

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition :

of :

JUAN KIP LENOIR :

DECISION
DTA NO. 826389

for Review of a Notice of Proposed Driver License :
Suspension Referral under Tax Law § 171-v.

Petitioner, Juan Kip Lenoir, filed an exception to the determination of the Administrative Law Judge issued on May 28, 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 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 September 21, 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 pursuant to Tax Law § 171-v should be sustained.

FINDINGS OF FACT

We find the facts as determined by the Administrative Law Judge except for findings of fact 2, 3, and 7, which have been modified to more fully reflect the record. Finding of fact 8 has

not been included as it merely contains a statement of the Division of Taxation's (Division) position. The Administrative Law Judge's findings of fact and the modified findings of fact are set forth below.

1. The Division issued to petitioner, Juan Kip Lenoir, a notice of proposed driver license suspension referral (Form DTF-454), collection case ID: E-001582922-CLO1-8 (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 September 17, 2013 and is addressed to petitioner in New York, New York. Included with the 60-day notice was a consolidated statement of tax liabilities (Form DTF 967-E), also dated September 17, 2013, setting forth a list of 17 unpaid assessments subject to collection as follows:

Tax Type	Assessment ID	Period Ended	Tax Assessed	Interest	Penalty	Current Balance
Income	L-039681927-4	12/31/12	\$404.50	\$12.06	\$10.10	\$426.66
Income	L-037883930-4	12/31/11	520.50	61.75	67.62	649.87
Income	L-034860303-4	12/31/09	580.50	184.03	118.90	883.43
Income	L-034854497-6	12/31/08	1,042.00	506.16	494.95	2,043.11
Income	L-029608328-8	12/31/04	1,960.50	2,236.44	931.10	5,128.04
Income	L-029608327-9	12/31/05	848.50	840.15	402.90	2,091.55
Income	L-029593144-5	12/31/02	2,590.00	3,606.32	1,230.25	7,426.57
Income	L-029593116-3	12/31/01	373.00	577.05	193.00	1,143.05
Income	L-029593031-7	12/31/00	1,810.00	3,025.01	859.75	5,694.76
Income	L-021785070-4	12/31/97	2,053.00	5,312.02	974.95	8,339.97
Income	L-014383082-9	12/31/95	0.00	261.87	123.63	385.50
Income	L-013018499-5	12/31/95	4,165.00	13,965.64	1,603.29	19,733.93
Income	L-012655428-4	12/31/94	0.00	255.33	105.90	361.23

Income	L-010581391-6	12/31/94	2,292.00	8501.69	818.10	11,611.79
Income	L-009306406-1	12/31/93	1,995.00	8,466.05	805.84	11,266.89
Income	L-009208847-4	12/31/91	0.00	249.04	82.70	331.74
Income	L-008267751-2	12/31/92	595.00	2,782.70	260.33	3,638.03

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 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 a 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 May 22, 2014, DMV advised petitioner that his driver’s license would be suspended, effective June 5, 2014, based upon “delinquent unpaid tax debt with the NYS Department of Taxation and Finance—case number E001582922.” There is a hand-written notation on the order of suspension that indicates that the suspension is being held in abeyance pending an appeal. The order of suspension indicated, among other items, that petitioner was eligible for a restricted use license and advised petitioner to contact DMV concerning such eligibility. The record does not disclose whether petitioner availed himself of this option.

4. Petitioner filed a request for conciliation conference challenging the proposed suspension of his license with the Division’s Bureau of Conciliation and Mediation

Services. On March 3, 2014, a conciliation conference was held and, in turn, a conciliation order (CMS No. 259710) dated April 18, 2014 (conciliation order) was issued denying petitioner's request and sustaining the proposed suspension of his license.

5. Petitioner challenged the conciliation order by filing a petition with the Division of Tax Appeals. The petition bears a United States Postal Service postmark dated July 14, 2014 and is date stamped as received by the Division of Tax Appeals on July 15, 2014.

6. The petition and petitioner's response to the subject motion seek to avoid license suspension upon the basis that he is required to care for his mother, who began to lose her memory in 1991, and his brother, who is afflicted with Down syndrome. Petitioner states that the expense of caring for his mother and brother became his obligation and he carried it out as best he could. Petitioner also notes that since 1984, he has had to cope with a series of serious medical conditions including pneumonia, obesity, high cholesterol, gout and arthritis, which sometimes prohibits him from walking. Petitioner, an attorney, currently has a limited practice of law. He submits that his practice requires him to travel to different boroughs of New York and that he must drive because he is unable to negotiate the subway system and stairs.

In a supporting affirmation, petitioner acknowledges that he incurred the arrears set forth in the affidavit of the representative of the Division of Taxation. However, he believes that his care-giving responsibilities should be considered at least in regard to the penalty and interest asserted to be due. According to petitioner, the Division has "garnish [sic] any future wages by filing various tax levies against my tax arrears which constitute a judgments [sic] against me" Petitioner also states that he is hopeful that an offer in compromise that is currently under consideration will be granted and reduce his tax obligation.

7. The answer of the Division was received by the Division of Tax Appeals on September 19, 2014. The Division subsequently brought a motion, filed on January 6, 2015, seeking an order dismissing the petition or, in the alternative, granting summary determination in favor of the Division pursuant to Tax Law § 2006 (6) and 20 NYCRR 3000.5, 3000.9 (a) and (b).

In support of its motion, the Division submitted an affidavit, dated January 5, 2015, of Matthew McNamara, who is employed as an Information Technology Specialist 3 in the Division's Civil Enforcement Division (CED). Mr. McNamara's duties involve maintenance of the CED internal website, and include creation and modification of pages on the site itself. His duties further involve the creation and maintenance of programs and reports run on a scheduled basis that facilitate and report on the movement of cases, including the creation of event codes based on criteria given by end users. 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 under Tax Law § 171-v. This process involves first reviewing internally set selection criteria to identify taxpayers owing a cumulative and delinquent tax liability (tax, penalty and interest) in excess of \$10,000.00, and then reviewing additional data to determine whether any of such taxpayers are excluded from application of the driver's license suspension provisions of Tax Law § 171-v (5) under the following elimination (or exclusion) criteria:

- the taxpayer is deceased;
- the taxpayer is in bankruptcy;

- the age of any assessments included in determining the cumulative amount of liability is more than 20 years from the notice and demand issue date;
- a formal or informal protest has been made with respect to any assessments 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; or
- the taxpayer is on an active approved payment plan.

b) The “DMV Data Match” involves reviewing information on record with DMV for a taxpayer not already excluded under the foregoing criteria to determine whether that taxpayer has a qualifying driver’s license potentially subject to suspension per Tax Law § 171-v. This review examines the following 14 data points:

- (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) mailing address: street
- (10) mailing address: city
- (11) mailing address: state
- (12) mailing address: zip code
- (13) license class
- (14) license expiration date.

If, upon this review, the Division determines that a taxpayer 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 7 (a). If the taxpayer remains within the criteria for suspension, then a

60-day notice will be issued to the taxpayer. In describing the process for the issuance of the 60-day notice, Mr. McNamara states:

“The date of the correspondence trigger will be stored on the database as the day that the 60-day notice was sent, but an additional 10 days will be added to the date displayed on the page to allow for processing and mailing. Additionally, the status will be set to ‘Approved’ and the clock will be set for seventy-five (75) days from the approval date.

The taxpayer(s) is sent the 60-day notice (form DTF-454) via regular U.S. mail to the taxpayer’s mailing address.”

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 or otherwise changed), the case will be electronically sent by the Division to DMV for license suspension.¹ Data is exchanged daily between the Division and DMV. If an issue of data transmission arises, an internal group within the Division (DMV-Failed-Suspensions) will investigate and resolve the issue. Upon successful data processing and transfer, DMV will send 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

¹ Prior to license suspension, the Division performs another “criteria for suspension” 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 remains on the Division’s system but the suspension will not proceed until the “on-hold” status is resolved. If the suspension is “closed,” then the 60-day notice will be canceled. If the taxpayer “passes” this final criteria compliance check, the suspension by DMV will proceed.

“on-hold” status can result from events such as those set forth above (e.g., the filing of a protest, a bankruptcy filing, the creation and approval of an installment payment agreement and the like). Similar to the process described in footnote 1, 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 (the 60-day notice would remain in the Division’s system). If the subsequent event resulted in “closed” status, the 60-day notice would be canceled.

A copy of the 60-day notice at issue in this matter, a consolidated statement of tax liabilities, and a payment document (form DTF-968.4), by which petitioner could remit payment against the liability 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 review of the Division’s records, that: the Division issued the 60-day notice to petitioner on September 17, 2013; the 60-day notice comports with statutory requirements; petitioner has not raised any of the specifically listed grounds for challenging such a notice set forth in Tax Law § 171-v (5); therefore, the 60-day notice has not been and should not be canceled.

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 determination² and explained that such a motion may “be granted if, upon all the papers and proof submitted, the administrative

² Although not specifically held, the implication of the Administrative Law Judge’s discussion of this issue wherein he states that the Division’s motion to dismiss the petition was improperly brought, is that such motion was denied.

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 concluded that the Division had properly issued the notice of proposed driver license suspension, and that the amount of petitioner’s past-due tax liabilities more than met the required \$10,000.00 threshold.

The Administrative Law Judge then explained that petitioner’s right to challenge the notice of proposed driver license suspension pursuant to Tax Law § 171-v (5) was limited to the following grounds: he was not the taxpayer at issue (Tax Law § 171-v [5] [i]); the past-due tax liabilities were satisfied (Tax Law § 171-v-[5] [ii]); his wages are being garnished by the department for the payment of the past-due tax liabilities or for past-due child support or combined child and spousal support arrears (Tax Law § 171-v [5] [iii]); his wages are being garnished for past-due child support or combined child and spousal support arrears pursuant to an income execution issued pursuant to Civil Practice Law and Rules § 5241 (Tax Law § 171-v [5] [iv]); his driver’s license is a commercial driver’s license (Tax Law § 171-v [5] [v]); or the department incorrectly found that he failed to comply with the terms of a payment arrangement more than once in a twelve month period (Tax Law § 171-v [5] [vi]).

However, the Administrative Law Judge then noted that Tax Law § 171-v (3) (d) requires that any notice of proposed driver’s license suspension issued by the Division include “a statement that the suspension of the taxpayer’s driver’s license shall continue until the past-due liabilities are fully paid or the taxpayer makes payment arrangements satisfactory to the commissioner.” The Administrative Law Judge concluded that the taxpayer’s assertion that he had submitted an offer in compromise, without the Commissioner of Taxation and Finance’s

acceptance of the offer, does not constitute a payment arrangement “satisfactory to the Commissioner.”

With regard to petitioner’s assertions that tax levies had been filed against him, the Administrative Law Judge concluded that there was no showing that petitioner’s wages were being garnished, and that Tax Law § 171-v [5] [iii] did not provide a right to challenge a notice of proposed driver’s license suspension based upon the filing of a tax levy.

With regard to petitioner’s assertions that the suspension of his license would cause a hardship for himself and his family, the Administrative Law Judge explained that personal hardships did not constitute valid grounds for challenging a notice of proposed driver license suspension under Tax Law § 171-v.

In conclusion, the Administrative Law Judge found that there was no dispute as to the facts and no basis in law to grant the petition. Accordingly, the Administrative Law Judge granted the Division’s motion for summary determination.

SUMMARY OF ARGUMENTS ON EXCEPTION

Petitioner continues to assert on exception that tax levies had been filed against him. On exception, however, petitioner no longer argues that such levies are the equivalent of his wages being garnished, but rather that such levies are the equivalent of making payment arrangements satisfactory to the Division. Thus, petitioner asserts that he may avoid suspension of his driver’s license pursuant to Tax Law § 171-v (3) (b).

Petitioner argues that the Division seeks to suspend his driver’s license in violation of his rights under the Federal and State constitutions. Petitioner argues that Tax Law § 171-v is being unconstitutionally applied retroactively to tax liabilities incurred prior to the enactment of the statute. In particular, petitioner argues that the statute is punitive in nature and no punitive

statute may be applied to punish persons for actions that occurred prior to the passage of the statute. Petitioner also argues that he has a property right in his driver's license and that such right cannot be taken away based upon his inability to pay past-due tax liabilities. Petitioner contends that such a suspension of a driver's license constitutes a violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, because it disproportionately affects people without the means to pay the past-due tax liabilities.

The Division argues that as petitioner did not challenge the proper issuance of the notice of proposed driver's license suspension referral, or his receipt of the notice, or raise any one of the six specifically enumerated grounds set forth in Tax Law § 171-v (5), petitioner's exception should be denied and the determination of the Administrative Law Judge affirmed.

With regard to petitioner's constitutional arguments, the Division argues that both the United States Supreme Court and New York Court of Appeals have specifically upheld the application of a new statutory method to collect taxes to tax liabilities that existed prior to the enactment of the relevant statute. The Division also argues that while the right to a driver's license may be an important property right, it is not a fundamental right under constitutional law, and thus Tax Law § 171-v is not subject to review under strict scrutiny standards. The Division, citing *Wells v Malloy* (402 F Supp 856 [1975] *affd without opinion* 538 F2d 317 [1976]), argues that the collection of past-due tax liabilities by the suspension of a driver's license is fair and reasonable. Finally, the Division asserts that petitioner's present inability to pay the tax did not make the collection method unreasonable.

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).”

In determining a motion for summary determination, the evidence must be viewed in a manner most favorable to the party opposing the motion (*see Rizk v Cohen*, 73 NY2d 98, 103 [1989]); *Museums at Stony Brook v Village of Patchogue Fire Dept.*, 146 AD2d 572 [1989], 573-74 [1989]; *see also Weiss v Garfield*, 21 AD2d 156, 158 [1964]). Petitioner made the following factual assertions in his response to the Division's motion for summary determination: (1) he is required to care for an ill mother and brother who has Down syndrome; (2) he has suffered from a variety of medical ailments; (3) he has a limited practice of law and is required to drive, as his medical ailments prohibit him from using public transportation; (4) the Division had filed levies against him based upon his past-due tax liabilities; (5) he had submitted an offer an compromise to the Division; and (6) he acknowledged that he had incurred the past-due tax liabilities underlying the notice of proposed driver license suspension. Even assuming all of the facts asserted by petitioner to be true, the Administrative Law Judge concluded that all of petitioner's arguments failed.

After carefully reviewing the analysis given to the issues before the Administrative Law Judge, we believe that the Administrative Law Judge completely and correctly addressed such issues and we affirm the determination of the Administrative Law Judge based upon the

reasoning contained therein. Thus, we turn to petitioner's arguments on exception, all of which differ from those presented to the Administrative Law Judge.³

Tax Law § 171-v requires that the notice of proposed driver license suspension include a clear statement of the past due tax liabilities, together with a statement that the taxpayer can avoid license suspension by paying the debt or entering into a payment agreement acceptable to the Division. Petitioner claims that the tax levies, which he asserts were filed against him by the Division, are the equivalent of entering into a payment agreement acceptable to the Division. Petitioner has not pointed to any evidence or legal theory that suggests a levy issued against him by the Division could be construed as a payment agreement acceptable to the Division. Furthermore, the suspension of a driver's license pursuant to Tax Law § 171-v does not limit the collection methods the Division is allowed to utilize to collect the underlying past-due tax liabilities, such as the levies discussed herein (*see* Tax Law § 171-v [7]).

Petitioner also 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 Federal and State constitutions. As we recently held in *Matter of Balkin*, Tax Appeals Tribunal, February 10, 2016, new remedies for the collection of delinquent taxes may be validly applied to liabilities existing before the enactment of the statute (*citing League v State of Texas*, 184 US 156, 158 [1902] ["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"]; *Matter of City of New York*, 290 NY 236, 241 [1943] [where a taxpayer has already been provided with due process by having been given

³ The Tribunal has consistently held that while arguments requiring an additional factual foundation are not allowed on exception, either party may raise new arguments that are strictly legal in nature (*see Matter of Chuckrow*, Tax Appeals Tribunal, July 1, 1993).

notice and an opportunity to be heard, 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]). The principles stated in these cases clearly apply to the facts in the instant matter, where petitioner had an opportunity to administratively challenge the underlying past-due tax liabilities, but chose not to, and indeed, admits incurring the underlying past-due tax liabilities.

We do not find, as petitioner asserts, that the proposed suspension of his driver's license is in the nature of a penalty. Rather, it is a method, chosen by the Legislature, to collect past-due tax liabilities. The cases cited by petitioner in support of his position, *Kansas v Hendricks*, 521 US 346 (1997); *Schall v Martin*, 467 US 253 (1984), *Allen v Illinois*, 478 US 364 (1986) and a dissenting opinion in *Seling v Young*, 531 US 250 (2001), all deal with issues of civil or pre-trial confinement, and thus cannot be compared to the facts of this case where petitioner's driver's license has been suspended.

We do, however, 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 educational 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 also asserts that the differentiation in treatment afforded to those who can afford to pay their past-due tax liabilities and those who cannot amounts to a violation of his rights to equal protection under the law as set forth in the Fourteenth Amendment to the United States Constitution. In equal protection cases, wealth discrimination alone does not provide a basis for imposing a strict scrutiny standard of review (*San Antonio Ind. School Dist. v Rodriguez*, 411 US 1, 28-29 (1973), *rehearing denied* 411 US 959 (1973)). Furthermore, while petitioner has an important property interest in his driver's license, his right to retain the license is not a fundamental right (*Wells v Malloy*). Thus, as a strict standard of review is not applicable, the question is whether New York has a rational basis for suspending drivers' licenses of those with unpaid past-due tax liabilities in excess of \$10,000.00. The collection of past-due tax liabilities provides a rational basis for Tax Law § 171-v (*see Wells v Malloy* 402 F Supp at 860-861). Furthermore, suspending the driver's license of petitioner, when he cannot afford to pay, cannot be held to be an unreasonable method of accomplishing this goal, as petitioner's circumstances may change (*id.* at 861). It would be unreasonable and a "practical impossibility, not to mention an invasion of privacy," to require the Division to monitor the financial position of each taxpayer meeting the threshold requirements of Tax Law § 171-v in order not to issue notices of proposed driver license suspension until the Division determined that a given taxpayer was able to pay the underlying tax liabilities (*id.*).

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 statute as applied under the circumstances of this case was unconstitutional.

Accordingly its is ORDERED, ADJUDGED and DECREED that:

1. The exception of Juan Kip Lenoir is denied;
2. The determination of the Administrative Law Judge is affirmed;
3. The petition of Juan Kip Lenoir is denied; and
4. The notice of proposed driver license suspension referral, dated September 17, 2013,

is sustained.

DATED: Albany, New York
March 18, 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