STATE OF NEW YORK

1733

2021-2022 Regular Sessions

IN SENATE

January 14, 2021

Introduced by Sen. TEDISCO -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

AN ACT to amend the legislative law, the public officers law and the tax law, in relation to eligibility to assume office for persons owing past-due tax liabilities

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

Section 1. The legislative law is amended by adding a new section 3-a to read as follows:

§ 3-a. Past-due tax liabilities of members-elect. 1. The legislature shall require a tax clearance from the department of taxation and finance, as provided for in section one hundred seventy-one-x of the tax law, for each member-elect of the legislature. No person elected to the legislature having past-due tax liabilities, as defined in subdivision one of section one hundred seventy-one-x of the tax law, or otherwise denied a tax clearance by the department of taxation and finance pursuant to such section, shall be sworn into or assume office unless and until such past-due tax liabilities are satisfied, settled, or made subject to a payment plan established by the department of taxation and finance and in which such person is in good standing.

2. If, after six months subsequent to the date on which such member-elect would have been sworn into office but for their owing past-due tax liabilities, such past-due tax liabilities have not been satisfied, settled, or made subject to a payment plan established by the department of taxation and finance and in which such person is in good standing, then a special election shall be held to fill such office.

§ 2. Section 3 of the public officers law is amended by adding a new subdivision 1-b to read as follows:

1-b. (i) Any person elected to the office of a statewide elected official, which for the purposes of this section shall mean the governor,

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

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lieutenant governor, comptroller or attorney general, shall, upon certification of such person's election, request a tax clearance from the department of taxation and finance, as provided for in section one hundred seventy-one-x of the tax law. No such person having past-due tax liabilities, as defined in subdivision one of section one hundred seventy-one-x of the tax law, or otherwise denied a tax clearance by the department of taxation and finance pursuant to such section, shall be sworn into or assume office unless and until such past-due tax liabilities are satisfied, settled, or made subject to a payment plan established by the department of taxation and finance and in which such person is in good standing.

(ii) If, after six months subsequent to the date on which a person elected to statewide office would have been sworn into office but for their owing past-due tax liabilities, such past-due tax liabilities have not been satisfied, settled, or made subject to a payment plan established by the department of taxation and finance and in which such person is in good standing, then a special election shall be held to fill such office.

§ 3. The tax law is amended by adding a new section 171-x to read as follows:

§ 171-x. Enforcement of delinquent tax liabilities through tax clearances. (1) 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 owed by an individual or entity. The term "past-due tax liabilities" means any unpaid tax liabilities that have become fixed and final such that the taxpayer no longer has any right to administrative or judicial review. The term "government entity" means the state of New York, or any of its agencies, political subdivisions, instrumentalities, public corporations (including a public corporation created pursuant to agreement or compact with another state or Canada), or combination thereof.

(2) The commissioner, or his or her designee, shall cooperate with any government entity that is required by law or has elected to require tax clearances to establish procedures by which the department shall receive a tax clearance request and transmit such tax clearance to the government entity, and any other procedures deemed necessary to carry out the provisions of this section. These procedures shall, to the extent practicable, require secure electronic communication between the department and the requesting government entity for the transmission of tax clearance requests to the department and transmission of tax clearances to the requesting entity. Notwithstanding any other law to the contrary, a government entity shall be authorized to share any data or information with the department that is necessary to ensure the proper matching of a person who is the subject of a tax clearance request to the tax records maintained by the department.

(3) Upon receipt of a tax clearance request, the department shall examine its records to determine whether the subject of the tax clearance request has past-due tax liabilities equal to or in excess of the dollar threshold applicable for such tax clearance request. When a tax clearance request so requires, the department shall also determine whether (i) the subject of such request has complied with applicable tax return filing requirements for each of the past three years; and/or (ii) whether a subject of such request that is an individual or entity that is a person required to register pursuant to section one thousand one hundred thirty-four of this chapter is registered pursuant to such section. The department shall deny a tax clearance if it determines that

the subject of a tax clearance request has past-due tax liabilities equal to or in excess of the applicable threshold or, when the tax clearance request so requires, has not complied with applicable return filing and/or registration requirements.

(4) If a tax clearance is denied, the government entity that requested the clearance shall provide notice to the subject of the request to contact the department. Such notice shall be made by first class mail with a certificate of mailing and a copy of such notice also shall be provided to the department. When the subject of the request contacts the department, the department shall inform him or her of the basis for the denial of the tax clearance and shall also inform such person (i) that a tax clearance denied due to past-due tax liabilities may be issued once the taxpayer fully satisfies past-due tax liabilities or makes payment arrangements satisfactory to the commissioner; (ii) that a tax clearance denied due to failure to file tax returns may be issued once the individual has satisfied the applicable return filing requirements; (iii) that a tax clearance denied for failure to register pursuant to section one thousand one hundred thirty-four of this chapter may be issued once the individual has registered pursuant to such section; and (iv) the grounds for challenging the denial of a tax clearance listed in subdivision five of this section.

(5) (a) Notwithstanding any other provision of law, and except as specifically provided herein, an individual denied a tax clearance shall have no right to commence a court action or proceeding or seek any other legal recourse against the department or the government entity related to the denial of a tax clearance by the department.

(b) An individual seeking to challenge the denial of a tax clearance must protest to the department or the division of tax appeals no later than sixty days from the date of the notification to the individual that the tax clearance was denied. An individual may challenge a department finding of past-due tax liabilities only on the grounds that (i) the individual or entity denied the tax clearance is not the individual or entity with the past-due tax liabilities at issue or (ii) the past-due tax liabilities were satisfied. An individual may challenge a department finding of failure to comply with tax return filing requirements only on the grounds that all required tax returns have been filed for each of the past three years.

(c) Nothing in this subdivision is intended to limit any individual from seeking relief 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 that 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).

(6) Notwithstanding any other provision of law, the department may exchange with a government entity any data or information that, in the discretion of the commissioner, is necessary for the implementation of a tax clearance requirement. However, no government entity may re-disclose this information to any other entity or person, other than for the purpose of informing the individual that a required tax clearance has been denied, unless otherwise permitted by law.

(7) Except as otherwise provided in this section, the activities to collect past-due tax liabilities undertaken by the department pursuant to this section shall not in any way limit, restrict or impair the department from exercising any other authority to collect or enforce tax liabilities under any other applicable provision of law.

(8) Except as otherwise provided in this section, the provisions of this section are not applicable to the tax clearance required by section one hundred seventy-one-v of this article.

§ 4. This act shall take effect June 1, 2021; provided, however, that the department of taxation and finance, and any other government entity electing to receive a tax clearance from the department of taxation and finance may work to execute the necessary procedures and technical changes to support the tax clearance process as described in this act before that date; provided, further, that this effective date will not impact the administration of any tax clearance program authorized by another provision of law.