

# STATE OF NEW YORK

1839

2019-2020 Regular Sessions

## IN SENATE

January 16, 2019

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:

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

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

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

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

22 1-b. (i) Any person elected to the office of a statewide elected offi-  
23 cial, 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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1 lieutenant governor, comptroller or attorney general, shall, upon  
2 certification of such person's election, request a tax clearance from  
3 the department of taxation and finance, as provided for in section one  
4 hundred seventy-one-w of the tax law. No such person having past-due tax  
5 liabilities, as defined in subdivision one of section one hundred seven-  
6 ty-one-w of the tax law, or otherwise denied a tax clearance by the  
7 department of taxation and finance pursuant to such section, shall be  
8 sworn into or assume office unless and until such past-due tax liabil-  
9 ities are satisfied, settled, or made subject to a payment plan estab-  
10 lished by the department of taxation and finance and in which such  
11 person is in good standing.

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

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

21 § 171-w. Enforcement of delinquent tax liabilities through tax clear-  
22 ances. (1) For the purposes of this section, the term "tax liabilities"  
23 shall mean any tax, surcharge, or fee administered by the commissioner,  
24 or any penalty or interest owed by an individual or entity. The term  
25 "past-due tax liabilities" means any unpaid tax liabilities that have  
26 become fixed and final such that the taxpayer no longer has any right to  
27 administrative or judicial review. The term "government entity" means  
28 the state of New York, or any of its agencies, political subdivisions,  
29 instrumentalities, public corporations (including a public corporation  
30 created pursuant to agreement or compact with another state or Canada),  
31 or combination thereof.

32 (2) The commissioner, or his or her designee, shall cooperate with any  
33 government entity that is required by law or has elected to require tax  
34 clearances to establish procedures by which the department shall receive  
35 a tax clearance request and transmit such tax clearance to the govern-  
36 ment entity, and any other procedures deemed necessary to carry out the  
37 provisions of this section. These procedures shall, to the extent prac-  
38 ticable, require secure electronic communication between the department  
39 and the requesting government entity for the transmission of tax clear-  
40 ance requests to the department and transmission of tax clearances to  
41 the requesting entity. Notwithstanding any other law to the contrary, a  
42 government entity shall be authorized to share any data or information  
43 with the department that is necessary to ensure the proper matching of a  
44 person who is the subject of a tax clearance request to the tax records  
45 maintained by the department.

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

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

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

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

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

38 (c) Nothing in this subdivision is intended to limit any individual  
39 from seeking relief from joint and several liability pursuant to section  
40 six hundred fifty-four of this chapter, to the extent that he or she is  
41 eligible pursuant to that section, or establishing to the department  
42 that the enforcement of the underlying tax liabilities has been stayed  
43 by the filing of a petition pursuant to the Bankruptcy Code of 1978  
44 (Title Eleven of the United States Code).

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

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

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

4     § 4. This act shall take effect June 1, 2019; provided, however, that  
5     the department of taxation and finance, and any other government entity  
6     electing to receive a tax clearance from the department of taxation and  
7     finance may work to execute the necessary procedures and technical  
8     changes to support the tax clearance process as described in this act  
9     before that date; provided, further, that this effective date will not  
10    impact the administration of any tax clearance program authorized by  
11    another provision of law.