



NEW YORK STATE BAR ASSOCIATION

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TAX SECTION

2011-2012

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March 16, 2011

Hon. Thomas H. Mattox
Commissioner of Taxation and Finance
W.A. Harriman Campus, Bldg. 9
Albany, NY 12227

Re: Proposed Legislation (S.1072)
Creating an Office of the Taxpayer Advocate

Dear Commissioner Mattox:

I am writing on behalf of the New York State Bar Association Tax Section to express our strong support for legislation recently proposed in the New York State Senate (S.1072), which would create an independent “Office of the Taxpayer Advocate” as part of the Executive branch.

Current Taxpayer Rights Advocate Office

There already exists within the Department of Taxation and Finance (the “Department”) an Office of the Taxpayer Rights Advocate (the “Office”), which was formed administratively by the Department in 2009. The Office is intended to be independent of the Department’s operating units.

The Office was formed at a time of increased tax enforcement by the Department, with more active audits, aggressive collections enforcement and increased criminal investigations. The Department does a commendable job of carrying out these important enforcement activities in a fair manner, affording taxpayers their rights to due process, but inevitably there will be situations when the normal channels within the Department are seen by some as failing to adequately

protect the rights of taxpayers. Since its formation in October 2009, the Office has played an important role in making the Department more accessible and responsive to taxpayers.

The role of the Office is twofold. First, it is to help individual taxpayers who are unable to resolve protracted tax problems through normal channels within the Department. Second, it is to identify systemic problems within the Department that negatively affect multiple taxpayers and to propose remedies to those problems.

By all accounts, the existing Office has been viewed as a resounding success by taxpayers and practitioners. For example, the Office formed a Case Advocacy Unit a little over a year ago, and we understand that the Unit has already received more than 1,900 taxpayer requests for assistance. Working with Department employees, the Case Advocacy Unit reportedly has successfully resolved nearly 70% of those cases. In addition, a “Systemic Advocacy Unit” has been addressing issues that impact a broader range of taxpayers. For example, it has helped draft legislation to create a statute of limitations for tax collections, and legislation to reform the definition of who is a “responsible person” for sales tax collection purposes. Another example is its work to address concerns regarding the effectiveness and independence of the Department’s Conciliation Bureau. These efforts have been instrumental in facilitating better and fairer tax administration.

Importance of the Proposed Legislation

The legislation would institutionalize the Office of the Taxpayer Advocate, and make it fully independent of the Department. Among the key features of the legislation are the following:

- The Taxpayer Advocate would be appointed by the Governor, with the advice and consent of the Senate, to a four-year term. The Taxpayer Advocate would continue to report directly to the Commissioner.
- The legislation enumerates the specific functions, powers and duties of the Office.

- The Department would have no authority over the staffing, operations and management of the Office, including its budget.
- The Taxpayer Advocate would be required to submit an annual report to the Governor, Senate and Assembly leaders, and the Commissioner, identifying problem areas within the Department and making recommendations for administrative and legislative action to address those problems.

The legislation merits the Department's support for several reasons. First, it would more closely follow the U.S. federal model, where the Office of the Taxpayer Advocate was an office within the IRS from 1979 until 1996, when Congress enacted legislation creating an independent Office of the Taxpayer Advocate; other states such as California have also followed this model.¹ Second, by setting a fixed four-year term for the Taxpayer Advocate and removing from the Department all management, staffing and budgetary oversight over the Office, the legislation would further emphasize the independence of that Office, which is critical to its effectiveness.

Moreover, while currently there are no plans to scale back the role of the existing Taxpayer Rights Advocate, the legislation would help insure the continuation of the Office, unimpeded by future political or budgetary contingencies.

Finally, by requiring the Taxpayer Advocate to prepare an annual report identifying problems, initiatives and recommendations for remedial action, the Commissioner, the Governor and the Senate and Assembly leaders will benefit from the impartial assessment of the fairness and effectiveness of the State's revenue-generating agency.

Recommendations for Improvement

While we believe the legislation would be improved by including some or all of the following recommendations, we nonetheless support it in its present form if the choice is between the legislation in its current form or no legislation at all. As a matter of fair and effective tax

¹ More information about the National Taxpayer Advocate can be found at <http://www.irs.gov/advocate/>.

administration it is far preferable for the Taxpayer Advocate Office to be created under the authority of the Legislature, and that it be independent from the Department. We believe the legislation would benefit by more closely following the U.S. federal model in certain respects to better insure the independence and effectiveness of the Taxpayer Advocate Office.

Thus, we believe the legislation should specify that the annual report furnished to the Governor, legislative leaders and the Commissioner is to be provided without prior review or comment from the Department (consistent with the U.S. federal model). However, to prevent any implication that the Taxpayer Advocate would be precluded from consulting with Department personnel (whether or not related to the preparation of the report), we recommend that the legislation specify that the Taxpayer Advocate may consult with appropriate Department personnel not only in the preparation of the report, but in order to carry out any of his or her responsibilities.

Similarly, the legislation should give the Taxpayer Advocate the discretion to not disclose to the Department that the Office had contact with, or any information provided to the Office by, a taxpayer (consistent with the U.S. federal model).

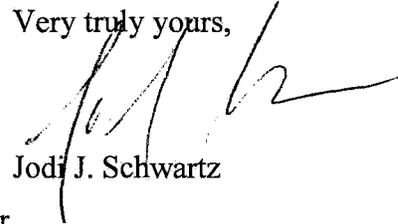
In addition, while we think it is unlikely that Department personnel would fail to cooperate in providing the Taxpayer Advocate with information and assistance necessary to perform his or her duties, it would be preferable if the legislation specifically called for such cooperation in order to make the Legislature's intent clear. Along these lines, we note that under the U.S. federal model the IRS is required to furnish formal written responses to recommendations made by the National Taxpayer Advocate within three months after submission to the IRS. The legislation would benefit by the addition of a similar obligation on the part of the Department.

This legislation accomplishes the goal of an independent and effective Taxpayer Advocate Office, and we are hopeful that the Department will support its enactment. Such support would demonstrate the Department's continued commitment to fairness in the administration of the State's tax system

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Thank you for considering our recommendations. The Tax Section remains available to provide assistance regarding this legislation, and in other areas where you feel we can be helpful.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jodi J. Schwartz", written over a light blue horizontal line.

Jodi J. Schwartz

cc: Mylan L. Denerstein, Counsel to the Governor
Jamie Woodward, Executive Deputy Commissioner