

6097

2009-2010 Regular Sessions

I N   A S S E M B L Y

February 25, 2009

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Introduced by M. of A. ESPAILLAT -- read once and referred to the  
Committee on Ways and Means

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

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

1     Section 1. Short title. This act shall be known and may be cited as  
2     the "taxpayer advocate act".

3     S 2. The tax law is amended by adding a new section 3013 to read as  
4     follows:

5     S 3013. OFFICE OF TAXPAYER ADVOCATE. (A) THERE SHALL BE IN THE DEPART-  
6     MENT AN OFFICE TO BE KNOWN AS THE "OFFICE OF THE TAXPAYER ADVOCATE".  
7     SUCH OFFICE SHALL BE UNDER THE SUPERVISION AND DIRECTION OF AN OFFICIAL  
8     KNOWN AS THE "TAXPAYER ADVOCATE". THE TAXPAYER ADVOCATE SHALL BE  
9     APPOINTED BY THE GOVERNOR BY AND WITH THE ADVICE AND CONSENT OF THE  
10    SENATE. THE TAXPAYER ADVOCATE SHALL REPORT DIRECTLY TO THE COMMISSIONER.  
11    THE TAXPAYER ADVOCATE SHALL DEVOTE HIS OR HER ENTIRE TIME TO THE DUTIES  
12    OF SUCH OFFICE.

13    (B) NO PERSON SHALL BE APPOINTED AS A TAXPAYER ADVOCATE UNLESS AT THE  
14    TIME OF SUCH PERSON'S APPOINTMENT SUCH PERSON IS A RESIDENT OF THE STATE  
15    AND IS KNOWLEDGEABLE ON THE SUBJECT OF TAXATION AND IS SKILLFUL IN  
16    MATTERS PERTAINING THERETO. ONCE APPOINTED AND CONFIRMED, THE TAXPAYER  
17    ADVOCATE SHALL CONTINUE IN OFFICE UNTIL SUCH PERSON'S TERM EXPIRES AND  
18    UNTIL SUCH PERSON'S SUCCESSOR HAS BEEN APPOINTED AND HAS QUALIFIED. THE  
19    TERM OF OFFICE SHALL BE FOUR YEARS.

20    (C) ANY TAXPAYER ADVOCATE MAY BE REMOVED BY THE GOVERNOR FOR CAUSE  
21    AFTER AN OPPORTUNITY TO BE HEARD. A STATEMENT OF THE CAUSE OF SUCH  
22    PERSON'S REMOVAL SHALL BE FILED BY THE GOVERNOR IN THE OFFICE OF THE  
23    SECRETARY OF STATE.

24    (D) IN THE EVENT OF A VACANCY CAUSED BY THE DEATH, RESIGNATION,  
25    REMOVAL OR DISABILITY OF THE TAXPAYER ADVOCATE, THE VACANCY SHALL BE

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

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1 FILLED BY THE GOVERNOR BY AND WITH THE ADVICE AND CONSENT OF THE SENATE  
2 FOR THE UNEXPIRED TERM.

3 (E) (1) THE OFFICE OF TAXPAYER ADVOCATE SHALL HAVE THE FOLLOWING FUNC-  
4 TIONS, POWERS, AND DUTIES:

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

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

8 (III) TO PROPOSE SOLUTIONS, INCLUDING ADMINISTRATIVE CHANGES TO PRAC-  
9 TICES AND PROCEDURES OF THE DEPARTMENT;

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

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

13 (VI) TO PROMOTE OPEN AND DIRECT COMMUNICATIONS; AND

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

16 (2) THE TAXPAYER ADVOCATE SHALL PREPARE AN ANNUAL REPORT AS TO THE  
17 ACTIVITIES OF THE TAXPAYER ADVOCATE. SUCH REPORT SHALL BE SUBMITTED TO  
18 THE GOVERNOR, THE TEMPORARY PRESIDENT OF THE SENATE, THE SPEAKER OF THE  
19 ASSEMBLY, AND THE COMMISSIONER NO LATER THAN THE THIRTY-FIRST DAY OF  
20 DECEMBER COMMENCING IN THE YEAR TWO THOUSAND TEN AND EVERY YEAR THERE-  
21 AFTER. ANY SUCH REPORT SHALL CONTAIN FULL AND SUBSTANTIVE ANALYSIS, IN  
22 ADDITION TO STATISTICAL INFORMATION, AND SHALL:

23 (I) IDENTIFY THE INITIATIVES THE TAXPAYER ADVOCATE HAS TAKEN ON  
24 IMPROVING TAXPAYER SERVICES AND THE DEPARTMENT'S RESPONSIVENESS;

25 (II) CONTAIN A SUMMARY OF AT LEAST FIFTEEN OF THE MOST SERIOUS PROB-  
26 LEMS ENCOUNTERED BY TAXPAYERS, INCLUDING A DESCRIPTION OF THE NATURE OF  
27 SUCH PROBLEMS;

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

33 (IV) CONTAIN RECOMMENDATIONS FOR SUCH ADMINISTRATIVE AND LEGISLATIVE  
34 ACTION AS MAY BE APPROPRIATE TO RESOLVE PROBLEMS ENCOUNTERED BY TAXPAY-  
35 ERS; AND

36 (V) INCLUDE SUCH OTHER INFORMATION AS THE TAXPAYER ADVOCATE MAY DEEM  
37 ADVISABLE.

38 S 3. Subdivisions 1, 3 and 4 of section 170 of the tax law, subdivi-  
39 sions 1 and 3 as amended by chapter 282 of the laws of 1986 and subdivi-  
40 sion 4 as amended by chapter 283 of the laws of 1986, are amended to  
41 read as follows:

42 1. The existing department of taxation and finance and its present  
43 functions are continued. The head of the department of taxation and  
44 finance shall be the commissioner of taxation and finance who shall have  
45 sole charge of the administration of such department except with regard  
46 to the administration of the division of tax appeals which shall be the  
47 sole charge of the tax appeals tribunal authorized by article forty of  
48 this chapter AND THE OFFICE OF TAXPAYER ADVOCATE AUTHORIZED BY SECTION  
49 THREE THOUSAND THIRTEEN OF THIS CHAPTER. The commissioner of taxation  
50 and finance shall be appointed by the governor by and with the advice  
51 and consent of the senate and shall hold office as commissioner of taxa-  
52 tion and finance until the end of the term of the governor by whom he  
53 was appointed and until his successor has been appointed and has quali-  
54 fied.

55 3. The commissioner of taxation and finance may establish such addi-  
56 tional divisions and bureaus as he may deem necessary. He may appoint

1 the heads of such divisions and bureaus and fix their duties and he may  
2 consolidate, alter or abolish any divisions or bureaus, except that such  
3 commissioner shall have no such authority or power with regard to the  
4 division of tax appeals AND THE OFFICE OF TAXPAYER ADVOCATE.

5 4. The commissioner of taxation and finance may appoint and remove  
6 such officers, assistants and other employees as he may deem necessary  
7 for the exercise of the powers and duties of the department, all of whom  
8 shall be in the classified civil service unless otherwise provided by  
9 law; and he may prescribe their duties, and fix their compensation with-  
10 in the amounts appropriated therefor. The commissioner of taxation and  
11 finance may transfer officers or employees from their positions to other  
12 positions in the department, or abolish or consolidate such positions.  
13 He shall have all powers necessary to perform the duties conferred upon  
14 him regarding the state lottery authorized by article thirty-four of  
15 this chapter. However, the commissioner of taxation and finance shall  
16 have no power to appoint or remove any personnel of the division of tax  
17 appeals OR OF THE OFFICE OF TAXPAYER ADVOCATE nor shall such commission-  
18 er have any power or authority with regard to the operation and adminis-  
19 tration of such division OR OFFICE including any power or authority over  
20 such division's OR OFFICE'S budget. The commissioner shall furnish to  
21 the director of the division of the budget the itemized estimates of the  
22 financial needs of the division of tax appeals AND THE OFFICE OF TAXPAY-  
23 ER ADVOCATE prepared by the tax appeals tribunal AND THE OFFICE OF  
24 TAXPAYER ADVOCATE. Such itemized estimates may not be revised or altered  
25 in any manner by the commissioner.

26 S 4. This act shall take effect immediately.