

Commercial/Bankruptcy/Tax Law

New York State and the Internal Revenue Service: Grounding Taxpayers

Both New York State and the Internal Revenue Service ("IRS") now have the ability to restrict delinquent taxpayers' ability to travel, whether by suspending their driver's licenses or by revoking their passports.

Driver's License Suspension

New York State can suspend a taxpayer's driver's license if (1) a taxpayer owes \$10,000 or more in taxes, penalties, or interest, and



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(2) no collection resolution is in place (such as an installment payment agreement, income execution, or offer in compromise).¹ Part P of Chapter 59 of the Laws of 2013 was the first statutory authority to empower the New York State Department of Taxation and Finance and the Department of Motor Vehicles ("DMV") to establish a program to suspend the drivers' licenses of taxpayers with substantial unpaid tax liabilities. New York State will allow limited suspensions in some cases, such as allowing certain trips to and from work.

In August 2013, a first round of over 17,000 suspension notices were mailed to taxpayers, forcing people to come forward and try to resolve their tax debts.² Just months later, in March 2014, Governor Cuomo announced that almost 9,000 New Yorkers had had their licenses suspended under the new law.³ The program is hitting taxpayers where it hurts, especially here on Long Island, where residents are so reliant on their cars.

After New York State identifies delinquent taxpayers, it sends them a "Notice of Proposed Driver License Suspension Referral," informing them that they have 60 days to enter into a collection resolution with the State.⁴ If there is no resolution within 60 days, New York State will notify the DMV of the taxpayer's delinquent status.⁵ The DMV will then send an "Order of Suspension or Revocation" to the taxpayer informing him that, unless the tax liabilities are addressed within 15 days, his license will be suspended. Between these two notices, the taxpayer has 75 days to resolve the tax issues. However, thanks to bureaucratic delays, the time period is typically 85 to 90 days.

For eligible taxpayers, there are exceptions to the program. For example, commercial drivers are not subject to driver's license suspension.⁶ In addition, those who already have a wage garnishment in place to pay child support, or have an agreement with the collection arm of child support, are also exempt.⁷ Other exceptions include taxpayers who are seeking innocent spouse relief or those for whom enforcement of past liabilities has been stayed by a petition in bankruptcy.⁸ Notably, the law contains no exception for provable hardship.



Many taxpayers have challenged the law, but to no avail. In *In re Jacobi*, the taxpayer failed in her due process challenge to the denial of her offer in compromise.⁹ The Tax Appeals Tribunal sustained a 60-day Notice of Proposed Driver License Suspension and held that the law does not permit challenges to a license suspension based on the alleged unreasonableness of the Department of Taxation and Finance's rejection of an offer in compromise.

Similarly, in *In re Balkin*, the taxpayer was unsuccessful in his claim that retroactive application of the law to his taxes that were due prior to the enactment of the statute was in violation of his due process rights.¹⁰

Moreover, in *In re Lenoir*, the Tax Appeals Tribunal held that a driver's license is not a "fundamental right." The need to collect past-due liabilities constituted a rational basis for suspending the driver's licenses of those with unpaid past-due tax liabilities in excess of \$10,000.¹¹

From New York State's point of view, the program has been a success. As a result of the program, taxpayers have paid over \$420 million in delinquent taxes to date. In fact, the program has been so successful that Governor Cuomo proposed lowering the threshold to just \$5,000, impacting approximately 11,000 more taxpayers.¹² Governor Cuomo also wanted to expand the program to include both professional and business licenses. Fortunately, for the taxpayers, both of the Governor's proposals were rejected by the legislature.

Revocation or Denial of Passport

Not wanting to be outdone by the states, in March 2011, the United States Government Accountability Office issued a report titled the "Potential for Using Passport Issuance to Increase Collection of Unpaid Taxes."¹³ In response, last December, Congress buried a provision inside a 1,300-page highway bill called the Fixing America's Surface Transportation Act,¹⁴ allowing revocation of a person's passport if he or she owes the IRS \$50,000 or more

and where the IRS has filed either a Notice of Federal Tax Lien or a levy.¹⁵ Significantly, this \$50,000 includes both penalties and interest, not just taxes, and will be adjusted upward for inflation in \$1,000 increments.¹⁶

The resulting law, codified at 26 U.S.C. § 7345 of the tax code is titled Revocation or Denial of Passport in Case of Certain Tax Delinquencies. Because the law is so new, there is currently no official guidance available other than the language in the statute.

The statute provides that the Commissioner of Internal Revenue may notify the Secretary of State if an individual has a "seriously delinquent tax debt," which is defined as \$50,000 or more.¹⁷ The Secretary of State is then permitted to deny the issuance or renewal of a passport to that individual. The Secretary is also permitted to revoke passports in such cases. Note that the statute provides that the IRS must contemporaneously give notice to the individual involved.¹⁸

Also, if the individual is outside the United States, the Secretary of State may also limit a previously issued passport to only return travel to the United States or issue a new limited passport that only permits return to the United States. Finally, there is an exception that will allow the State Department to issue a passport for emergency reasons.¹⁹

REAL ID Act of 2005

Another possible wrinkle regarding travel for taxpayers is presented by the REAL ID Act of 2005, which "set standards for the issuance of sources of identification, such as driver's licenses."²⁰ The REAL ID Act establishes minimum security standards for state-issued driver's licenses and identification cards and prohibits federal agencies, including the Department of Homeland Security and the Transportation Security Administration ("TSA"), from accepting for official purposes license and identification cards from states that do not meet these standards.²¹

According to the Department of Homeland Security website, effective

January 22, 2018, if you have a driver's license or identification card issued by a state that does not meet the requirements of the REAL ID Act, you will be required to present an alternative form of identification acceptable to TSA (such as a U.S. passport) in order to board a commercial domestic flight.²² Thereafter, starting October 1, 2020, every air traveler will need a REAL ID-compliant license, or another acceptable form of identification, for domestic air travel.²³ Although New York State is not yet compliant with these standards, it was granted an extension until October 10, 2017 to become so.²⁴

Theoretically, in the event that New York State does not comply with the standards of the REAL ID Act by 2018, taxpayers who were denied passports due to tax debts may find themselves unable to board any flights in the United States, regardless of destination.

Taxpayers should be wary of neglecting any tax liabilities or allowing tax debts to accumulate if they wish to travel, whether abroad, domestically, or even locally with their own vehicle. Practitioners should warn their clients of the possibility of losing one's driving and travelling privileges due to unpaid taxes, whether owed to the IRS or New York State.

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1 Tax Law § 171-v.

2 N.Y. State, Governor Cuomo Announces

Initial Results of Tax Scofflaw Driver License Suspension Initiative (Mar. 17, 2014), goo.gl/JOLM1te.

3 *Id.*

4 Tax Law § 171-v(3).

5 *Id.* § 171-v(4).

6 *Id.* § 171-v(5)(v).

7 *Id.* § 171-v(5)(iii) & (iv).

8 *Id.* § 171-v(5).

9 DTA No. 826332 (N.Y. Div. Tax Appeals, May 12, 2016).

10 DTA No. 826366 (N.Y. Div. Tax Appeals, Feb. 10, 2016).

11 DTA No. 826389 (N.Y. Div. Tax Appeals, Mar. 18, 2016).

12 S.2009/Assem. 3009., Reg. Sess. 2015-2016, Part EE (2015).

13 U.S. Gov't Accountability Office, GAO-11-272, Federal Tax Collection: Potential for Using Passport Issuance to Increase Collection of Unpaid Taxes (Mar. 2011), available at <http://www.gao.gov/new.items/d11272.pdf>.

14 FAST Act, Pub. L. No. 114-94, 129 Stat.

1232. The provision was section 32.101 of a bill with 89,003 sections.

15 26 USC § 7345(b)(1).

16 *Id.* § 7345(f).

17 *Id.* § 7345(b)(1).

18 *Id.* § 7345(d).

19 *Id.* § 7345(a); see FAST Act § 32101.

20 REAL ID Act of 2005, Pub. L. No. 109-13, 119 Stat. 231.

21 U.S. Dep't of Homeland Sec., REAL ID Frequently Asked Questions for the Public (last updated Oct. 26, 2016), available at <https://www.dhs.gov/real-id-public-faqs>.

22 *Id.*

23 See U.S. Dep't of Homeland Sec., Secure Driver's Licenses (last updated Nov. 1, 2016), available at <https://www.dhs.gov/secure-drivers-licenses>.

24 U.S. Dep't of Homeland Sec., Current Status of States/Territories (last updated Nov. 1, 2016), available at <https://www.dhs.gov/current-status-states-territories>.