1 and 3, which have been modified to more fully reflect the record; findings of fact 4 through

7, all of which have been renumbered to be included in finding of fact 4 and also modified to more fully reflect the record; and findings of fact 8 and 9, which have been renumbered 6 and 7, respectively. We have also made additional findings of fact numbered 1-a and 5. The Administrative Law Judge's findings of fact, the modified findings of fact and the additional findings of fact are set forth below.

1. The Division of Taxation (Division) issued to petitioner, Jeffrey S. Balkin, a notice of proposed driver license suspension referral, dated August 9, 2013 (the 60-day notice), which notified petitioner that new legislation allows New York State to suspend the driver's licenses of persons who have delinquent unpaid tax debts. Attached to the notice was a consolidated statement of tax liabilities listing petitioner's income tax assessments subject to collection, as follows:

Assessment No.	Tax period ended	Tax Amount Assessed	Interest Assessed	Penalty Assessed	Payments and credits	Current Balance Due
L-036774402-5	12/31/07	$2,133.00	$1,110.16	$1,003.22	$0.00	$4,246.38
L-036140918-8	12/31/06	$2,450.00	$1,651.51	$1,247.57	$0.00	$5,349.08
L-036140917-9	12/31/05	$3,708.00	$3,073.42	$2,123.41	$118.50	$8,786.33
Total						**$18,381.71**

1-a. 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 [Division], 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 that 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.

2. On June 25, 2014, following the issuance of a conciliation order, dated March 28, 2014, sustaining the 60-day notice, petitioner filed a petition with the Division of Tax Appeals. The petition alleges that petitioner is unable to pay his outstanding tax liabilities and that suspension of his driver's license would impose a severe hardship on him insofar as it would impede his travel to the grocery store and to medical appointments.

3. The Division filed its answer to the petition on September 10, 2014. The Division, in turn, filed a notice of motion and supporting papers on January 6, 2015, seeking an order dismissing the petition or, in the alternative, granting summary determination pursuant to Tax Law § 2006 (6) and 20 NYCRR 3000.5 and 3000.9 (a) and (b).

In support of its motion, the Division submitted the affidavit of Matthew McNamara, who is employed as an Information 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.

4. 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 § 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 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] Such case data is sent daily, Monday through Friday, by the Division to DMV. DMV then sends

[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," the 60-day notice will be canceled. If the taxpayer "passes" this final compliance check, the suspension by DMV will proceed.

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 cancelation 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; 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.

5. Mr. McNamara's affidavit also fully details how the process described in finding of fact 4 was followed by the Division in the instant matter concerning the 60-day notice. A copy of the 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 by which petitioner could remit payment against the liabilities in question, were included with Mr. McNamara's affidavit.

Mr. McNamara's affidavit confirms that all of the assessments listed on the consolidated statement of tax liabilities attached to the 60-day notice were subject to collection action.

6. Mr. McNamara avers that, based on his review of the Division's records and his knowledge of its policies and procedures, issuance of the suspension notice to petitioner was proper.

7. Petitioner responded to the Division's motion with arguments in opposition.

THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE

The Administrative Law Judge concluded that the Division of Tax Appeals had subject matter jurisdiction over the petition filed in this matter. Therefore, the Administrative Law Judge found that at issue was the Division's motion for summary determination[2] and explained that such a motion may "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 that the administrative law judge can, therefore, as a matter of law, issue a determination in favor of any party" (20 NYCRR 3000.9 [b] [1]).

The Administrative Law Judge explained that Tax Law § 171-v provides for the enforcement of past-due tax liabilities through the suspension of driver's 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 an amount in excess of $10,000.00. Specifically, the Administrative Law Judge rejected petitioner's argument that his outstanding tax liabilities were not fixed and final as required by the statute because the Division's consolidated statement of tax liabilities reflected tax due of $252.00 less than

[2] 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.

petitioner admittedly self-assessed on his filed returns. The Administrative Law Judge noted that petitioner did not contend that he had never received the notices of deficiency that were the basis for the consolidated statement of tax liabilities, or that any such notices were currently the subject of any type of appeal. Furthermore, the Administrative Law Judge noted that even the liability petitioner admitted he owed more than satisfied the $10,000.00 threshold required for license suspension referral. Thus, the Administrative Law Judge concluded that petitioner had not raised a triable issue of fact.

The Administrative Law Judge also rejected petitioner's argument that the actions of the State that will ultimately result in the suspension of his driver's license are being applied to him retroactively in violation of his due process rights under the State and Federal constitutions. In so rejecting petitioner's argument, the Administrative Law Judge, citing ***Matter of City of New York***, 290 NY 236 (1943); ***League v State of Texas***, 184 US 156 (1902); ***Phillips v Commissioner of Internal Revenue***, 283 US 589, 601 (1931), held that new remedies for the collection of delinquent taxes may be validly applied to tax liabilities existing before the enactment of the statute.

Therefore, the Administrative Law Judge granted the Division's motion for summary determination.

ARGUMENTS ON EXCEPTION

Petitioner argues that his tax liabilities are not fixed and final as required by Tax Law § 171-v (1). Furthermore, petitioner argues that the actions of the State that will ultimately result in the suspension of his driver's license are being applied to him retroactively in violation of his due process rights under the State and Federal constitutions.

In support of his constitutional argument, petitioner asserts that he is older, unemployed, in poor health and not able to pay the underlying tax liabilities. He contends that he relied upon maintaining his driver's license when he decided to move to a neighborhood with more affordable housing costs, but to a location that would require him to drive in order to go grocery shopping or to medical appointments. Petitioner also argues that the length of the retroactive period applied is an important consideration in determining whether the State actions in this matter afforded him due process of law and that the over-six-year retroactive period applied in this case is another reason that these actions should be found to violate the due process clauses of the Federal and State constitutions. Petitioner contends that the suspension of his driver's license would be harsh and oppressive and amount to a penalty rather than a remedy, as he will remain unable to pay the tax liabilities, and the only change in circumstances will be his inability to drive to required destinations such as the grocery store and medical appointments. Petitioner argues that the stated purpose of Tax Law § 171-v, to improve the collection of taxes, is not a purpose that rises to the level of allowing the retroactive application of the statute.

Finally, petitioner argues that the Administrative Law Judge was biased in favor of the Division. Petitioner bases this argument on the Administrative Law Judge's previous employment with the Division and what petitioner asserts was the cursory attention paid to his argument in the determination.

The Division argues that, as petitioner met the requirements for driver's license suspension referral, he is only entitled to challenge the referral by raising one of the six specifically enumerated grounds, set forth in Tax Law § 171-v (5). The Division notes that petitioner has raised none of those grounds, but has instead raised two other issues. In response to petitioner's argument that the tax liabilities that form the basis of the notice of proposed

driver's license suspension are not fixed and final, the Division asserts that the Administrative Law Judge was correct in his determination and reiterates that holding. In response to petitioner's constitutional arguments, the Division points out that a case relied upon heavily by petitioner in his arguments was overturned; that petitioner relies upon an Administrative Law Judge determination, which is not precedential under Tax Law § 2010 (5); and, finally, simply states that although petitioner in his submissions on exception addressed every case cited by the Administrative Law Judge in his determination, his analysis regarding the retroactive application of a statute "is not persuasive." Finally, with regard to petitioner's assertions that the Administrative Law Judge was biased in favor of the Division, the Division argues that petitioner presented no evidence of actual bias.

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)."

Petitioner's contention that the amount of tax at issue is not fixed and final as required by Tax Law § 171-v is based upon his factual contentions that an improper levy was executed

against his bank account in the amount of $91.49 in 2013 and that his personal income tax returns as filed set forth an amount of tax due for the years in question of $252.00 less than the amount of tax due set forth in the consolidated statement of tax liabilities. However, even assuming that the facts as asserted by petitioner are true, such facts do not defeat the Division's motion for summary determination, because, as a matter of law, such facts are not relevant.

Tax Law § 171-v (1) authorizes "a program to improve tax collection through the suspension of drivers' licenses of taxpayers with past-due tax liabilities equal to or in excess of ten thousand dollars." Tax liabilities are defined as including penalties and interest due on any tax amounts (Tax Law § 171-v [1]). The phrase "past-due tax liabilities" is specifically defined as "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 (Tax Law § 171-v [1]). Petitioner no longer has any right to any administrative or judicial review with regard to the propriety of, or the amount of the tax assessed by, the assessments listed on the consolidated statement of tax liabilities attached to the 60-day notice. Therefore, by operation of the definition in the statute, such liabilities are fixed and final and properly the subject of the 60-day notice. Furthermore, even if the $91.49 petitioner asserts was the subject of a levy by the Division on his bank account was collected by the Division, the tax, penalties and interest owed by petitioner on August 9, 2013, the date of the 60-day notice, was clearly over the $10,000.00 threshold required by the statute.

There being no other 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 driver's licenses.

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.[3]

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 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;

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[3] 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.

> (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 the notice of proposed driver's license referral issued in this matter.

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

Petitioner does argue that the actions of the State that will ultimately result in the suspension of his driver's license are being applied to him retroactively in violation of his due process rights under the State and Federal constitutions. Petitioner agues that the cases relied upon by the Administrative Law Judge in his determination for the proposition that new remedies for the collection of delinquent taxes may be validly applied to liabilities existing before the enactment of the statute (***League v State of Texas***, 184 US 156 [1902]; ***Phillips v Commissioner of Internal Revenue***, 283 US 589 [1931]; ***Matter of City of New York***, 290 NY 236 [1943]) are outdated and inapplicable to the present case. We disagree. These are the cases that most

directly relate to the present case. The factual situation described by the United States Supreme Court in ***League v State of Texas***, is the same as the factual situation in the present matter, i.e., the taxpayer admits that valid taxes were imposed and have not been paid, but contests the manner in which the state chooses to collect those taxes (***id.*** at 158). Unlike petitioner, we do not find it significant that ***League v State of Texas*** concerns real estate taxes rather than income taxes. Thus, we find that the Court's comments regarding retroactivity are persuasive in the present case (***id.*** ["That a state may adopt new remedies for the collection of taxes, and apply those remedies to taxes already delinquent, without any violation of the Federal Constitution, is not a matter of doubt"].

There is a distinct difference between these cases, dealing with the retroactive effect of a new remedy for the collection of taxes, and cases such as ***Caprio v New York State Depart. of Taxation & Fin.***, 25 NY3d 744 (2015), ***rearg denied*** 26 NY3d 955 (2015), a recent Court of Appeals case dealing with the retroactive application of a statute imposing a tax. In the present case, there has been no retroactive application of a tax liability. Rather, this case involves the application of a new method of collecting taxes to petitioner's already past-due tax liability. The due process analysis undertaken in cases when reviewing the retroactive application of a statute imposing a tax liability, does not work for reviewing the effects of a new collection method that is being applied to past-due tax liabilities. For example, petitioner argues that the amount of the tax liabilities asserted by the Division is incorrect and that, therefore, his liability is not fixed and final. However, petitioner had opportunities to contest the assessments issued by the Division and chose, for whatever reason, not to avail himself of those opportunities (***see*** Tax Law §§ 170 (3-a) 689, 690, 2000 and 2016). There is no argument presented, nor could there be a successful argument, that the statutory provisions for contesting assessments in New York do not provide

the necessary notice and opportunity to be heard required by due process (***id.***). Another example of the why the due process analysis of cases reviewing the retroactivity of statutes imposing taxes does not work when applied to collection issues is petitioner's argument that the stated purpose of Tax Law § 171-v is to improve tax collections, a purpose that by itself has been held not to justify the retroactive application of a taxing statute (***see Caprio v New York State Dept. of Taxation & Fin.***, 25 NY3d at 758 ["legislature was not acting merely to increase tax receipts, but to prevent unanticipated and unintended consequences arising from erroneous administrative determinations that were contrary to long-standing DTF policies"]). Petitioner is not incorrect in this assertion. However, Tax Law § 171-v is not a statute imposing or changing a tax, but a statute setting forth a new collection vehicle for the Division. It would be quite impossible for the purpose of a collection statute to be something other than the collection of taxes.

The proposition that a new remedy for the collection of taxes may be applied to preexisting final tax liabilities is set forth again in ***Matter of City of New York***. The Court of Appeals explains that where a taxpayer has already been provided with due process by having been given notice and an opportunity to be heard, as in the present case, the method chosen for the collection of those fixed and final taxes is merely a ministerial administrative act, not requiring its own set of due process protections (***id.*** at 241).

We do agree that this tax collection statute is unique in that it involves petitioner's driver's license and we acknowledge that petitioner has a property right in that license that would normally give rise to the due process protections of notice and a right to be heard if the State attempted to suspend that license (***see Bell v Burson***, 402 US 535, 539 [1971] [driver's licenses are important interests to the licensees because once issued, they may become essential to the "pursuit of a livelihood"). However, petitioner in the present matter may apply for a restricted

use license (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]). These provisions ameliorate the necessity for petitioner to be provided with another opportunity for notice and a hearing.

Petitioner's constitutional argument addressed above is an argument that the statute as retroactively applied to petitioner is unconstitutional. As such, it is an argument that this Tribunal can address. To the extent that petitioner's arguments could be interpreted as implying that Tax Law § 171-v is unconstitutional on its face, we decline to address this issue as it is not within our jurisdiction (***see Matter of Fourth Day Enters.***, Tax Appeals Tribunal, October 27, 1988).

To the extent that petitioner is arguing that the Division should provide relief to taxpayers based upon financial hardship, we note that such relief is not provided for in Tax Law § 171-v. Such relief is addressed, however, in Tax Law § 171 (Fifteenth), allowing the Division to compromise taxes in certain limited circumstances related to the financial hardship situation.

With regard to petitioner's argument that the Administrative Law Judge was biased in favor of the Division, we find that there is no evidence that the Administrative Law Judge prejudged petitioner's case in any manner (***see Matter of Willett v Dugan***, 161 AD2d 900 [1990], ***lv denied*** 76 NY2d 708 [1990] [even though two of the members of the Tax Appeals

Tribunal had been involved on the side of the Department against the petitioner in previous disputes before the State Tax Commission, there was no evidence that either member was actually prejudiced or had prejudged the specific facts of petitioner's tax dispute in the instant proceeding].

In conclusion, the Division has shown that its process regarding the suspension of driver's 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. Petitioner did not meet his burden of proof to show that the past-due tax liabilities were not fixed or final, or that the statute as applied under the circumstances of this case was unconstitutional.

Accordingly it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Jeffrey S. Balkin is denied;

2. The determination of the Administrative Law Judge is affirmed;

3. The petition of Jeffrey S. Balkin is denied; and,

4. The notice of proposed driver license suspension referral, dated August 9, 2013, is sustained.

DATED: Albany, New York
February 10, 2016

/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