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March 10, 2005

Honorable George E. Pataki  
Governor  
State of New York

Honorable Joseph Bruno  
Senate Majority Leader  
NYS Senate

Honorable Sheldon Silver  
Speaker  
NYS Assembly

RE: Part L of Budget Bill S.995-B and A.1925-B

Dear Governor Pataki, Majority Leader Bruno and Speaker Silver:

I am writing on behalf of the New York State Society of Certified Public Accountants (the Society), the oldest and largest CPA society in the country. Part L of the Budget Bill S.995-B/A.1925-B proposes a new section 7404-a of Article 149 of the Education law to make tax compliance a pre-condition to the right to practice public accountancy in New York, affecting both applicants for licensure as CPAs and current New York CPAs who must re-register with the state every three years. Under this proposal, an applicant will not be licensed and CPAs who re-register to practice will have their license suspended and revoked, if they have a tax due and owing to the state.

The only cure to this potential loss of right to practice will be the obtaining by the applicant or licensee of a tax clearance from the State Department of Taxation and Finance (DTF). For licensees, a time limit of no less than 45 days will be set by the State Education Department for obtaining the tax clearance. Given the severity of the penalty in Part L for the failure to obtain a timely tax clearance from DTF and our concerns about the lack responsiveness by DTF, a minimum 45-day time limit is inadequate. CPAs should have at least 180 days to obtain a tax clearance from DTF.

A large percentage of our membership is involved in providing tax preparation and tax advisory services, and tax compliance is an essential component of professional tax services offered to the public by CPAs. We expect

our members to comply with the tax laws, and our Society's bylaws provide for automatic expulsion for membership upon final conviction in any court of the United States or any political subdivision of the United States for:

- a. the willful failure to file any income tax return which the member, as an individual taxpayer, is required by law to file;
- b. the filing of a false or fraudulent income tax return on the member's or a client's behalf; or
- c. the willful aiding in the preparation or presentation of a false and fraudulent income tax return of a client.

We do not oppose the concept of proposed Part L that an applicant for a CPA license must not have a tax due and owing to the state, or that a CPA will face suspension of his license if he has a tax due and owing to the state. The license to practice public accountancy in New York represents the livelihood of our members, and before such a valuable property right is denied, the State must assure due process to the licensees through an administrative hearing under Section 6510 of the Education Law, with a final decision by the Board of Regents, subject to court review on appeal. Part L bypasses the hearing process entirely.

Our experience in representing clients before the DTF shows that even in instances of filed tax warrants, where the client owes a tax, penalty or interest to the State, it is sometimes reasonable and appropriate for the CPA to attempt in good faith to negotiate an offer in compromise with the DTF to satisfy the amount due. In some cases, there are mitigating circumstances that are raised in good faith to DTF resulting in extended negotiations. We recommend that Part L should preclude any suspension of CPA's right to practice upon proof by the CPA of pending good faith efforts to negotiate with DTF on a tax due and owing by such individual (a similar provision should be afforded to candidates for a CPA license who have a tax due to the state).

As a result of negotiations with the DTF regarding a filed warrant, a multi-year installment or other payment agreement may be entered into with DTF. If the applicant or CPA is current on payments under such agreement, he or she should not be deemed to have a tax due and owing to the state or be subjected to a loss of right to practice for failure to obtain a timely tax clearance from the DTF. We recommend that the exception in the definition of "taxes due and owing" in section 7404 (1)(D) be expanded to address this issue: "(D).....The term 'taxes due and owing' shall not include a warranted tax liability which has been paid in full and for which the tax commissioner has filed a satisfaction in the office of the appropriate county clerk, **OR FOR WHICH PAYMENTS ARE CURRENT PURSUANT TO AN INSTALLMENT OR OTHER PAYMENT AGREEMENT.**" (changes in CAPS)

We note that definition of "tax clearance" in section 7404 (1)(E) recognizes installment or other payment agreements, but this unnecessarily burdens the applicant or CPA with the additional step of obtaining a timely tax clearance from the DTF for the right to practice. When the applicant or CPA is current on his or her payments to the DTF under a payment agreement, such arrangement must be deemed to be in full compliance with the New York tax law, and not construed as a tax due and owing under section 7404.

We note that the State of Massachusetts affords its licensees a hearing on the issue of whether required taxes have been paid, and that license suspension or revocation occurs only when the licensee has not filed in good faith a pending application for tax abatement. We call your attention to the applicable section of the general laws of Massachusetts, M.G.L.-Chapter 62, Section 47A.

In lieu of Part L, we would support legislation to require all CPAs to certify every three years to the State Education Department under penalty of perjury: "To the best of my knowledge and belief, I have filed all state tax returns and paid all state taxes required by law". This statement is currently required to be signed by CPAs on their application for registration in Massachusetts. It would achieve the intended purpose of Part L to

improve tax compliance, without subjecting CPAs to likely administrative errors or delay by DTF that could unfairly jeopardize the CPA's right to practice under Part L, as proposed.

We wish to point out that all CPAs are not required to register triennially with the State Education Department, only those who are practicing public accountancy, i.e. public practice. Approximately one-third of our membership is currently in private industry, academia or government, and they are not currently required to register triennially. Therefore, the proposed Part L fails to treat all CPA equally, and would subject CPAs in public practice to a higher standard of tax compliance. We do not believe that you intend this result. The State Senate unanimously passed legislation in 2003 and 2004 to require triennial registration by all CPAs.

Lastly, we noted that the Massachusetts statute refers to the restoration or renewal of a suspended or revoked license upon certification from the tax commissioner that the licensee is in good standing with respect to taxes payable. In fairness to the licensees, a similar provision on restoration or renewal should be added to the proposed Part L.

Thank you for your consideration of our comments. We are available to work with you on these issues.

Yours truly,

A handwritten signature in cursive script, reading "John J. Kearney". The signature is written in black ink and is positioned above the typed name.

John J. Kearney, President