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**REPORT ON LEGISLATION
STATE & LOCAL TAXATION COMMITTEE**

**2015-16 ARTICLE VII BUDGET BILL A.3009 / S.2009 (PART JJ)
WHICH WOULD AMEND THE GENERAL OBLIGATIONS LAW AND THE TAX
LAW, IN RELATION TO AUTHORIZING ELECTRONIC TAX CLEARANCES FOR
PROFESSIONAL AND BUSINESS LICENSES**

THIS PROVISION IS OPPOSED

The State and Local Taxation Committee of the New York City Bar Association submits these comments on Governor's Cuomo's Proposed 2015-2016 Executive Budget (Part JJ) which works a particular hardship on all occupational, professional and business licensees.

Part JJ would allow various New York State executive branch agencies the right to deny holders of an occupational, professional or business license who apply online the right to obtain or renew a license if the licensed individual has past-due tax liabilities in excess of \$500, or another amount provided by the licensing department, or has failed to file returns or register during the three prior years. While our comments focus on the impact of the provision on attorneys licensed and regulated by the judicial branch, our particular area of expertise, we believe the proposal raises constitutional concerns with respect to all covered licensees.

The provision to sanction attorneys encroaches on the authority of the Office of Court Administration to regulate the profession and does so in a way that violates due process, and thus, the proposal appears vulnerable to constitutional challenge and should be reconsidered. *See, e.g., Berjikian v. Cal. Franchise Tax Bd.*, No. 25242 (Cal. Ct. App., Jan. 15, 2015) (holding that California's license suspension provisions violated the license holders' procedural due process rights; equal protection and substantive due process rights were held not to have been violated). First, by its terms, the bill only addresses online applications and not paper applications leaving open a question of whether the provisions violate equal protection. Second, procedural and substantive due process concerns exist because while license holders may have due process protections with respect to ascertaining the tax deficiency, only limited pre-deprivation review provisions were provided with respect to licensing and may not address all possible avenues for challenge. For example, the only basis provided for challenging the failure to file returns is to establish that the returns have been filed, even though legitimate bases may exist for not filing such returns.

In addition, the bill appears to allow a government entity to deny the issuance or renewal of a license without providing a reasonable pre-deprivation time to cure or otherwise address the problem, potentially depriving a licensed individual the ability to earn a livelihood. The bill also makes no provision for a delinquent tax obligor to enter into an installment payment plan or for entering into an offer in compromise. Delinquent taxpayers should not be required to forego these procedural options to secure licensing. The bill also provides that an entity's license application is rendered incomplete if a list of responsible officers and their social security numbers is not provided; this information should not be required as a precondition for the filing of a license application, particularly since the determination of who constitutes a "responsible person" is often a subjective and contentious legal issue.

We note that depriving attorneys of their license without due process of law also harms their clients, who would lose their attorneys abruptly in the middle of their matters.

For these reasons our Committee would recommend that Part JJ be stricken from the bill to allow time for additional consideration.

March 2015