New York is aggressively using a new driver’s license suspension program to try to collect tax debts.

The law has been effective in collecting New York tax debts from people who can pay, with over $400 million collected since the program began.

While taxpayers have tried to challenge the program on constitutional grounds, especially as applied to the indigent, the courts have upheld it, most recently in a decision issued last month in a test case in New York City. In my view, the state should consider adding a hardship exception to the law to mitigate its impact on the indigent.

Under the program, enacted in 2013, the Department of Taxation regularly identifies taxpayers with a balance of tax, penalties and interest in excess of $10,000 and advises the DMV to initiate procedures to suspend the taxpayers’ driver’s license. There are only very limited exclusions. These include taxpayers in bankruptcy, who have payment arrangements, or whose debts are more than 20 years old.

The suspension process moves quickly. The Department sends a suspension notice to the taxpayer, who has 60 days to arrange payment, plus a 15-day grace period. If the taxpayer fails to arrange payment, his or her license is suspended until the debt is paid or a payment plan is established.

A taxpayer who drives while his or her license is suspended may be subject to arrest and penalties. A taxpayer can apply for a restricted license, which permits the individual to travel only to and from work, school, medical appointments, the DMV and child care necessary for employment or education. The taxpayer must return directly home. The taxpayer is not permitted to use his or her vehicle in conducting basic life tasks such as going to the grocery store or to drive to visit family.

Individuals may challenge the suspension of their license only on extremely restricted grounds. Notably, these grounds do not include economic hardship.

As evidenced by amount collected, this program has been very effective in collecting taxes from individuals with an ability to pay. Puzzlingly, however, the state has also tried to use the law to collect tax from indigent individuals who have no ability to pay their tax debts.

I have personally handled two such cases through the Volunteer Legal Services Project in Rochester. In these cases, the state revoked the driver’s licenses of people living in poverty who owed small amounts of back taxes that they could not pay.

In discussions with other practitioners throughout the state, I have learned that this problem is widespread. As part of my work with the New York State Bar Association, I helped write a report about the problem which was published last year.

In an effort to challenge the law as applied to indigent taxpayers, lawyers at a legal clinic at Fordham Law School in New York City brought a test case before the Supreme Court there on behalf of a taxpayer named Arthur Berry. (While I have represented other similar taxpayers, I have not been involved in this case.)

Mr. Berry’s story was very sympathetic. He suffered from a chronic medical condition, and was unable to work full time, making ends meet through part-time work, housing subsidies, Medicaid and food stamps. Because of his financial situation, the IRS had suspended its efforts to collect his back taxes.

Mr. Berry owed about $19,000 in back taxes to New York. While this amount sounds large, because of the high rate of interest charged by New York on tax liabilities, small sums can compound very quickly.

Last August, the Tax Department suspended his driver’s license. Aided by his pro bono lawyers, he filed suit. He states that he needed to drive for his part-time job as a sales representative, and to take his 86-year-old mother to medical appointments. (Because he lived in Manhattan, he didn’t suffer many of the same practical consequences for everyday living that upstate residents would suffer.)

Mr. Berry’s lawyers argued that the law violated both the New York and federal constitutions. They made many different claims: that it violated the due process clause, the equal protection clause, and that it is an excessive fine.

The court essentially rejected all of these theories. While the constitutional arguments are complex, the analysis boiled down to the fact that driving isn’t viewed as a fundamental right, and the driver’s license suspension law was rationally related to the legitimate governmental purpose of tax collection. The case is now being appealed.

As a general matter, the driver’s license suspension law is controversial. Clearly it has been incredibly successful in collecting tax from delinquent taxpayers, and it has done so at low cost. The significance of the sanction also serves a deterrent role. On the other hand, it can be argued that the law is simply bad policy, as revocation of a driver’s license is an unduly punitive sanction for failure to pay taxes.

In my view, whatever you may think of the law in general, it clearly needs an exception for economic hardship. The department has been using an existing program, the offer-in-compromise program, to provide something of an informal economic hardship exception. Indeed, I was able to successfully resolve one of my cases through this program. Many taxpayers, however, have not had this experience and the offer-in-compromise program is complex and opaque.

It is my hope that the Tax Department or the Legislature will see the folly of trying to collect tax from indigent persons, and enact an appropriate hardship exception to the law.

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