STATE OF NEW YORK

3836--A

2019-2020 Regular Sessions

IN SENATE

February 19, 2019

Introduced by Sens. KRUEGER, BAILEY, CARLUCCI -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations -- recommitted to the Committee on Investigations and Government Operations in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the tax law, in relation to the enforcement of delinquent tax liabilities by means of the suspension of licenses to operate a motor vehicle

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivisions 1, 3 and 5 of section 171-v of the tax law, subdivision 1 as added by section 1 of part P of chapter 59 of the laws of 2013, and subdivisions 3 and 5 as amended by section 1 of part EEE of chapter 59 of the laws of 2019, are amended to read as follows:

(1) The commissioner shall enter into a written agreement with the commissioner of motor vehicles, which shall set forth the procedures for the two departments to cooperate in 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 **multiplied by the applicable inflation adjustment**. 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, the term "driver's license" means any license issued by the department of motor vehicles, except for a commercial driver's license as defined in section five hundred one-a of the vehicle and traffic law, and the term "past-due tax liabilities" means 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**, and the "applicable inflation adjustment" for a calendar year shall be determined under the**

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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principles of section 7345(f) of the Internal Revenue Code of 1986, using the calendar year of the effective date of the chapter of the laws of two thousand twenty which amended this subdivision as the base period. The ten thousand dollar limitation in this subdivision shall not apply to a taxpayer that the commissioner determines has taken affirmative steps to evade or avoid the collection of tax, such as by hiding assets.

(3) The department shall provide notice to the taxpayer of his or her inclusion in the license suspension program no later than sixty days prior to the date the department intends to inform the commissioner of motor vehicles of the taxpayer's inclusion. However, no such notice shall be issued to a taxpayer: (i) whose wages are being garnished by the department for the payment of past-due tax liabilities or past-due child support or combined child and spousal support arrears; (ii) who receives public assistance or supplemental security income; or (iii) whose income does not exceed two hundred fifty percent of the poverty level as reported by the federal Department of Health and Human Services or any successor agency. Notice shall be provided by first class mail to the taxpayer's last known address as such address appears in the electronic systems or records of the department. Such notice shall include:

(a) a clear statement of the past-due tax liabilities along with a statement that the department shall provide to the department of motor vehicles the taxpayer's name, social security number and any other identifying information necessary for the purpose of suspending his or her driver's license pursuant to this section and subdivision four-f of section five hundred ten of the vehicle and traffic law sixty days after the mailing or sending of such notice to the taxpayer;

(b) a statement that the taxpayer may avoid suspension of his or her license by fully satisfying the past-due tax liabilities, by making payment arrangements satisfactory to the commissioner, or by demonstrating any of the grounds for challenge set forth in subdivision five of this section, or by presenting facts to the commissioner resulting in the commissioner waiving suspension of his or her license based on the equities of the case. Such statement shall include information regarding programs through which the taxpayer can pay the past-due tax liabilities to the department, enter into a payment arrangement or request additional information needed to challenge the suspension under subdivision five of this section or demonstrate the equities of the case;

(c) a statement that the taxpayer's right to protest the notice is limited to raising issues set forth in subdivision five of this section;

(d) a statement that the suspension of the taxpayer's driver's license shall continue until the past-due tax liabilities are fully paid or the taxpayer makes payment arrangements satisfactory to the commissioner; and

(e) any other information that the commissioner deems necessary.

(5) 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 department or the department of motor vehicles regarding a notice issued by the department pursuant to this section and the referral by the department of any taxpayer with past-due tax liabilities to the department of motor vehicles pursuant to this section for the purpose of suspending the taxpayer's driver's license. A taxpayer may only challenge such suspension or referral on the grounds that (i) the individual to whom the notice was provided is not the taxpayer at issue; (ii) the

past-due tax liabilities were satisfied; (iii) the taxpayer's wages are being garnished by the department for the payment of the past-due tax liabilities at issue or for past-due child support or combined child and spousal support arrears; (iv) the taxpayer's wages are being garnished for the payment of past-due child support or combined child and spousal support arrears pursuant to an income execution issued pursuant to section five thousand two hundred forty-one of the civil practice law and rules; (v) the taxpayer's driver's license is a commercial driver's license as defined in section five hundred one-a of the vehicle and traffic law; (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; (vii) the taxpayer receives public assistance or supplemental security income; [~~or~~] (viii) [~~the taxpayer demonstrates that suspension of the taxpayer's driver's license will cause the taxpayer undue economic hardship~~] **the taxpayer's income does not exceed two hundred fifty percent of the poverty level as reported by the federal Department of Health and Human Services or any successor agency; or (ix) payment of the past due tax liabilities will create a hardship for the taxpayer in meeting necessary living expenses**.

However, nothing in this subdivision is intended to limit a taxpayer from seeking relief pursuant to an offer in compromise pursuant to subdivision fifteenth of section one hundred seventy-one of this article or from joint and several liability pursuant to section six hundred fifty-four of this chapter, to the extent that he or she is eligible pursuant to such section, or establishing to the department that the enforcement of the underlying tax liabilities has been stayed by the filing of a petition pursuant to the Bankruptcy Code of 1978 (Title Eleven of the United States Code).

§ 2. The commissioner of taxation and finance is authorized and directed to promulgate any rules and regulations necessary to implement the provisions of this act in accordance with the provisions of the state administrative procedure act.

§ 3. This act shall take effect on the first of April next succeeding the date on which it shall have become a law.