

STATE OF NEW YORK  
TAX APPEALS TRIBUNAL

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In the Matter of the Petition  
of  
**ARIEL JIMENEZ**  
for Review of a Notice of Proposed Driver License  
Suspension Referral under Tax Law § 171-v.

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DECISION  
DTA NO. 828477

Petitioner, Ariel Jimenez, filed an exception to the determination of the Administrative Law Judge issued on June 18, 2020. Petitioner appeared by Hodgson Russ LLC (William J. Comiskey, Esq., and Ariele R. Doolittle, Esq., of counsel). The Division of Taxation appeared by Amanda Hiller, Esq. (Karry L. Culihan, Esq., of counsel).

Petitioner filed a brief in support of the exception. The Division of Taxation filed a letter brief in opposition. Petitioner filed a reply brief. Oral argument was held by teleconference on January 28, 2021, which date began the six-month period for the issuance of this decision.

After reviewing the entire record in this matter, the Tax Appeals Tribunal renders the following decision. Commissioner Monaco took no part in the consideration of this matter.

***ISSUE***

Whether past-due tax preparer penalties assessed pursuant to Tax Law § 685 (aa) may be enforced through the driver license suspension program under Tax Law § 171-v.

***FINDINGS OF FACT***

We find the facts as determined by the Administrative Law Judge. Those facts appear below.

1. Petitioner, Ariel Jimenez, was a tax return preparer who was audited by the Division of Taxation (Division) with respect to returns that he prepared for tax years 2009 through 2011.

2. As a result of the audit, the Division issued three notices of deficiency (Assessment Nos. L-038866440, L-038866437 and L-038866435) to petitioner, which asserted preparer penalties under Tax Law § 685 (aa) (the Preparer Assessments), as follows:

Assessment No.	Penalty Amount Assessed
L-038866440	\$243,000.00
L-038866437	\$ 13,000.00
L-038866435	\$464,000.00
Total	\$720,000.00

3. Petitioner filed a petition with the Division of Tax Appeals protesting the Preparer Assessments.

4. On April 25, 2016, petitioner entered a stipulation for discontinuance with the Division, settling his protest of the Preparer Assessments, as follows:

“Deficiency: \$0.00  
Interest: \$0.00  
Penalty: \$162,000.00”

The stipulation for discontinuance further provided, in part, that “This stipulation is subject to the condition that petitioner remit \$40,500.00 to the Division by June 20, 2016; otherwise the penalty will [sic] recomputed to be \$180,000.00.”

5. Petitioner failed to remit payment in the amount of \$40,500.00 by the date established in the stipulation for discontinuance, and the Preparer Assessments were recomputed to total \$180,000.00. Although the stipulation for discontinuance does not provide a breakdown of the reduced amount per assessment number, the parties agreed in the stipulation of facts that the Preparer Assessments were reduced as follows:

Assessment No.	Penalty Amount Assessed
L-038866440	\$ 70,000.00
L-038866437	\$ 10,000.00
L-038866435	\$100,000.00
Total	\$180,000.00

6. On May 13, 2016, the Division of Tax Appeals issued an order of discontinuance for the petition protesting the Preparer Assessments, pursuant to the stipulation for discontinuance.

7. On December 14, 2016, the Division issued a notice of proposed driver's license suspension referral to petitioner (60-day notice).

8. The 60-day notice stated, in part, that "[n]ew legislation allows New York State to suspend the driver's licenses of persons who have delinquent unpaid tax debts. Our records indicate you owe the amounts listed on the enclosed Consolidated Statement of Tax Liabilities."

9. Included with the 60-day notice was a consolidated statement of tax liabilities (form DTF-967-E), dated December 14, 2016, setting forth the Preparer Assessments listed above (*see* finding of fact 2), as well as an assessment for tax year 2014, as follows:

Assessment ID	Tax Period Ended	Tax Amount Assessed	Interest Amount Assessed	Penalty Amount Assessed	Current Balance Due
L-043943109	12/31/14	\$3,291.00	\$518.04	\$1,069.50	\$4,878.54
L-038866440	12/31/10	0.00	\$2,761.53	\$243,000.00	\$245,761.53
L-038866437	12/31/11	0.00	\$147.73	\$13,000.00	\$13,147.73
L-038866435	12/31/09	0.00	\$5,273.04	\$464,000.00	\$469,273.04
Total					\$733,060.84

The consolidated statement of tax liabilities did not accurately set forth the correct amount of the Preparer Assessments as reflected in the stipulation for discontinuance (*see* findings of fact 4 and 5).

10. Petitioner timely requested a conciliation conference with the Bureau of Conciliation and Mediation Services (BCMS). On August 28, 2017, petitioner's written request to discontinue the matter before BCMS was accepted as filed. On November 20, 2017, petitioner filed the petition in this matter with the Division of Tax Appeals.

11. In the petition challenging the 60-day notice, petitioner has not raised any of the grounds set forth in Tax Law § 171-v (5). Instead, petitioner asserts that the preparer penalties

imposed under Tax Law § 685 (aa) do not constitute “tax liabilities” within the meaning of Tax Law § 171-v (1) and that the statutory limitations of permissible grounds for challenging a notice of proposed driver’s license suspension referral set forth in Tax Law § 171-v (5) do not apply to him because he is not a “taxpayer with past-due tax liabilities” as required by that section.

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

The Administrative Law Judge disagreed with petitioner’s contention that penalties imposed under Tax Law § 685 (aa) are not tax liabilities as defined in Tax Law § 171-v (1). To the contrary, the Administrative Law Judge found that the statutory definition includes such penalties. The Administrative Law Judge noted that the Tax Appeals Tribunal has upheld driver’s license suspensions for unpaid liabilities consisting of penalties and interest only. Accordingly, the Administrative Law Judge concluded that petitioner had more than \$10,000.00 in past-due tax liabilities and denied the petition.

***ARGUMENTS ON EXCEPTION***

As he did below, petitioner contends that a proper reading of Tax Law § 171-v (1) supports his position that stand-alone penalties, defined by petitioner as penalties that are “not connected” to unpaid taxes, surcharges or fees, are not tax liabilities under the statutory definition. Petitioner asserts that the statute’s language and punctuation make clear that penalties must be due on a tax to give rise to a license suspension. Petitioner argues that penalties imposed under Tax Law § 685 (aa) are not due on a tax and thus do not fall within the statute’s definition of tax liabilities.

Petitioner contends that the Tribunal decisions cited in the determination are irrelevant because those decisions do not address the specific issue raised in the present matter.

Petitioner also contends that the determination's interpretation of Tax Law § 171-v (1) logically leads to the expansion of the license suspension program to include penalties that are outside the Tax Law. According to petitioner, this interpretation improperly broadens the reach of the statute and leads to a plainly absurd result. Petitioner further contends that inclusion of stand-alone tax preparer penalties is inconsistent with the statute's stated purpose of improving tax collection. Petitioner also asserts that Tax Law § 171-v was not intended to provide the Division with an additional punishment to impose on those who have been penalized for some transgression, but who do not owe any tax, surcharge or fee administered by the Division.

Petitioner also argues that Tax Law § 171-v, which deprives an individual of a substantial property right (a driver's license), should be interpreted narrowly to reach only those whom the Legislature clearly intended to reach. Petitioner contends that the application of Tax Law § 171-v to persons who owe a stand-alone penalty, unconnected to a tax deficiency, improperly broadens the reach of the statute beyond the Legislature's intent.

The Division agrees with the Administrative Law Judge's analysis of the language of Tax Law § 171-v (1).

The Division also notes that Tax Law § 685 (l) provides that all penalties assessed pursuant to Tax Law § 685 are to be collected in the same manner as taxes. Hence, according to the Division, it is appropriate to use the collection tool of a driver's license suspension under Tax Law § 171-v to enforce an assessment of tax preparer penalties under Tax Law § 685 (aa).

The Division disputes petitioner's contention that the determination's interpretation could lead to the absurd result of the Division seeking driver's license suspensions for non-Tax Law penalties. The Division asserts that the language of Tax Law § 171-v makes clear that the suspension program applies only to penalties under the Division's administrative authority.

The Division also contends that its proposed interpretation of Tax Law § 171-v is entitled to deference.

### ***OPINION***

Before addressing the issue presented, we note the basis for our jurisdiction in this matter. Petitioner protests the 60-day notice issued pursuant to Tax Law § 171-v. Such a protest is restricted by Tax Law § 171-v (5), which provides, in relevant part: “Notwithstanding any other provision of law, and except as specifically provided herein, the taxpayer shall have no right to commence a court action or proceeding or to any other legal recourse against the [Division] . . . regarding a notice issued by the [Division] pursuant to this section.” Tax Law § 171-v (5) goes on to enumerate grounds upon which a taxpayer may challenge a 60-day notice. Petitioner has not raised any of those grounds in this proceeding (*see* finding of fact 11). Tax Law § 171-v (5) does not, however, “foreclose limited review to ensure ‘that [an] administrative official has not acted in excess of the grant of authority given him [or her] by statute or in disregard of the standard prescribed by the [L]egislature’” (*Matter of Jimenez v New York State Dept. of Taxation & Fin.*, 143 AD3d 1221, 1222 [3rd Dept 2016], *lv denied* 28 NY3d 914 [2017] quoting *Matter of Guardian Life Ins. Co. of Am. v Bohlinger*, 308 NY 174, 183 [1954]). The court in *Jimenez* specifically identified the issue of whether tax preparer penalties could result in a license suspension under Tax Law § 171-v as subject to such review (*id.*). As petitioner raises the same issue in the present matter, we may consider his protest.<sup>1</sup>

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<sup>1</sup> Consistent with this principle, this Tribunal has examined whether the Division has provided notice of a proposed driver’s license suspension to a taxpayer in accordance with Tax Law § 171-v (3) (*see e.g. Matter of Jacobi*, Tax Appeals Tribunal, May 12, 2016, *confirmed* 156 AD3d 1154 [3rd Dept 2017], *lv denied* 31 NY3d 1061 [2018], *cert denied* 139 S Ct 572 [2018]).

Tax Law § 171-v authorizes the Division, in cooperation with the Department of Motor Vehicles, to suspend the driver's licenses of "taxpayers with past-due tax liabilities equal to or in excess of [\$10,000.00]" (Tax Law § 171-v [1]). The stated purpose of the suspension program is to "improve tax collection" (*id.*). Petitioner's liabilities exceeded \$10,000.00 and were past-due as required.<sup>2</sup>

As noted, the dispute here is whether tax preparer penalties imposed pursuant to Tax Law § 685 (aa) are tax liabilities for purposes of the license suspension statute. Tax Law § 171-v (1) defines tax liabilities as follows:

"For the purposes of this section, the term 'tax liabilities' shall mean any tax, surcharge, or fee administered by the commissioner, or any penalty or interest due on these amounts owed by an individual with a New York driver's license."

Tax Law § 685 (aa) imposes a penalty on tax preparers where such a person takes a position on a return that results in an understatement of tax liability and the preparer either: (1) knew or should have known that the position was improper or; (2) acted recklessly or intentionally disregarded the law in taking the improper position. Tax Law § 685 (aa) (1) permits a penalty of up to \$1,000.00 for each such improperly prepared filed personal income tax return. The maximum penalty increases to \$5,000.00 per return under Tax Law § 685 (aa) (2). It appears that the penalties at issue were assessed under Tax Law § 685 (aa) (1).<sup>3</sup>

Although we have previously sustained notices of proposed driver's license suspension referrals where the past-due liability was for penalty and interest only, the issue of whether such penalty fell within the statutory definition of tax liabilities was neither raised by the petitioners in

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<sup>2</sup> Past-due here means liabilities that are fixed and final and no longer subject to administrative or judicial review (Tax Law § 171-v [1]).

<sup>3</sup> The Division's letter brief filed with the Administrative Law Judge states: "There is no dispute that Petitioner was in fact subject to tax preparer penalties under Tax Law § 685 (aa) (1)."

those cases nor addressed in our decisions (*see Matter of Salaria*, Tax Appeals Tribunal, September 28, 2018; *Matter of Nastasi*, Tax Appeals Tribunal, July 16, 2018; *Matter of DeMartino*, Tax Appeals Tribunal, December 16, 2016). We agree with petitioner that those cases are not precedent here. We note also that *Matter of Jimenez v New York State Dept. of Taxation & Fin.* did not address this question either, as the Appellate Division dismissed that appeal as untimely (143 AD3d at 1224).

Resolution of the present dispute is thus a matter of statutory construction. Accordingly, our task is to ascertain and give effect to the legislative intent (*Matter of Yellow Book of N.Y., Inc. v Commissioner of Taxation & Fin.*, 75 AD3d 931, 932 [3rd Dept 2010], *lv denied* 16 NY3d 704 [2011]). We generally presume that statutes mean what they say (*Matter of Stewart's Shops Corp. v New York State Tax Appeals Trib.*, 172 AD3d 1789, 1792 [3rd Dept 2019] [“The best evidence of the Legislature’s intent is the text of the statute itself”]; *Matter of Friss v City of Hudson Police Dept.*, 187 AD2d 94, 96 [3d Dept 1993] [“every word in a statute is to be given effect and to be presumed to have some meaning”]; McKinney’s Cons Laws of NY, Book 1, Statutes § 231). Additionally, “the language of a statute is generally construed according to its natural and most obvious sense, without resorting to artificial or forced construction” (McKinney’s Cons Laws of NY, Book 1, Statutes § 94). Ultimately, proper statutory interpretation focuses on “the precise language of the enactment in an effort to give a correct, fair and practical construction that properly accords with the discernable intention and expression of the Legislature [citation omitted]” (*Matter of 1605 Book Ctr. v Tax Appeals Trib. of State of N.Y.*, 83 NY2d 240, 244, 245 [1994], *cert denied* 513 US 811 [1994]).

Petitioner bears the burden of proof to show that the assessed tax preparer penalties are not tax liabilities as that term is defined in Tax Law § 171-v (1), and that, accordingly, the Division’s



issuance of the 60-day notice was improper (20 NYCRR 3000.15 [d] [5]). However, as Tax Law § 171-v would impose the burden of a driver's license suspension on petitioner, we follow the rule of construction applicable to tax imposition statutes and construe its language narrowly (*see Debevoise & Plimpton v New York State Dept. of Taxation & Fin.*, 80 NY2d 657, 661 [1993] [any doubts concerning the "scope and application" of an imposition statute are to be resolved in favor of the taxpayer]; *American Cyanamid & Chem. Corp. v Joseph*, 308 NY 259, 263 [1955] [the burdens imposed by taxing statutes are "not to be extended by implication"]). Finally, as the issue presented is one of pure statutory construction, we do not defer to the Division's proposed interpretation (*Matter of Balbo v New York State Tax Appeals Trib.*, 163 AD3d 1364, 1366 [3rd Dept 2018]).

Turning now to the specific statutory language, we agree with petitioner that "administered by the commissioner" modifies the meaning of "any tax, surcharge, or fee," but does not modify the meaning of "any penalty" in the statutory text. "Where words sensibly apply to a particular antecedent branch of a sentence in a statute or regulation, they should not be extended so as to apply to that which follows" (*Matter of Mularadelis v Haldane Cent. School Bd.*, 74 AD2d 248, 253-54 [2d Dept 1980], *appeal dismissed* 54 NY2d 760 [1981]). We note that the Division does not argue to the contrary on this point.

The crux of the dispute concerns the meaning of the next phrase in the definitional sentence, namely, "or any penalty or interest due on these amounts." Petitioner contends that "due on these amounts" modifies both "penalty" and "interest." Petitioner would thus break the definition down into two categories: 1) any tax, surcharge or fee administered by the commissioner; or 2) any penalty or interest due on these amounts. Under this interpretation, "any penalty" must be "due on these amounts" to fall within the definition. Furthermore, "these

amounts” would refer back to “any tax, surcharge, or fee administered by the commissioner.” Accordingly, petitioner contends that a penalty must be “due on” a “tax, surcharge, or fee administered by the commissioner,” to qualify as a tax liability under the definition. As tax preparer penalties under Tax Law § 685 (aa) are not due on a tax, surcharge, or fee, such penalties are not tax liabilities under Tax Law § 171-v (1) and therefore may not result in a driver’s license suspension, according to petitioner. This is a plausible literal reading of the statutory text.

We note here that we disagree with the Administrative Law Judge’s finding, and the Division’s contention, that petitioner’s construction ignores the “or” between penalty and interest and thereby violates the previously cited rule that every word in a statute must be given effect. Petitioner’s construction gives the word its due as a disjunctive conjunction.

The Division’s proposed construction breaks the definition down into three categories: 1) any tax, surcharge or fee administered by the commissioner; or 2) any penalty; or 3) interest due on these amounts. In this view, the definition is a series of three discrete items each separated by the disjunctive “or.” Accordingly, “due on these amounts” would modify only the immediately preceding “interest.” Hence, a penalty need not be “due on” a tax to fall within the definition. Any penalty imposed under the Tax Law, including the preparer penalties at issue, could thus result in a driver’s license suspension. Although a comma after “penalty” would have aided the Division’s interpretation, the rules of construction direct us not to place too much reliance on punctuation, or to allow punctuation to interfere with a reasonable interpretation (McKinney’s Cons Laws of NY, Book 1, Statutes § 253). Accordingly, the absence of such a comma notwithstanding, we find that the Division’s construction is also a plausible literal reading of the statutory text.

We disagree with petitioner's contention that the Division's construction is flawed because it logically leads to the expansion of the license suspension program to include penalties that are outside the Tax Law. We agree with the Division that, given the context, "any penalty" necessarily means penalties that are "administered by the commissioner." As noted, the stated purpose of Tax Law § 171-v is to improve *tax* collection (Tax Law § 171-v [1]). Moreover, a taxpayer may avoid a driver's license suspension by making payment arrangements with the Division (Tax Law § 171-v [3] [b]). As the Division notes, it has no authority to make payment arrangements for penalties imposed outside of the Tax Law. In our view, then, it would be illogical to construe "any penalty" so expansively (McKinney's Cons Laws of NY, Book 1, Statutes § 145 [absurd constructions are to be rejected]).

To resolve the ambiguity of these two facially valid literal constructions of Tax Law § 171-v (1), either of which would advance the statute's stated purpose of improving tax collection, we must rely on the rules of construction that direct us to presume reasonable results and to avoid objectionable consequences (*People v Ortega*, 127 Misc 2d 717, 724 [Sup Ct, Bronx County 1985], *affd* 118 AD2d 523 [1st Dept 1986], 69 NY2d 763 [1987] [courts should adopt construction that will not cause objectionable results]; *Zappone v Home Ins. Co.*, 55 NY2d 131, 137 [1982] [proper construction of statutes presumes that the Legislature intended a reasonable result]; *Matter of Friedman-Kien v City of New York*, 92 AD2d 827, 828 [1st Dept 1983], *affd* 61 NY2d 923 [1984] [courts will not construe statutes in such a manner as to reach absurd and unexpected consequences]; McKinney's Cons Laws of NY, Book 1, Statutes §§ 141, 143, 145).

The Legislature has expressed its intent, throughout the Tax Law, to collect penalties in the same manner as taxes (*see e.g.* Tax Law §§ 289-b [f], 315 [a], 481 [1] [a] [v], [1] [b] [iii]),

512 [f], 527 [e], 685 [l], 1145 [a] [7]). As applicable here, Tax Law § 685 (l) requires that all penalties imposed under Tax Law § 685, including the penalties imposed under Tax Law § 685 (aa), be collected in the same manner as income taxes. Neither Tax Law § 685 (l) nor any of these other similar provisions make any distinction between penalties due on a tax and stand-alone penalties with respect to collection. The Division's construction of "tax liabilities," by which all penalties imposed under the Tax Law are included in the definition, is consistent with the Legislature's intent to treat all penalties like taxes for purposes of collection.

Petitioner asserts that the Legislature intended a narrower definition of tax liabilities for purposes of Tax Law § 171 -v than that used throughout the Tax Law. Petitioner notes that the opening phrase of the definition, "[f]or purposes of this section," indicates that what follows may differ from other definitions in the Tax Law. The line that petitioner proposes to draw between these definitions, however, is plainly arbitrary.

In addition to the preparer penalties at issue, the Tax Law imposes many penalties that are not due on a tax deficiency owed by the person against whom the penalty assessment is made (*see e.g.* Tax Law §§ 29 [e], 481 [1] [b] [i]; 685 [g], [h], [i], [j]; 1145 [a] [3], [g], [h]). While some of these penalties are for relatively minor or technical violations (*e.g.* Tax Law § 685 [h] [failure to file certain information returns]), others are more substantive (*e.g.* Tax Law §§ 481 [1] [b] [i] [possession of unstamped or unlawfully stamped cigarettes] and 685 [g] [responsible person willful failure to collect and pay over withholding tax]). Petitioner's interpretation of the statute would exclude all such penalties from the definition of tax liabilities under Tax Law § 171-v (1). There is little to distinguish between the kind of conduct that these more substantive stand-alone penalties seek to deter, and conduct that results in penalties imposed on a deficiency for negligence or fraud (*see e.g.* Tax Law §§ 685 [b], [e]; 1145 [a] [1], [2]). There is, therefore,

no basis to distinguish between stand-alone penalties as a group and other penalties imposed under the Tax Law to justify different treatment for collection purposes.

Additionally, a difference in terminology between sales and income tax leads to unequal results for substantially similar Tax Law transgressions under petitioner's interpretation, contrary to the canons of construction (McKinney's Cons Laws of NY, Book 1, Statutes § 147 [courts should adopt a construction which will produce equal results]). Specifically, consider an individual who is under a duty to act for a business for both income and sales tax purposes (Tax Law §§ 685 [n] and 1131 [1]) and the business owes both withholding and sales taxes. Such an individual may face liability with respect to both such deficiencies. However, his income tax liability will be assessed as a stand-alone penalty (equal to the amount of withholding tax required to be collected and paid over) and his sales tax liability will be assessed as a tax (equal to the amount of sales tax required to be collected and paid over) (Tax Law §§ 685 [g] and 1133 [a]). Under petitioner's construction, this individual's sales tax liability could result in a driver's license suspension, but his income tax liability could not.

Petitioner's interpretation would also arbitrarily exclude some interest from the definition of tax liabilities. As noted above, "these amounts" under petitioner's interpretation refers to "any tax, surcharge, or fee administered by the commissioner." Hence, interest must be imposed on a tax, surcharge, or fee to meet the statutory definition, according to petitioner. Tax Law § 684 (g), however, imposes interest on penalties imposed under article 22 and Tax Law § 684 (f) requires that such interest be assessed, collected, and paid in the same manner as income tax. Interest imposed under Tax Law § 684 (g) would not be considered a tax liability for driver's license suspension purposes under petitioner's construction. As an example of the incongruity of this result, consider a taxpayer with past-due liabilities consisting of an underpayment of income

tax, interest on such underpayment under Tax Law § 684 (a), fraud penalty under Tax Law § 685 (e), and interest on such fraud penalty under Tax Law § 684 (g). Under petitioner's proposed construction, the underpayment of tax, the interest on the underpayment and the fraud penalty would be considered tax liabilities under Tax Law § 171-v (1), but the interest on the fraud penalty would not because it is imposed on a penalty and not a tax.

Pursuant to the foregoing discussion, we find that petitioner has failed to meet his burden to show that the assessed tax preparer penalties are not tax liabilities as that term is defined in Tax Law § 171-v (1). He has thus failed to show that the Division's issuance of the 60-day notice was improper (20 NYCRR 3000.15 [d] [5]).

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Ariel Jimenez is denied;
2. The determination of the Administrative Law Judge is affirmed;
3. The petition of Ariel Jimenez is denied; and
4. The notice of proposed driver license suspension referral dated December 14, 2016, as modified by findings of fact 4, 5 and 9, is sustained.

DATED: Albany, New York  
July 28, 2021

/s/ Anthony Giardina  
Anthony Giardina  
President

/s/ Dierdre K. Scozzafava  
Dierdre K. Scozzafava  
Commissioner