



NEW YORK  
CITY BAR

Contact: Maria Cilenti - Director of Legislative Affairs - mcilenti@nycbar.org - (212) 382-6655

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

**A.6429  
S.1072**

**M. of A. Kavanagh  
Sen. DeFrancisco**

AN ACT to amend the tax law, in relation to enacting the "taxpayer advocate act"

**THIS BILL IS APPROVED WITH SUGGESTED MODIFICATIONS**

The New York City Bar Association's Committee on State and Local Taxation (the "Committee") supports legislation that would create the Office of the Taxpayer Advocate as an independent office within the Executive Branch.

As set forth in the Committee's prior correspondence to Governor Cuomo<sup>1</sup>, in 2009 the New York State Department of Taxation and Finance (the "Tax Department") administratively created an Office of the Taxpayer Rights Advocate (the "Office") to assist taxpayers in resolving disputes with the Tax Department, to identify problems and legislative solutions, and to work with the Tax Department to improve processes. The Office has been viewed as a success by taxpayers and practitioners.

**Significance of Legislative Proposal**

The legislation would ensure the continued permanence of the ombudsman position within New York, and make it independent of the Tax Department. The Committee applauds the proposal's establishment of the Taxpayer Advocate, for a set term, through appointment by the Governor, by and with the advice and consent of the Senate. The Committee believes that independence, both economically (*i.e.*, having a budget outside the Tax Department) and operationally (*i.e.*, allowing the Taxpayer Advocate to appoint officers and employees as necessary to perform statutory duties), is crucial to the effective role of the Office of Taxpayer Advocate. Notwithstanding, the Taxpayer Advocate should report to the Commissioner of the Tax Department, similar to the federal model requiring the National Taxpayer Advocate to report to the Commissioner of the Internal Revenue Service.

The statutory mission of the Office of Taxpayer Advocate should be clear. In this regard, the Committee supports the proposal's specific enumeration of functions, powers and duties for the Office of Taxpayer Advocate. The Committee believes that the powers, duties and functions

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<sup>1</sup> The Committee's January 11, 2011 letter to Governor Cuomo is attached and is available at <http://www.nycbar.org/pdf/report/uploads/20072040-LettertoGovernorCuomoreTaxpayerRightsAdvocate.pdf>.

should mirror those at the federal level, and the current proposal adopts the four principal functions of the National Office of Taxpayer Advocate: to assist taxpayers in resolving problems with the Tax Department; to identify areas in which taxpayers have problems in dealings with the Tax Department, to propose changes in the administrative practices of the Tax Department to mitigate these problems; and to identify potential legislative changes which may be appropriate to mitigate such problems.

The Committee views the requirement that the Taxpayer Advocate submit an annual report (the "Annual Report") to the Governor, Commissioner, and heads of the Senate and Assembly as serving a vital role in recommending reforms that ensure sound tax administration.

## **Recommendations**

While the Committee has the following recommendations on improvements to the legislation, it supports its enactment in current form, if the choice is between enactment of this legislation or no legislation at all.

At the federal level, the National Taxpayer Advocate has the authority upon application filed by the taxpayer to issue a Taxpayer Assistance Order ("TAO") when a taxpayer is suffering or about to suffer a significant hardship as a result of the manner in which the federal tax laws are being administered if relief is not granted. The TAO may require the Internal Revenue Service ("IRS") to release property of the taxpayer levied upon or order the IRS to cease any action, take any action as permitted by law, or refrain from taking any action with respect to the taxpayer pursuant to the provisions of the Internal Revenue Code addressing collection, bankruptcy and receiverships, discovery, or any other provision of the internal revenue laws specifically described in the order. A TAO may also be issued to require the IRS to expedite, reconsider, or review at a higher level an action taken with respect to a determination or collection of a tax liability. Although a TAO is not intended to be a substitute for an established administrative procedure or judicial review procedure, but rather is intended to supplement existing procedures, the TAOs play an important role at the federal level, serving as an effective advocacy tool. We believe the legislative proposal would benefit by the addition of this tool. In the event legislation authorizes the issuance of TAOs, the Taxpayer Advocate's annual report should identify any TAOs that were not honored by the Tax Department in a timely manner, as in the federal model.

Consideration should be given to more closely conform the legislation to the federal model in the following other areas:

- Provide that the Taxpayer Advocate must not have been an officer or employee of the Tax Department during the 2-year period ending with such appointment;
- Provide that the annual report shall be issued directly to the Governor, Commissioner, and leaders of the Senate and Assembly without any prior comment or review by the Commissioner or any other officer or employee of the Tax Department or Executive Branch;
- Provide that the Commissioner shall furnish formal responses to recommendations made by the Taxpayer Advocate; and

- Provide that the Taxpayer Advocate may, at the Taxpayer Advocate's discretion, not disclose to the Tax Department contact with, or information provided by the taxpayer, subject to provisions under the Tax Law requiring the Office to report criminal violations and acts of fraud committed under the Tax Law.

The Committee greatly appreciates the time given to read and consider these recommendations and urges the ultimate passage of A.6429/S.1072.

June 2011

[Attachment: January 11, 2011 letter from the Committee to Governor Cuomo]



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**COMMITTEE ON STATE & LOCAL TAXATION**

DEBRA S. HERMAN  
CHAIR  
825 8<sup>TH</sup> AVENUE  
37<sup>TH</sup> FLOOR  
NEW YORK, NY 10019  
Phone: (212)903-8736  
Fax: (212)974-3059  
dherman@rhtax.com

January 11, 2011

MARK WILENSKY  
SECRETARY  
825 8<sup>TH</sup> AVENUE  
37<sup>TH</sup> FLOOR  
NEW YORK, NY 10019  
Phone: (212)903-8732  
Fax: (212)974-3059  
mwilensky@rhtax.com

The Honorable Andrew M. Cuomo  
Governor of New York State  
New York State Capitol Building  
Albany, NY 12224

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