



NEW YORK  
CITY BAR

**COMMITTEE ON STATE & LOCAL TAXATION**

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The Honorable Andrew M. Cuomo  
Governor of New York State  
New York State Capitol Building  
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Dear Governor Cuomo:

We congratulate you upon your election and want to take this opportunity to introduce you to our Committee. The State and Local Taxation Committee of the New York City Bar Association ("City Bar") addresses recent developments in New York State and City taxation, legislative and regulatory proposals, new decisions and procedural issues affecting New York taxpayers. Our membership is composed of attorneys from government agencies, law firms, accounting firms, and the business community. In furtherance of our agenda, we are seeking your support for continuing the operation of The Office of the Taxpayer Rights Advocate within the New York State Department of Taxation and Finance (the "Tax Department"), and ultimately, legislation that would formally codify the ombudsman position within the Tax Department.

**The Office of the Taxpayer Rights Advocate**

The Office of the Taxpayer Rights Advocate (the "Office") is an independent organization within the Tax Department that was administratively created in 2009 to assist taxpayers in resolving problems with the Tax Department, identify problems and legislative solutions, and work with the Tax Department to improve processes. The Office is currently under the supervision and direction of Deputy Commissioner, Taxpayer Rights Advocate, Jack Trachtenberg. Acting Commissioner Jamie Woodward appointed Mr. Trachtenberg to that position in October 2009.<sup>1</sup>

The Taxpayer Rights Advocate is an employee of the Tax Department and reports to the Commissioner of Taxation and Finance. The Office is currently divided into two units, the Case Advocacy Unit that assists individuals and business taxpayers with case-specific tax problems, and the Systemic Advocacy Unit that addresses broader issues that adversely affect multiple

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<sup>1</sup> See generally, N.Y.S. Dep't of Tax'n & Fin., Press Release, *Tax Department Announces Initiatives to Improve Taxpayer Rights, Efforts Include Comprehensive Review of Practices and Policies to Help Taxpayers; Department Names Public Taxpayer Rights Advocate to Spearhead Efforts*, October 1, 2009.

taxpayers, including instances where Tax Department procedure has failed to produce the intended result. The Office also educates taxpayers on their responsibilities with respect to audits, protests and reviews of adverse decisions.

### **The Need for a New York Taxpayer Rights Advocate**

As tax professionals, we work with the Tax Department on a continuous basis, both in respect of professional responsibilities for clients, as well as serving as representatives of the City Bar which for years has provided objective technical assistance to Tax Department personnel on matters of New York tax policy, interpretation and administration. While we have found the Tax Department generally to be thoughtful, cooperative, cognizant of taxpayers' rights and even-handed in its application of the law, we recognize that there may be exceptions (often due to the size of the operation and the nature of its task of collecting tax revenue). The Tax Department has also recently enhanced its enforcement of the Tax Laws, which has led to the filing of more tax warrants, an increase in the number of collection actions such as seizures and levies, as well as an increase in criminal investigations and prosecutions. While we recognize the need of the Tax Department to ensure compliance with the Tax Law, we believe it incumbent upon the Tax Department to collect revenue in a way that treats taxpayers fairly and in a timely, professional manner, primarily because our tax system depends on voluntary compliance.

The Office has found when investigating individual taxpayer's cases "that the Tax Department's aggressive enforcement efforts are beginning to yield diminishing returns, and may even be counterproductive in some areas."<sup>2</sup> As of this writing, since October 2009, the Taxpayer Rights Advocate has received approximately 1,900 requests from individuals and businesses for assistance. The number and nature of requests illustrates that the Tax Department's traditional informal dispute resolution process is not sufficient in responding to taxpayers' claims and protests. The Systemic Advocacy Unit has also identified certain reform initiatives that would simplify collection procedures, eliminate delay in enforcement efforts, and promote voluntary compliance. For example, the Office has advocated for legislation to reform the state's Offer in Compromise Program (which would allow the Tax Department to resolve many cases on a fair and practical basis and bring revenue to the Tax Department). The Office has also recommended legislative changes to the period of time for collections (which would benefit the Tax Department by saving resources from being spent on aged and uncollectible debts). The Taxpayer Rights Advocate is expected to issue an annual report identifying systemic problems with the Tax Department and suggested reforms relatively soon.

The tax ombudsman role is well established at the Federal tax level. The Internal Revenue Service ("IRS") Office of the Taxpayer Advocate, which was established in 1979, plays an important role in assisting taxpayers in resolving specific disputes with the IRS, as well as working with the IRS to improve processes on a cost effective basis.<sup>3</sup> Many other states also have taxpayer advocates to help resolve disputes and guard against waste, fraud and abuse.<sup>4</sup>

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<sup>2</sup> Jack Trachtenberg, *New York Does the 'Right Thing': The State's First Taxpayer Rights Advocate*, Journal of Multistate Tax'n, Vol. 20, No. 7, October 2010.

<sup>3</sup> See e.g. National Taxpayer Advocate, Report to Congress, Fiscal Year 2011 Objectives, June 30, 2010.

<sup>4</sup> Approximately 26 states have some kind of taxpayer advocate, either by statute (e.g. California) or administrative grace.

We believe that the New York Taxpayer Rights Advocate is serving a vital role in advocating on behalf of New York taxpayers and resolving disputes with the Tax Department in a cost-effective manner and identifying systemic issues that affect the Tax Department's ability to perform its primary function of collecting revenue. In doing so, the Taxpayer Rights Advocate is helping to reduce the high costs to the Tax Department and taxpayers of litigation and formal dispute resolution, as well as promoting sound tax administration that encourages taxpayers to live, work and employ their capital in the State. As such, we enthusiastically ask for your support to continue the current Office of the Taxpayer Rights Advocate, as well as codify the Office within New York's Tax Law.

Respectfully,

A handwritten signature in cursive script that reads "Debra Herman".

Debra S. Herman  
Chair

Cc: Senator John DeFrancisco  
Chair, Senate Finance Committee