STATE OF TENNESSEE

IN THE MATTER OF:	)	
	)	
DAVID JONATHAN TULIS,	)	
	)	
PETITIONER,	)	
	)	
v.	)	**Docket No. 23-004**
	)	
TENNESSEE DEPARTMENT OF REVENUE,	)	
	)	
	)	
RESPONDENT.		

DEPARTMENT'S REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

This matter is before the administrative judge on the motion for summary judgment filed by the Tennessee Department of Revenue (the "Department" or "Respondent") on July 15, 2024 (the "Department's Motion"), and the cross motion for summary judgment filed by David Jonathan Tulis (the "Petitioner") on September 23, 2024 (the "Petitioner's Motion"), both related to the Department's suspension of the Petitioner's motor vehicle registration as part of its administration of the Electronic Insurance Verification Program ("EIVS" or "EIVS Program") for failure to comply with the requirements of Tenn. Code Ann. §§ 55-12-101, *et seq.* (the "Tennessee Financial Responsibility Law," "TFRL," or "Part 1") and Tenn. Code Ann. §§ 55-12-201, *et seq.* (the "James Lee Atwood, Jr. Law," the "Atwood Law," or "Part 2")(collectively referred to as the "Financial Responsibility Laws"). On October 29, 2024, the Petitioner filed a response in opposition to the Department's Motion (the "Petitioner's Response").

The Petitioner's Response mostly restates arguments he has previously made in past filings, which are addressed and refuted at length in the Department's Motion, its Memorandum in Support of Motion for Summary Judgment filed July 15, 2024 (the "Department's

Memorandum"), and the Department's Response in Opposition to Petitioner's Motion for Summary Judgment filed October 29, 2024 (the "Department's Response"). However, the Department has identified several flaws in arguments raised in the Petitioner's Response that warrant specific address, as detailed below.

1. The Petitioner's Response claims prescient knowledge of legislative intent as it pertains to the Financial Responsibility Laws, without providing any evidence of such intent.

The Petitioner's Response highlights, in a striking way, a theme that has been present throughout the parties' litigation of this dispute—Petitioner's claim that he alone has correctly discerned the intent of the Tennessee General Assembly in enacting the Atwood Law, including its interaction with the TRFL. The Petitioner argues as follows:

> Respondent claims independent authority **not envisioned by the general assembly** nor authorized by law. The current program **abrogates and subverts the will of the general assembly**, effectively placing a second set of hands on the steering wheel of the TFRL . . . Petitioner's reading accounts for and allows the statutory puzzle pieces to fit neatly together into one seamless picture **as envisioned by the assembly**.

Petitioner's Response, pp. 1-2 (emphasis added). The Petitioner asserts that his construction of the Atwood Law should not only be given more weight and consideration than that of the agency tasked with its administration, but should also enjoy preference over the statements of the legislators that drafted and passed the law. Petitioner's Response, p. 12. This is the Petitioner's position notwithstanding the fact that his preferred interpretation requires the inference of limitations that are not cognizable from a plain reading of the Part 2 statutory text.

In the Petitioner's view, the Atwood Law cannot be properly understood without near constant referral to particular provisions located in Part 1, despite the fact that the Part 1 provisions he claims to control the interpretation of Part 2 are simply not mentioned in the relevant Part 2 sections. Specifically, Tenn. Code Ann. § 55-12-210(a)(1) provides in relevant part that, "[i]f there is evidence based on either the IICMVA model or the full book of business .

. . that a motor vehicle is not insured, the department of revenue shall [initiate the notice procedures detailed in Tenn. Code Ann. § 55-12-210(a)-(c)("Section 210")]." The plain language of the statute applies the EIVS inquiry to any motor vehicle with an active registration that is not covered by an express exclusion. However, Petitioner contends that the Department should obey the statutory directive only in situations where a registrant is required to provide a certificate establishing future compliance with financial responsibility laws following an accident or other applicable violation,[1] as contemplated by Tenn. Code Ann. § 55-12-114 and § 55-12-120 (referred to within the insurance industry as an "SR-22 Policy").[2] Petitioner's Response, pp. 5-6 ("Sect. 210 creates no liability on petitioner. It merely gives revenue a protocol for revoking the registration of SR-22 policyholders who drop their policy during the probationary period of supervision by the respondent").

Section 210 does not limit its own application in the manner advanced by Petitioner, nor does it include any reference to Tenn. Code Ann. § 55-12-114, Tenn. Code Ann. § 55-12-120, SR-22 Policies, or other statutory provisions relating to the post-accident reporting regime overseen by the Department of Safety and Homeland Security (DSHS). Petitioner is undeterred by this fact, claiming that Section 210 "heralds [P]etitioner's claims" by reference to IICMVA:

> Reference to 'evidence based on either the **IICMVA model** or the full book of business download process' brings in IICMVA, which authority pertains to SR-22

[1] Petitioner's views on this point appear to have evolved over the course of this proceeding, as he first proclaimed that the Department had no authority to revoke his registration for failure to provide proof of financial responsibility without the occurrence of a "qualifying accident." Motion for Temporary Injunction, p. 3 ("The filings in the case indicate petitioner seeks permanent restoration of his motor vehicle registration on the grounds that, **absent a qualifying accident**, he is not subject to TFRL and that none of its provisions put him in status of facing a known legal duty to purchase a motor vehicle insurance policy or perform any of the three other options for proof of financial security as listed in the law's liability provisions at $ 55-12-105")(emphasis added). However, Petitioner now concedes that proof may also be required in the event of a moving violation or DUI. Petitioner's Response, p. 14 ("EIVS operates on people who have suspended use of the privilege, for whatever reason the privilege is suspended, whether DUI or rules of road violations in other chapters of the title or for disobeying § 55-12-105").

[2] See SR-22 Insurance. Tennessee Department of Safety and Homeland Security, Financial Responsibility Laws. https://www.tn.gov/safety/driver-services/reinstatements/frlawindex/sr22.html (last accessed Nov. 5, 2024).

> high-risk insureds who are working through periods of license and tag suspension. IICMVA focuses on SR-22 compulsory insurance on probationers.

Petitioner's Response, p. 5 (emphasis in original). The Petitioner's above assertions are not supported by any citation to legal authority or the record in this matter. His claim that a refence to IICMVA should limit the EIVS Program to SR-22 policyholders because "IICMVA focuses on SR-22 compulsory insurance" cannot be reconciled with the statutory definitions of the cited terms.[3] The fact that Section 210 discusses the IIMCVA offers no support for the Petitioner's narrow construction of the law's application. Rather, the Petitioner's construction asks the administrative judge to infer this Section 210 limitation without any basis in the text of the statute. Notwithstanding the departure from the clear language of Section 210 proffered by the Petitioner, he avers that legislative intent is on his side. Petitioner's Response, pp. 1-2.

The Department acknowledges that consideration of legislative history in statutory interpretation is appropriate only where ambiguity is present.[4] As detailed at length in the Department's Memorandum, the Department believes the plain language of the Atwood Law and the TFRL supports its position in this case. Department's Memorandum, pp. 5-7. However, in a situation where one party makes a brazen, unsupported claim to have a monopoly on legislative intent, the Department submits that consideration of legislative history is also appropriate for the

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[3] IICMVA is an abbreviation for the "Insurance Industry Committee on Motor Vehicle Administration." Tenn. Code Ann. § 55-12-203(5). IICMVA Model is the "online insurance verification system model created by the IICMVA." Tenn. Code Ann. § 55-12-203(6). The "full book of business" is defined in relevant part as the "business record download of an automobile liability insurer made in accordance with the IICMVA Insurance Data Transfer Guide Specifications." Tenn. Code Ann. § 55-12-203(4). As with the rest of Section 210, these defined terms relating to the IICMVA do not signal or "herald" an association with SR-22 policies, nor do they limit the application of Section 210 to vehicles involved in post-accident reporting. To the contrary, the "full book of business" refers to an insurer's comprehensive set of business records.

[4] See *Wallace v. Metropolitan Government of Nashville*, 546 S.W.3d 47, 52 (Tenn. 2018).

limited purpose of refutation of such claim.[5] The only evidence of legislative intent offered by the Petitioner is the assertion that his construction of the statute is superior. Petitioner's Motion, p. 12.

In contrast, in addition to the fact that a plain reading of the statutory text favors the Department's position, the Department has offered statements from lawmakers during legislative session that establish the following: (1) the enactment of Tenn. Code Ann. § 55-12-139 was intended to and did impose a mandatory financial requirement on all motor vehicles driven on Tennessee roads;[6] (2) the 2005 amendment to Tenn. Code Ann. § 55-12-139 limited the mandatory financial responsibility requirement to vehicles subject to title and registration requirements;[7] and (3) the Atwood Law was passed for purposes of implementing an enforcement mechanism for the existing financial responsibility requirement.[8] Department's Memorandum, pp. 9-13. The Petitioner contends that the administrative judge should "reject

[5] The Petitioner has not made an alternative argument that the Financial Responsibility Laws may be ambiguous, in which case argument regarding factors suggestive of legislative intent may be properly considered. See *Wallace v. Metropolitan Government of Nashville*, 546 S.W.3d 47, 52 (Tenn. 2018)(noting that where the language of a particular statute is ambiguous, or subject to differing interpretations, courts will consider "rules of statutory construction and external sources in order to ascertain and give effect to the legislative intent"). Rather, the Petitioner maintains without qualification that the law is unambiguous, but nevertheless claims that his construction of the law is in keeping with the General Assembly's legislative intent. Petitioner's Response, pp. 1-2. Additionally, Petitioner's briefs are littered with Latin phrases purporting to identify canons of statutory construction he believes are appropriately applied, notwithstanding his position that the statute is unambiguous. *Id.* at pp. 6-7.

[6] "We have a financial responsibility law on the books from 1977. This actually just puts some teeth into that law. **Requires that whoever is going to be driving motor vehicles [to] have financial responsibility.**" Motor Vehicles—Insurance—Financial Responsibility, H.B. 1576, House Calendar and Rules Committee, 102nd General Assembly (2001)(Statement of Randy S. Rinks)(emphasis added).

[7] "**All vehicles driven on the public highways are subject to the mandatory financial responsibility law.** This bill would limit the applicability to those vehicles that are subject to titling and licensing. What we're talking about here are some of the backhoes and construction equipment that may work on the roads." Motor Vehicles—License and Permits—Grace Period, S.B. No. 339, Senate Transportation Committee, 104th General Assembly (2005)(Statement of Jim Tracey)(emphasis added).

[8] "This is an attempt to craft a bill that is a vast improvement over how we enforce financial responsibility in our state . . . currently . . . there's about 23 percent of drivers that are uninsured. Quite frankly, that's unacceptable for one in four or one out of five drivers not carrying car insurance **when it is already mandated virtually for you to have insurance or at least a surety on your car.** [It] is completely unacceptable and it's a danger to our highways." Motor Vehicles—Insurance—Verification, H.B. 606, Insurance and Banking Committee, 109th General Assembly (2015)(Statement of William Lamberth)(emphasis added).

these politicians' personal glosses as insignificant and focus on actual, clear authority." Petitioner's Response, p. 12. This point is deserving of further emphasis—the Petitioner claims that the clear statements of the legislators that drafted and enacted the Financial Responsibility Laws should be **rejected as insignificant** in favor of his personal construction, which is at odds with the clear language of Section 210 and Section 139. Notwithstanding the Petitioner's confidence, the Department submits that, in the event the administrative judge is inclined to consider factors suggestive of legislative intent, these factors weigh strongly in favor of the Department's position, not the Petitioner's.

2. The Petitioner's contention that the EIVS Program should not initiate its queries by vehicle identification number (VIN) further demonstrates his misunderstanding of Section 210.

In an effort to demonstrate the degree to which EIVS is intended to cover certain registrant populations, the Petitioner asserts the following:

> [The Department] *looks at the wrong thing* in [its] use of EIVS, looking solely at VINS and insurance customers. EIVS is currently being used to sniff out noncustomers of the industry (i.e., non-holders of non-certified policies, such as relator). EIVS was authorized to monitor and "verify" only on certified policies . . . If the driver is required to have SR-22 motor vehicle liability policy on record, the driver is obligated to evidence his certificate as proof of financial responsibility. The certificate proves he personally is covered, the policy insuring him (or her). A certified policy is not applied to a motor vehicle, but a person.

Petitioner's Response, p. 8 (emphasis in original). The Department understands the above to signify that Petitioner believes EIVS should be used only to determine whether a particular driver has requisite coverage under Part 1. However, this is contrary to the plain language of Section 210, which directs the Department to verify coverage for "a motor vehicle." Tenn. Code Ann. § 55-12-210(a)(1). Thus, even if the Petitioner is correct that "certified" or "SR-22" policies follow the driver rather than the vehicle, the scope of Section 210 cannot be limited to

this narrow subset of registrants, as it directs the Department to verify coverage for motor vehicles, not drivers.

Additionally, the Department's electronic vehicle title and registration system ("VTRS") is incapable of operating EIVS in the manner the Petitioner recommends. VTRS is organized and driven by VIN. Lanfair Deposition (Exhibit 10 to Petitioner's Motion), pp. 17-18. The system stores vehicle records, which detail registrant history and other information relating to the vehicle at issue. However, the records are organized by VIN, not registrant. Further, the IICMVA Model or "full book of business" provided by insurers is matched to Department records by VIN, not registrant.[9] *See* Tenn. Code Ann. § 55-12-207(c)(1)("The full book of business provided pursuant to subsection (a) shall include: (A) The vehicle identification number of each insured motor vehicle; and (B) The automobile liability insurer's NAIC code, policy number, and effective date of each policy"). Notably, Tenn. Code Ann. § 55-12-207(c)(1) does not require insurers to provide registrant names as part of their transmission of business records to the Department. The functional operation of EIVS is not related to verification of policies covering a particular driver, as is evident from even a cursory reading of Part 2. Accordingly, the Department submits that it is Petitioner who is "looking at the wrong thing."

3. The Petitioner is incorrect that the Department's interpretation of the Financial Responsibility Laws is at odds with Tenn. Code Ann. § 55-12-214.

The Petitioner's Response makes numerous references to a purported disregard of Tenn. Code Ann. § 55-12-214 ("Section 214") by the Department, including the following statements:

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[9] The Petitioner's Response also asserts that Section 210 "directs the commissioner to surveil the full book of business data contained in i3 Verticals' [the Department's vendor] data mine." Petitioner's Response, p. 6. Here again, Petitioner demonstrates his misunderstanding of the EIVS Program. The "full book of business" refers to the comprehensive set of business records maintained by the insurance industry, as contemplated by Tenn. Code Ann. § 55-12-203(4). Thus, the "data mine" for purposes of the Petitioner's metaphor is in the possession of insurers, not the Department's vendor. The EIVS Program compares Department records of vehicles with active registrations to the full book of business provided by the insurance industry to isolate vehicles for which a liability insurance policy is unconfirmed, as directed by Tenn. Code Ann. § 55-12-210(a)(1).

i. “Respondent views the [Section 214] ban on new requirements as inconsequential as a piece of lint or a bottlecap.” Petitioner’s Response, p. 23.

ii. “Respondent fails in his motion to acknowledge or countenance the plain and unambiguous language of [Section 214].” Petitioner’s Response, p. 2.

iii. “Respondent hopes to mislead the AHO about [Section 214], financial responsibility requirements unaffected . . . The effort is only a little short of magnificent.” Petitioner’s Response, p. 11.

The Petitioner’s assertion that the Department has overlooked Section 214 is incorrect. The Department’s positions in this case are not in conflict with Section 214, which provides that “[n]othing in this part shall alter the existing financial responsibility requirements in this chapter.” The Department’s administration of the EIVS Program does not impose or change a registrant’s obligation to maintain some form of financial responsibility on vehicles with an active registration. This mandatory obligation derives from Part 1, in Section 139. *See* Department’s Memorandum, pp. 10-13. The imposition of the mandatory requirement predates the enactment of the Atwood Law, which functions as an additional enforcement mechanism for the existing requirement. Indeed, Part 2 does not define the acceptable forms of financial responsibility, which are established in Part 1. See Tenn. Code Ann. § 55-12-102(12). Thus, the financial responsibility requirements are not altered by EIVS—rather, the program provides a more efficient means of monitoring registrant compliance with those requirements.

4. <u>The UAPA does not exclude the Department from the contested case procedures established by Tenn. Code Ann. §§ 4-5-301, *et seq.*</u>

Finally, the Petitioner’s Response renews his objection to the administrative judge’s exercise of jurisdiction over this controversy, which the Petitioner first raised in his “Notice of Subject Matter Jurisdiction Challenge,” filed in October of 2023. Specifically, Petitioner contends:

> No provision in Atwood allows for hearings in revenue. UAPA specifically declaims it applies to revenue rulings. Yet the proceedings have been under color of UAPA. On this point alone of subject matter jurisdiction, the hearing officer can smash the illegal and unconstitutional Sauron program.

Petitioner's Response, p. 23. The Petitioner's assertion that the UAPA excludes matters relating to the Department from the contested case process likely stems from a misreading of Tenn. Code Ann. § 4-5-106(f), which provides that the UAPA "shall not apply to revenue rulings and letter rulings issued by the commissioner of revenue." This provision refers to **tax rulings** issued by the Department as authorized by Tenn. Code Ann. § 67-1-109(a)-(c).

The language in Tenn. Code Ann. § 4-5-106(f) does not mean that the UAPA does not apply in situations in which the Department revokes a license or certificate it issued. That reading is explicitly contradicted by Tenn. Code Ann. § 55-3-113, which directs the Department to provide UAPA review of certain actions taken pursuant to Title 55 authority. Tenn. Code Ann. § 67-1-105(a)(1) likewise provides authority for the Department to conduct hearings related to the "revocation of, any certificate, license, permit, privilege or right . . . or any other adverse action proposed or taken to implement . . . registration law administered by the commissioner." See also Tenn. Op. Atty. Gen. No. 02-071 (Tenn.A.G.), 2002 WL 1357061 at *1-4 (discussing the interaction of Tenn. Code Ann. § 67-1-105 and the UAPA pertaining to Department hearings, further confirming that Tenn. Code Ann. § 4-5-106(f) does not exclude revenue matters from the UAPA process). Finally, as the administrative judge has previously advised, it is the Petitioner who has invoked the subject matter jurisdiction of this tribunal in filing his request for an administrative hearing. If the Petitioner questions the authority of the tribunal to adjudicate this matter, he may dismiss his petition at any time.

CONCLUSION

For the foregoing reasons, as well as those reasons set forth in the Department's Motion, Memorandum, Response, and supporting materials thereto, there is no genuine issue as to any material fact, and the Department is entitled to a judgment as a matter of law. *See* TENN. R. CIV. P. 56.04. Accordingly, the administrative judge should enter summary judgment in favor of the

Department and against the Petitioner, upholding the Department's suspension of the Petitioner's registration.

Respectfully submitted,

/s/ Camille Cline
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was sent via electronic mail, to the following:

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on this the 12th day of November, 2024.

/s/ Camille C. Cline
Camille C. Cline