

9323

I N A S S E M B L Y

February 16, 2012

Introduced by M. of A. PRETLOW -- read once and referred to the Committee on Ways and Means

AN ACT to amend the executive law, the state administrative procedure act and the judiciary law, in relation to the denial of the renewal of professional licenses when the applicant has outstanding avoidance of state tax debt

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Section 32 of the executive law, as added by chapter 55 of
2 the laws of 1992, is amended to read as follows:
3 S 32. Authority not to renew. 1. For the purposes of this section[,
4 "state]: (A) "STATE agency" shall mean any state department, board,
5 bureau, division, commission, committee, public authority, public bene-
6 fit corporation, council, office, or other governmental entity perform-
7 ing a governmental or proprietary function for the state, AND SHALL
8 INCLUDE THE EDUCATION DEPARTMENT.
9 (B) "TAX DEBT" SHALL MEAN ALL LIABILITIES, INCLUDING UNPAID TAXES,
10 INTEREST AND PENALTIES, THAT THE COMMISSIONER OF TAXATION AND FINANCE IS
11 REQUIRED BY LAW TO COLLECT, AND THAT HAVE BEEN REDUCED TO JUDGMENT BY
12 THE DOCKETING OF A NEW YORK STATE TAX WARRANT WITH A COUNTY CLERK OR BY
13 THE FILING OF A COPY THEREOF WITH THE DEPARTMENT OF STATE, AND THE
14 TAXPAYER DEBTOR HAS FAILED TO PAY SUCH LIABILITIES OR FAILED TO ENTER
15 INTO A WRITTEN AGREEMENT WITH THE DEPARTMENT OF TAXATION AND FINANCE TO
16 SETTLE SUCH LIABILITIES.
17 2. Notwithstanding any other provision of law, when a state agency
18 levies fees or assesses civil fines or penalties for licensing or regu-
19 latory matters, such state agency shall, following consultation with the
20 [state] department of law and after such appropriate due process as
21 required by the provisions of law applicable to such state agency and to
22 such licensing or regulatory matters, not be required to renew any
23 license, permit, or certificate of qualification, authority[,] or opera-
24 tion, of any business, individual[,] or other entity, which is not a
25 state agency, municipal corporation or district corporation, if such
26 business, individual or other entity has failed to pay or enter into a

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

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1 written agreement to settle outstanding fees, civil penalties or fines
2 assessed by such state agency.

3 3. (A) IT SHALL BE A CONDITION FOR THE RENEWAL OF ANY LICENSE, PERMIT,
4 CERTIFICATE OR REGISTRATION WHICH SPECIFICALLY AUTHORIZES ANY PERSON OR
5 ENTITY TO CONDUCT ANY PROFESSION, BUSINESS OR TRADE THAT THE APPLICANT
6 FOR RENEWAL ATTEST, UNDER THE PENALTY OF PERJURY, TO THE STATE AGENCY
7 RENEWING THE LICENSE, PERMIT, CERTIFICATE OR REGISTRATION THAT THE
8 APPLICANT DOES NOT HAVE A TAX DEBT.

9 (B) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, EVERY STATE AGENCY
10 WHICH ISSUES A LICENSE, PERMIT, CERTIFICATE OR REGISTRATION WHICH
11 SPECIFICALLY AUTHORIZES ANY PERSON OR ENTITY TO CONDUCT ANY PROFESSION,
12 BUSINESS OR TRADE MAY DENY THE APPLICATION FOR THE RENEWAL OF ANY SUCH
13 LICENSE, PERMIT, CERTIFICATE OR REGISTRATION TO ANY PERSON OR ENTITY
14 WHICH HAS A TAX DEBT.

15 (C) EVERY APPLICATION FOR THE RENEWAL OF A LICENSE, PERMIT, CERTIF-
16 ICATE OR REGISTRATION WHICH SPECIFICALLY AUTHORIZES ANY PERSON OR ENTITY
17 TO CONDUCT A PROFESSION, BUSINESS OR TRADE SHALL PROVIDE NOTICE TO THE
18 APPLICANT OF THE REQUIREMENTS OF THIS SUBDIVISION.

19 S 2. Section 401 of the state administrative procedure act, as amended
20 by chapter 935 of the laws of 1976, subdivision 1 as amended by chapter
21 469 of the laws of 1985, subdivision 4 as added by chapter 236 of the
22 laws of 1987, is amended to read as follows:

23 S 401. Licenses. 1. FOR THE PURPOSES OF THIS ARTICLE:

24 (A) "AGENCY" SHALL MEAN AND INCLUDE THE STATE JUDICIAL BRANCH, THE
25 UNIFIED COURT SYSTEM, THE OFFICE OF COURT ADMINISTRATION AND THE MEANING
26 ASCRIBED TO SUCH TERM BY SUBDIVISION ONE OF SECTION ONE HUNDRED TWO OF
27 THIS ACT.

28 (B) "TAX DEBT" SHALL MEAN ALL LIABILITIES, INCLUDING UNPAID TAXES,
29 INTEREST AND PENALTIES, THAT THE COMMISSIONER OF TAXATION AND FINANCE IS
30 REQUIRED BY LAW TO COLLECT, AND THAT HAVE BEEN REDUCED TO JUDGMENT BY
31 THE DOCKETING OF A NEW YORK STATE TAX WARRANT WITH A COUNTY CLERK OR BY
32 THE FILING OF A COPY THEREOF WITH THE DEPARTMENT OF STATE, AND THE
33 TAXPAYER DEBTOR HAS FAILED TO PAY SUCH LIABILITIES OR FAILED TO ENTER
34 INTO A WRITTEN AGREEMENT WITH THE DEPARTMENT OF TAXATION AND FINANCE TO
35 SETTLE SUCH LIABILITIES.

36 2. When licensing is required by law to be preceded by notice and
37 opportunity for hearing, the provisions of this chapter concerning adju-
38 dicatory proceedings apply. For purposes of this act, statutes providing
39 an opportunity for hearing shall be deemed to include statutes providing
40 an opportunity to be heard.

41 [2.] 3. (A) IT SHALL BE A CONDITION FOR THE RENEWAL OF ANY LICENSE,
42 PERMIT, CERTIFICATE OR REGISTRATION WHICH SPECIFICALLY AUTHORIZES ANY
43 PERSON OR ENTITY TO CONDUCT ANY PROFESSION, BUSINESS OR TRADE THAT THE
44 APPLICANT FOR RENEWAL ATTEST, UNDER THE PENALTY OF PERJURY, TO THE AGEN-
45 CY RENEWING THE LICENSE, PERMIT, CERTIFICATE OR REGISTRATION THAT THE
46 APPLICANT DOES NOT HAVE A TAX DEBT.

47 (B) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, EVERY AGENCY WHICH
48 ISSUES A LICENSE, PERMIT, CERTIFICATE OR REGISTRATION WHICH SPECIFICALLY
49 AUTHORIZES ANY PERSON OR ENTITY TO CONDUCT ANY PROFESSION, BUSINESS OR
50 TRADE MAY DENY THE APPLICATION FOR THE RENEWAL OF ANY SUCH LICENSE,
51 PERMIT, CERTIFICATE OR REGISTRATION TO ANY PERSON OR ENTITY WHICH HAS A
52 TAX DEBT.

53 (C) EVERY APPLICATION FOR THE RENEWAL OF A LICENSE, PERMIT, CERTIF-
54 ICATE OR REGISTRATION WHICH SPECIFICALLY AUTHORIZES ANY PERSON OR ENTITY
55 TO CONDUCT A PROFESSION, BUSINESS OR TRADE SHALL PROVIDE NOTICE TO THE
56 APPLICANT OF THE REQUIREMENTS OF THIS SUBDIVISION.

1 4. When a licensee has made timely and sufficient application for the
2 renewal of a license or a new license with reference to any activity of
3 a continuing nature, the existing license does not expire until the
4 application has been finally determined by the agency, and, in case the
5 application is denied or the terms of the new license limited, until the
6 last day for seeking review of the agency order or a later date fixed by
7 order of the reviewing court, provided that this subdivision shall not
8 affect any valid agency action then in effect summarily suspending such
9 license.

10 [3.] 5. If the agency finds that public health, safety, or welfare
11 imperatively requires emergency action, and incorporates a finding to
12 that effect in its order, summary suspension of a license may be
13 ordered, effective on the date specified in such order or upon service
14 of a certified copy of such order on the licensee, whichever shall be
15 later, pending proceedings for revocation or other action. These
16 proceedings shall be promptly instituted and determined.

17 [4.] 6. When the hearing seeks the revocation of a license or permit
18 previously granted by the agency, either party shall, upon demand and at
19 least seven days prior to the hearing, disclose the evidence that the
20 party intends to introduce at the hearing, including documentary
21 evidence and identification of witnesses, provided, however, the
22 provisions of this subdivision shall not be deemed to require the
23 disclosure of information or material otherwise protected by law from
24 disclosure, including information and material protected because of
25 privilege or confidentiality. If, after such disclosure, a party deter-
26 mines to rely upon other witnesses or information, the party shall, as
27 soon as practicable, supplement its disclosure by providing the names of
28 such witnesses or the additional documents.

29 S 3. Section 53 of the judiciary law is amended by adding a new subdi-
30 vision 7 to read as follows:

31 7. (A) FOR THE PURPOSES OF THIS SUBDIVISION, "TAX DEBT" SHALL MEAN ALL
32 LIABILITIES, INCLUDING UNPAID TAXES, INTEREST AND PENALTIES, THAT THE
33 COMMISSIONER OF TAXATION AND FINANCE IS REQUIRED BY LAW TO COLLECT, AND
34 THAT HAVE BEEN REDUCED TO JUDGMENT BY THE DOCKETING OF A NEW YORK STATE
35 TAX WARRANT WITH A CLERK OR BY THE FILING OF A COPY THEREOF WITH THE
36 DEPARTMENT OF STATE, AND THE TAXPAYER DEBTOR HAS FAILED TO PAY SUCH
37 LIABILITIES OR FAILED TO ENTER INTO A WRITTEN AGREEMENT WITH THE DEPART-
38 MENT OF TAXATION AND FINANCE TO SETTLE SUCH LIABILITIES.

39 (B)(I) EVERY APPELLATE DIVISION MAY DENY THE APPLICATION FOR RENEWAL
40 OF ADMISSION TO PRACTICE AS AN ATTORNEY AND COUNSELLOR AT LAW OF ANY
41 PERSON WHO HAS A TAX DEBT.

42 (II) THE COURT OF APPEALS SHALL ADOPT RULES ESTABLISHING THAT IT SHALL
43 BE A CONDITION FOR THE RENEWAL OF ADMISSION TO PRACTICE AS AN ATTORNEY
44 AND COUNSELLOR AT LAW THAT THE APPLICANT ATTEST, UNDER THE PENALTY OF
45 PERJURY, TO THE APPELLATE DIVISION THAT THE APPLICANT DOES NOT HAVE A
46 TAX DEBT.

47 (III) EVERY APPLICATION FOR RENEWAL OF ADMISSION TO PRACTICE AS AN
48 ATTORNEY AND COUNSELLOR AT LAW SHALL PROVIDE NOTICE TO THE APPLICANT OF
49 THE REQUIREMENTS OF THIS PARAGRAPH.

50 S 4. This act shall take effect one year after it shall have become a
51 law.