S T A T E O F N E W Y O R K

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I N S E N A T E

January 10, 2011

Introduced by Sens. PERKINS, DUANE, HASSELL-THOMPSON, KRUEGER -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

AN ACT to amend the tax law, in relation to creating the office of the taxpayer advocate

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The tax law is amended by adding two new sections 3013 and 3014 to read as follows:

S 3013. OFFICE OF THE TAXPAYER ADVOCATE. (A) THERE SHALL BE IN THE DEPARTMENT AN OFFICE TO BE KNOWN AS THE "OFFICE OF THE TAXPAYER ADVOCATE". SUCH OFFICE SHALL BE UNDER THE SUPERVISION AND DIRECTION OF AN OFFICIAL KNOWN AS THE "COMMISSIONER OF THE OFFICE OF THE TAXPAYER ADVOCATE". THE COMMISSIONER OF THE OFFICE OF THE TAXPAYER ADVOCATE SHALL BE APPOINTED BY THE GOVERNOR AND SHALL REPORT DIRECTLY TO THE COMMISSIONER. THE COMMISSIONER OF THE OFFICE OF THE TAXPAYER ADVOCATE SHALL DEVOTE HIS OR HER ENTIRE TIME TO THE DUTIES OF SUCH OFFICE.

(B) NO PERSON SHALL BE APPOINTED AS THE COMMISSIONER OF THE OFFICE OF THE TAXPAYER ADVOCATE UNLESS AT THE TIME OF SUCH PERSON'S APPOINTMENT SUCH PERSON IS A RESIDENT OF THE STATE AND IS KNOWLEDGEABLE ON THE SUBJECT OF TAXATION AND IS SKILLFUL IN MATTERS PERTAINING THERETO. ONCE APPOINTED, THE COMMISSIONER OF THE OFFICE OF THE TAXPAYER ADVOCATE SHALL CONTINUE IN OFFICE UNTIL THE GOVERNOR'S TERM EXPIRES AND UNTIL SUCH GOVERNOR'S SUCCESSOR HAS BEEN APPOINTED AND HAS QUALIFIED. THE TERM OF OFFICE SHALL BE AT THE PLEASURE OF THE GOVERNOR.

(C) IN THE EVENT OF A VACANCY CAUSED BY THE DEATH, RESIGNATION, REMOVAL OR DISABILITY OF THE COMMISSIONER OF THE OFFICE OF THE TAXPAYER ADVOCATE, THE VACANCY SHALL BE FILLED BY THE GOVERNOR.

(D) (1) THE OFFICE OF THE TAXPAYER ADVOCATE SHALL HAVE THE FOLLOWING FUNCTIONS, POWERS, AND DUTIES:

(I) TO ASSIST TAXPAYERS IN RESOLVING PROBLEMS WITH THE DEPARTMENT;

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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(II) TO IDENTIFY AREAS IN WHICH TAXPAYERS HAVE PROBLEMS IN DEALINGS WITH THE DEPARTMENT;

(III) TO PROPOSE SOLUTIONS, INCLUDING ADMINISTRATIVE CHANGES TO PRACTICES AND PROCEDURES OF THE DEPARTMENT;

(IV) TO RECOMMEND LEGISLATIVE ACTION AS MAY BE APPROPRIATE TO RESOLVE PROBLEMS ENCOUNTERED BY TAXPAYERS;

(V) TO PRESERVE AND PROMOTE THE RIGHTS OF THE TAXPAYER;

(VI) TO PROMOTE OPEN AND DIRECT COMMUNICATIONS; AND

(VII) TO APPOINT SUCH OFFICERS AND EMPLOYEES AS IT MAY REQUIRE FOR THE PERFORMANCE OF ITS DUTIES.

(2) THE COMMISSIONER OF THE OFFICE OF THE TAXPAYER ADVOCATE SHALL PREPARE AN ANNUAL REPORT AS TO HIS OR HER ACTIVITIES. SUCH REPORT SHALL BE SUBMITTED TO THE GOVERNOR, THE TEMPORARY PRESIDENT OF THE SENATE, THE SPEAKER OF THE ASSEMBLY, AND THE COMMISSIONER NO LATER THAN THE THIRTY-FIRST OF DECEMBER NEXT SUCCEEDING THE EFFECTIVE DATE OF THIS SECTION AND EVERY DECEMBER THIRTY-FIRST THEREAFTER. ANY SUCH REPORT SHALL CONTAIN FULL AND SUBSTANTIVE ANALYSIS, IN ADDITION TO STATISTICAL INFORMATION, AND SHALL

(I) IDENTIFY THE INITIATIVES THE COMMISSIONER OF THE OFFICE OF THE TAXPAYER ADVOCATE HAS TAKEN ON IMPROVING TAXPAYER SERVICES AND THE DEPARTMENT'S RESPONSIVENESS;

(II) CONTAIN A SUMMARY OF AT LEAST FIFTEEN OF THE MOST SERIOUS PROBLEMS ENCOUNTERED BY TAXPAYERS, INCLUDING A DESCRIPTION OF THE NATURE OF SUCH PROBLEMS;

(III) CONTAIN AN INVENTORY OF THE ITEMS DESCRIBED IN SUBPARAGRAPHS (I) AND (II) OF THIS PARAGRAPH FOR WHICH ACTION HAS BEEN TAKEN AND THE RESULT OF SUCH ACTION; AN INVENTORY FOR WHICH ACTION REMAINS TO BE COMPLETED; AND AN INVENTORY FOR WHICH NO ACTION HAS BEEN TAKEN, AND THE REASONS FOR THE INACTION;

(IV) IDENTIFY ANY TAXPAYER ASSISTANCE ORDER WHICH WAS NOT HONORED BY THE DEPARTMENT IN A TIMELY MANNER AS SPECIFIED UNDER SUBDIVISION (A) OF SECTION THREE THOUSAND FOURTEEN OF THIS ARTICLE;

(V) CONTAIN RECOMMENDATIONS FOR SUCH ADMINISTRATIVE AND LEGISLATIVE ACTION AS MAY BE APPROPRIATE TO RESOLVE PROBLEMS ENCOUNTERED BY TAXPAYERS; AND

(VI) INCLUDE SUCH OTHER INFORMATION AS THE COMMISSIONER OF THE OFFICE OF THE TAXPAYER ADVOCATE MAY DEEM ADVISABLE.

S 3014. TAXPAYER ASSISTANCE ORDERS. (A) THE COMMISSIONER OF THE OFFICE OF THE TAXPAYER ADVOCATE MAY, WITH OR WITHOUT A FORMAL REQUEST FROM A TAXPAYER, ISSUE A TAXPAYER ASSISTANCE ORDER THAT SUSPENDS OR STAYS AN ACTION OR PROPOSED ACTION BY THE DEPARTMENT IF, IN THE DETERMINATION OF SUCH COMMISSIONER, THE TAXPAYER IS SUFFERING OR IS ABOUT TO SUFFER A SIGNIFICANT HARDSHIP AS A RESULT OF THE MANNER IN WHICH THE DEPARTMENT ADMINISTERS THE TAX LAWS. A DETERMINATION BY SUCH COMMISSIONER UNDER THIS SECTION TO ISSUE OR TO NOT ISSUE A TAXPAYER ASSISTANCE ORDER IS FINAL AND CANNOT BE APPEALED TO ANY COURT.

(B) A TAXPAYER ASSISTANCE ORDER MAY REQUIRE THE DEPARTMENT TO RELEASE PROPERTY OF THE TAXPAYER LEVIED ON, CEASE ANY ACTION OR REFRAIN FROM TAKING ANY ACTION TO ENFORCE THE STATE TAX LAWS AGAINST THE TAXPAYER UNTIL THE ISSUE OR ISSUES GIVING RISE TO THE ORDER HAVE BEEN RESOLVED.

(C) THE RUNNING OF THE APPLICABLE PERIOD OF LIMITATIONS FOR SUCH DEPARTMENT ACTION SHALL BE SUSPENDED FROM THE DATE OF THE TAXPAYER'S REQUEST FOR A TAXPAYER ASSISTANCE ORDER OR THE DATE THE ORDER IS ISSUED, WHICHEVER IS EARLIER, UNTIL ONE OF THE FOLLOWING SHALL OCCUR:

(1) THE EXPIRATION DATE OF THE ORDER.

(2) IF AN ORDER IS MODIFIED, THE EXPIRATION DATE OF THE MODIFICATION ORDER.

(3) IF AN ORDER IS RESCINDED, THE DATE OF THE RESCISSION ORDER.

(D) A TAXPAYER ASSISTANCE ORDER SHALL NOT BE USED TO CONTEST THE MERITS OF A TAX LIABILITY OR AS A SUBSTITUTE FOR INFORMAL PROTEST PROCEDURES OR ADMINISTRATIVE OR JUDICIAL PROCEEDINGS FOR THE REVIEW OF A TAX ASSESSMENT OR COLLECTION ACTION OR DENIAL OF REFUND.

S 2. Subdivisions 1, 3 and 4 of section 170 of the tax law, subdivisions 1 and 3 as amended by chapter 282 of the laws of 1986 and subdivision 4 as amended by chapter 283 of the laws of 1986, are amended to read as follows:

1. The existing department of taxation and finance and its present functions are continued. The head of the department of taxation and finance shall be the commissioner of taxation and finance who shall have sole charge of the administration of such department except with regard to the administration of the division of tax appeals which shall be the sole charge of the tax appeals tribunal authorized by article forty of this chapter AND THE OFFICE OF THE TAXPAYER ADVOCATE AUTHORIZED BY SECTIONS THREE THOUSAND THIRTEEN AND THREE THOUSAND FOURTEEN OF THIS CHAPTER. The commissioner of taxation and finance shall be appointed by the governor by and with the advice and consent of the senate and shall hold office as commissioner of taxation and finance until the end of the term of the governor by whom he was appointed and until his successor has been appointed and has qualified.

3. The commissioner of taxation and finance may establish such additional divisions and bureaus as he may deem necessary. He may appoint the heads of such divisions and bureaus and fix their duties and he may consolidate, alter or abolish any divisions or bureaus, except that such commissioner shall have no such authority or power with regard to the division of tax appeals AND THE OFFICE OF THE TAXPAYER ADVOCATE.

4. The commissioner of taxation and finance may appoint and remove such officers, assistants and other employees as he may deem necessary for the exercise of the powers and duties of the department, all of whom shall be in the classified civil service unless otherwise provided by law; and he may prescribe their duties, and fix their compensation within the amounts appropriated therefor. The commissioner of taxation and finance may transfer officers or employees from their positions to other positions in the department, or abolish or consolidate such positions. He shall have all powers necessary to perform the duties conferred upon him regarding the state lottery authorized by article thirty-four of this chapter. However, the commissioner of taxation and finance shall have no power to appoint or remove any personnel of the division of tax appeals OR OF THE OFFICE OF THE TAXPAYER ADVOCATE nor shall such commissioner have any power or authority with regard to the operation and administration of such division OR OFFICE including any power or authority over such division's OR OFFICE'S budget. The commissioner shall furnish to the director of the division of the budget the itemized estimates of the financial needs of the division of tax appeals AND THE OFFICE OF THE TAXPAYER ADVOCATE prepared by the tax appeals tribunal AND THE OFFICE OF THE TAXPAYER ADVOCATE. Such itemized estimates may not be revised or altered in any manner by the commissioner.

S 3. This act shall take effect immediately; provided, however, that section 3014 of the tax law, as added by section one of this act shall not take effect until the later of April first next succeeding the date on which it shall have become a law, or the latest date on which any state appropriations relating to the operations of the department of

taxation and finance for the state fiscal year commencing on such April first, becomes law; provided, however, that the commissioner of taxation and finance shall take all steps necessary to promulgate rules and regulations necessary to achieve the intent and purposes of this act and to implement this act prior to such April first so that such rules and regulations shall be effective on the effective date of such section 3014 of the tax law; provided, further, that the commissioner of taxation and finance shall notify the legislative bill drafting commission upon the occurrence of the enactment of the legislation provided for in section one of this act in order that the commission may maintain an accurate and timely effective data base of the official text of the laws of the state of New York in furtherance of effectuating the provisions of section 44 of the legislative law and section 70-b of the public officers law.