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

1072

2011-2012 Regular Sessions

I N S E N A T E

January 5, 2011

Introduced by Sen. DeFRANCISCO -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

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:

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

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

S 3013. OFFICE OF TAXPAYER ADVOCATE. (A) THERE SHALL BE ESTABLISHED 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 "TAXPAYER ADVOCATE". THE TAXPAYER ADVOCATE SHALL BE APPOINTED BY THE GOVERNOR BY AND WITH THE ADVICE AND CONSENT OF THE SENATE. THE TAXPAYER ADVOCATE SHALL REPORT DIRECTLY TO THE COMMISSIONER. THE TAXPAYER ADVOCATE SHALL DEVOTE HIS OR HER ENTIRE TIME TO THE DUTIES OF SUCH OFFICE.

(B) NO PERSON SHALL BE APPOINTED AS A 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 AND CONFIRMED, THE TAXPAYER ADVOCATE SHALL CONTINUE IN OFFICE UNTIL SUCH PERSON'S TERM EXPIRES AND UNTIL SUCH PERSON'S SUCCESSOR HAS BEEN APPOINTED AND HAS QUALIFIED. THE TERM OF OFFICE SHALL BE FOUR YEARS.

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

(D) IN THE EVENT OF A VACANCY CAUSED BY THE DEATH, RESIGNATION, 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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FILLED BY THE GOVERNOR BY AND WITH THE ADVICE AND CONSENT OF THE SENATE FOR THE UNEXPIRED TERM.

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

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

(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 TAXPAYER ADVOCATE SHALL PREPARE AN ANNUAL REPORT AS TO THE ACTIVITIES OF THE TAXPAYER ADVOCATE. 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 DAY OF DECEMBER COMMENCING IN THE YEAR TWO THOUSAND TWELVE AND EVERY YEAR THEREAFTER. ANY SUCH REPORT SHALL CONTAIN FULL AND SUBSTANTIVE ANALYSIS, IN ADDITION TO STATISTICAL INFORMATION, AND SHALL:

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

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

S 3. 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 TAXPAYER ADVOCATE AUTHORIZED BY SECTION THREE THOUSAND THIRTEEN 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 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 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 TAXPAYER ADVOCATE prepared by the tax appeals tribunal AND THE OFFICE OF TAXPAYER ADVOCATE. Such itemized estimates may not be revised or altered in any manner by the commissioner.

S 4. This act shall take effect immediately.