

May 19, 2004

The Honorable George E. Pataki
Governor
State of New York
State Capitol
Albany, New York 12224

Re: Part L of Budget Bill S. 6060-A/A. 9560-A

Dear Governor Pataki:

The New York State Society of Certified Public Accountants, the largest and oldest society of CPAs in the United States, is very concerned about your proposal to curtail administrative hearing rights for New York State taxpayers, as proposed in Part L of your Budget Bill S. 6060-A/ A. 9560-A. This proposal essentially provides that a taxpayer must first pre-pay a tax assessment and penalty in instances of mathematical and clerical errors, and then apply to the NYS Department of Taxation and Finance for a refund, before proceeding to an administrative hearing.

Since September 1st, 1987, when Article 40 of the Tax Law became effective, New Yorkers have enjoyed the right to appeal, "as a matter of right" to the independent Division of Tax Appeals. Taxpayers are entitled to an independent administrative hearing to protest a notice issued by the Commissioner of Tax and Finance of "tax due, a tax deficiency, a denial of refund...or any other notice which gives a person a right to a hearing." New Yorkers also enjoy the benefits of the pre-hearing process established under the Bureau of Conciliation and Mediation.

In 1994, the Supreme Court, Appellate Division Third Department, In the Matter of Donal A. Meyers v. Tax Appeals Tribunal of the State of New York et al, 201 A.D. 2d 185, held that under Article 40 of the Tax Law, Section 2006 (4) a taxpayer is entitled to a hearing without pre-payment of the tax. Specifically, the Court stated, "Requiring the taxpayer to first pay the tax and then file a claim for refund imposes conditions on the

The Honorable George E. Pataki
Page 2
May 19, 2004

taxpayer's entitlement to a hearing, a hearing which the statute requires as a matter of right." For almost ten years, our clients, both individuals, as well as small and large businesses throughout New York, have had the right to administrative appeal without prepayment of the tax or penalty. The change sought in Part L of your Budget Bill is a fundamental change to due process rights of New York taxpayers.

We applaud your efforts and accomplishments in treating taxpayers fairly, and recognize the accomplishments of your administration in tax reform. Your letter on the NYS Department of Taxation and Finance's website regarding the rights of the taxpayer, refers to an important protection you have given taxpayers: "giving more time to pay tax liabilities after receiving a notice of the liability before additional interest and certain penalties begin to accrue." The right to administrative appeal without a prepayment is essential because the tax that is appealed under Article 40 is not due until a final decision on the tax is rendered by the Tax Appeals Tribunal, subject to judicial review.

Some may argue that we, as tax professionals, should not be concerned about Part L because it is limited in its application, i.e. "to cases of mathematical or clerical errors or failure to pay the tax due shown on the return or for any stamps purchased, and any interest or penalty related thereto." Our view is that a pre-hearing payment requirement may have a significant financial impact on taxpayers and possibly could discourage them from participating in the administrative appeal process.

On May 10, 2004, members of our New York, Multistate and Local Taxation Committee met with representatives of the Department of Taxation and Finance. The purpose of the meeting was to voice our concerns and make recommendations that would satisfy both the Department's objectives of timely tax collection and at the same time preserve the taxpayer's right to appeal. Specifically, we recommended that any tax, penalty and interest that may be owed be bifurcated on all tax due notices. This would allow the Department to collect tax and interest that is rightfully owed, while preserving the taxpayer's right to appeal penalties and interest thereon without pre-payment based upon reasonable cause.

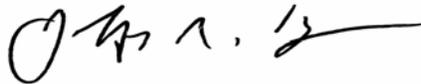
In August of 1995, in an approval message for Chapter 373 to establish a new sales tax exemption, you wrote: "By administrative edict, the prior administration pursued avenues of taxation on the basis of an expansive—and erroneous—interpretation of tax law. This abusive practice has subjected honest, law-abiding taxpayers to unwarranted assessments, endless notices of determination, and years of litigation from tax auditors

The Honorable George E. Pataki
Page 3
May 19, 2004

with marching orders from the top – all stemming from a policy in search of endless revenue streams from alleged taxes never authorized by the Legislature.”

The most important right to protect taxpayers during those years prior to your administration was the right to an administrative hearing and subsequent judicial review, without prepayment of the tax assessment or penalty. We believe our recommendation would accelerate the Department’s ability to collect tax that is rightfully owed and at the same time preserve taxpayer’s rights to appeal penalties and interest thereon. We urge you to reconsider your proposal to curtail taxpayers’ hearing rights, and to adopt our recommendation. We offer our services to work with you and your staff to revise Part L of your Budget Bill.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Hoops", with a long horizontal flourish extending to the right.

Jeffrey R. Hoops, CPA
President

cc: The Honorable Joseph L. Bruno
The Honorable Sheldon Silver
The Honorable Herman D. Farrell, Jr.
The Honorable Owen H. Johnson
The Honorable Andrew Eristoff