

No. 2001-47

AN ACT

HB 200

Reenacting and amending the act of December 20, 1996 (P.L.1504, No.195), entitled "An act providing for the rights and privileges of taxpayers," further providing for disclosure statement of rights of taxpayers and for the Taxpayers' Rights Advocate; providing for innocent spouse relief and for reports to the General Assembly; and further providing for the expiration date.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. The title and the act of December 20, 1996 (P.L.1504, No.195), known as the Taxpayers' Bill of Rights, are reenacted and amended to read:

AN ACT

Providing for the rights and privileges of taxpayers, *for designation of a taxpayers' rights advocate and for the powers, duties and responsibilities of the Department of Revenue and the Taxpayers' Rights Advocate.*

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CHAPTER 1 GENERAL PROVISIONS

Section 101. Short title.

This act shall be known and may be cited as the Taxpayers' Bill of Rights.

Section 102. Legislative intent.

It is the intent of the General Assembly to provide equitable and uniform procedures for the operation of the Department of Revenue and for all taxpayers when dealing with the department. In order to ensure the equitable administration of the tax law, the relative rights and responsibilities of citizens and of their State government should be clearly set forth and adhered to. This act is intended as a minimum procedural code, and the Department of Revenue may adopt or grant additional procedures not inconsistent with this act.

Section 103. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Assessment." An assessment, determination, settlement or appraisal of tax liability issued by the Department of Revenue.

"Department." The Department of Revenue of the Commonwealth.

"Fiscal Code." The act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code.

"Secretary." The Secretary of Revenue of the Commonwealth.

"Taxpayer." An individual, partnership, association, society, company, corporation, estate, trust, trustee, receiver, liquidator, fiduciary or other entity subject to or claiming exemption from any tax administered by the Department of Revenue pursuant to the authority of the laws of this Commonwealth or under a duty to perform an act for itself or for another under or pursuant to the authority of such laws.

"Voluntary payment." A payment of a tax liability made pursuant to the free will of the taxpayer. The term does not include a payment made as a result of distraint, levy or pursuant to a legal proceeding in which the Commonwealth is seeking to collect its delinquent taxes or file a claim therefor.

CHAPTER 2
TAXPAYERS' RIGHTS

Section 201. Application.

(a) Limited to certain taxes.—Except as otherwise provided, the provisions of this act shall apply to any tax which is administered by the department. Any reference to a tax or taxes includes special assessments, fees and other impositions which are administered by the secretary.

(b) Strict compliance unnecessary.—Except to the extent explicitly provided by this act, the failure of the secretary or an officer or employee of the department to comply with any provision of this act shall not:

(1) Excuse a taxpayer from payment of any taxes owed by the taxpayer.

(2) Excuse any taxpayer from complying with any other duty imposed under or pursuant to the laws of this Commonwealth.

(3) Cure any procedural defect in an administrative or judicial proceeding or case involving a taxpayer with respect to taxes owed or compliance with any duty imposed under the laws of this Commonwealth.

Section 202. Disclosure statement of rights of taxpayers.

(a) Contents.—The secretary shall, **not later than 180 days after the effective date of this act,** prepare a statement which sets forth the following in simple and nontechnical terms:

(1) The rights of a taxpayer and the [obligation] *jurisdiction* of the department during an audit. *The taxpayer shall be informed about the extent of and limits to the department's jurisdiction in an audit.*

(2) The procedures by which a taxpayer may appeal or seek review of any adverse decision of the department, including administrative and judicial appeals.

(3) The procedure for filing and processing refund claims and taxpayer complaints *and the time frames for departmental action.*

(4) The procedures which the department may use *and the remedies it may seek* in enforcing [taxes] *tax law.*

(b) Distribution.—The statements prepared in accordance with this section shall be distributed by the secretary to all taxpayers the secretary contacts, other than by providing tax return forms, with respect to the determination or collection of any tax, the cancellation, revocation or suspension of a license, permit or registration or the denial of an application for a license, permit or registration. The secretary may take such actions as the secretary deems necessary to assure that distribution does not result in multiple statements being sent to any one taxpayer.

Section 203. Procedures involving taxpayer interviews.

(a) Recording of interviews by taxpayer.—Any officer or employee of the department in connection with any in-person interview with any taxpayer relating to the determination or collection of any tax, the

cancellation, revocation or suspension of a license, permit or registration or the denial of an application for a license, permit or registration shall, upon advance written request of the taxpayer, make an audio recording of the interview at the taxpayer's own expense and with the department's equipment. The taxpayer may also make an audio recording of the interview with the taxpayer's own equipment if, prior to commencement of the interview, the taxpayer notifies all parties present that the interview will be recorded.

(b) Safeguard.—

(1) An officer or employee of the department shall, before or at an initial interview, provide the following to the taxpayer:

(i) In the case of an in-person interview with the taxpayer relating to the determination of any tax, an explanation of the audit process and the taxpayer's rights under such process.

(ii) In the case of an in-person interview with the taxpayer relating to the collection of any tax, an explanation of the collection process and the taxpayer's rights under such process.

(iii) In the case of an in-person interview with the taxpayer relating to the cancellation, revocation or suspension of a license, permit or registration or to the denial of an application for a license, permit or registration, an explanation of the administrative hearing and judicial review processes and the taxpayer's rights under such processes.

(2) If the taxpayer clearly informs an officer or employee of the department at any time during an interview, other than an interview initiated by a subpoena, writ or other lawful process, that the taxpayer wishes to consult with an attorney, certified public accountant or any other person permitted to represent the taxpayer, such officer or employee shall suspend the interview regardless of whether the taxpayer may have answered one or more questions.

(c) Representative holding power of attorney.—Any attorney, certified public accountant or any other person permitted to represent the taxpayer who is not disbarred or suspended from practice and who has a written power of attorney executed by the taxpayer may be authorized by the taxpayer to represent the taxpayer in any interview described in subsection (a). An officer or employee of the department may not require a taxpayer to accompany the representative in the absence of a subpoena, writ or other lawful process to examine and inspect the taxpayer or the taxpayer's books, records or other papers. The officer or employee, with the consent of the immediate supervisor of the officer or employee, may notify the taxpayer directly that the officer or employee believes such representative is responsible for unreasonable delay or hindrance of a department examination or investigation of the taxpayer.

(d) **Nonapplicability to certain investigations.**—This section shall not apply to criminal investigations or investigations relating to the integrity of any officer or employee of the department.

(e) **Scope.**—For purposes of this section, any reference to tax shall also include any associated penalty, addition to tax or interest.

Section 204. Abatement of certain interest, penalties and additions to tax.

(a) **Interest attributable to errors and delays by the department.**—In the case of any assessment or final determination of interest, the secretary may abate the assessment or final determination of all or any part of interest for any period for the following:

(1) Any deficiency or any tax finally determined to be due attributable in whole or in part to any error or delay by an officer or employee of the department acting in his or her official capacity in performing a ministerial act.

(2) Any payment of any tax to the extent that any error or delay in such payment is attributable to such officer or employee being erroneous or dilatory in performing a ministerial act.

(b) **Error or delay.**—For purposes of subsection (a)(1), an error or delay shall be taken into account only if no significant aspect of the error or delay can be attributed to the taxpayer involved and after the department has contacted the taxpayer in writing with respect to the deficiency or tax finally determined to be due or payable. The secretary shall determine what constitutes timely performance of various ministerial acts performed under or pursuant to this act. Administrative and judicial review of abatements under subsection (a) and this subsection shall be limited to review of whether failure to abate would be widely perceived as grossly unfair.

(c) **Abatement of any penalty or addition to tax or excess interest attributable to erroneous written advice by the department.**—

(1) The secretary shall abate any portion of any penalty or excess interest attributable to erroneous advice furnished to the taxpayer in writing by an officer or employee of the department, acting in the officer's or employee's official capacity, if:

(i) the written advice was reasonably relied upon by the taxpayer and was in response to specific written request of the taxpayer; and

(ii) the portion of the penalty or addition to tax or excess interest did not result from a failure by the taxpayer to provide adequate or accurate information.

(2) This subsection shall not be construed to require the department to provide written advice to taxpayers or other persons or entities.

Section 205. Installment agreements.

(a) **Authorization.**—The secretary may enter into written agreements with any taxpayer under which the taxpayer is allowed to satisfy liability for payment of any tax and any interest, penalty or addition to tax in installment payments if the secretary determines that the agreement will facilitate collection of the liability.

(b) Extent to which agreements remain in effect.—

(1) Except as otherwise provided in this subsection, any agreement entered into by the secretary under subsection (a) shall remain in effect for the term of the agreement.

(2) The secretary may terminate any prior agreement entered into under subsection (a) if:

(i) information which the taxpayer provided to the secretary prior to the date of the agreement was inaccurate or incomplete; or

(ii) the secretary believes that collection of any liability to which an agreement under this section relates is in jeopardy.

(3) If the secretary finds that the financial condition of the taxpayer has significantly changed, the secretary may alter, modify or terminate the agreement, but only if:

(i) notice of the secretary's finding is provided to the taxpayer no later than 30 days prior to the date of such action; and

(ii) the notice contains the reasons why the secretary believes a significant change has occurred.

(4) The secretary may alter, modify or terminate an agreement entered into by the secretary under subsection (a) if the taxpayer fails to do any of the following:

(i) Pay any installment at the time the installment is due under such agreement.

(ii) Pay any other tax liability at the time the liability is due.

(iii) Provide a financial condition update as requested by the secretary.

(c) Prepayment permitted.—Nothing in this section should be construed to prevent a taxpayer from prepaying in whole or in part any outstanding liability under any agreement the taxpayer enters into with the secretary.

Section 206. Basis for evaluating department employees.

(a) General rule.—The department shall not use records of tax enforcement results:

(1) as the primary criterion to evaluate department officers or employees directly involved in collection activities and their immediate supervisors; or

(2) to impose or suggest collection or assessment quotas or goals with respect to department officers or employees described in this subsection.

(b) Exceptions.—Forecasts of enforcement results may be made and communicated for planning purposes. Tax enforcement results may be accumulated, tabulated, published and used for management and control of tax administration resources so long as tax enforcement results tabulations are not used as the primary criterion to evaluate an officer or employee described in subsection (a) or to impose or suggest production quotas or goals. In the discharge of a manager's responsibilities, but subject to the provisions of subsection (a)(1), a manager may raise questions with an officer or employee about the number of cases the officer or employee has

processed, the amount of time the officer or employee has been spending on the individual case or the [kind of] results the officer or employee has been obtaining.

Section 207. Taxpayers' Rights Advocate.

The [department] *secretary* shall designate a Taxpayers' Rights Advocate. The Taxpayers' Rights Advocate shall be an employee of the department and shall report directly to the secretary. The Taxpayers' Rights Advocate shall facilitate the resolution of taxpayer complaints and problems in connection with the audit or collection of a tax imposed under Article III *or XXI* of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971.

Section 208. Taxpayer assistance orders.

(a) Authority to issue.—On application filed by a taxpayer with the department Taxpayers' Rights Advocate in the form, manner and time prescribed by the secretary and after thorough investigation, the Taxpayers' Rights Advocate may issue a taxpayer assistance order if, in the determination of the Taxpayers' Rights Advocate, the manner in which the State tax laws are being administered is creating or will create an unjust and inequitable result for the taxpayer. A determination by the Taxpayers' Rights Advocate under this section to issue or to not issue a taxpayer assistance order is final and cannot be appealed to any court.

(b) Terms of a taxpayer assistance order.—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. The running of the period of limitation for such department action shall be suspended from the date of the taxpayer assistance order until one of the following:

(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.

(c) Authority to modify or rescind.—A taxpayer assistance order may be modified or rescinded by the secretary.

(d) Independent action of Taxpayers' Rights Advocate.—This section shall not prevent the Taxpayers' Rights Advocate from taking action in the absence of an application being filed under subsection (a).

Section 209. Application of payments.

Unless otherwise specified by the taxpayer, all voluntary payments with respect to any tax period for any tax administered by the department shall be allocated within the taxpayer's account in the following priority:

(1) Tax.

(2) Addition to tax.

(3) Interest.

(4) Penalty.

(5) Any other fees or charges.

Section 210. Decisions of Board of Finance and Revenue and Department of Revenue.

(a) **Precedent.**—Where the Board of Finance and Revenue has issued a decision or an order in favor of a taxpayer and the Commonwealth has not appealed the decision or order, the department may not make an assessment against the taxpayer that raises an identical or substantially identical issue.

(b) **Application.**—Precedent shall apply to tax periods following the period to which the decision or order of the Board of Finance and Revenue applies. It shall not apply where there has been a change in statute, regulation or material fact applicable to periods following the period to which the decision or order of the Board of Finance and Revenue applies.

(c) **Decisions of department.**—In the case of a tax imposed under Article III of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, the department may not assess a taxpayer with respect to an issue for which the department assessed the same taxpayer in a previous year and the taxpayer prevailed in removing such assessment based upon identical or substantially identical facts.

(d) **Exception.**—Subsections (a) and (c) shall not apply if the department, upon publication of notice, changes its policy with respect to a discretionary issue, provided that any such change in policy shall be effective prospectively only.

Section 211. Authority to remove lien.

The secretary shall remove the lien on any property and shall promptly notify the property owner that the lien has been removed if any of the following apply:

- (1) the debt which underlies the lien has been otherwise satisfied;
- (2) removal of the lien will facilitate the collection of the outstanding debt; or
- (3) the taxpayer has entered into an agreement under section 205 to satisfy the outstanding debt by means of installment payments and such agreement provides for the removal of the lien.

Section 212. Innocent spouse relief.

Under regulations promulgated by the secretary, a taxpayer filing a joint return under Article III of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, for a taxable year shall be relieved of liability for tax, interest and penalties for that taxable year to the extent such liability is attributable to a substantial understatement by the taxpayer's spouse. This section shall apply only if:

- (1) *On such joint return there is a substantial understatement of tax attributable to grossly erroneous items of one spouse.*
- (2) *The other spouse establishes that in signing the return such spouse did not know and had no reason to know that there was such substantial understatement.*

(3) Taking into account all the facts and circumstances, it is inequitable to hold the other spouse liable for any assessment for such taxable year attributable to such substantial understatement.

**CHAPTER 3
[INTERDEPARTMENTAL] INTRADEPARTMENTAL
DOCUMENTS AND REPORTS**

Section 301. Rules and regulations.

The secretary shall make such reasonable rules and regulations, not inconsistent with law, as may be necessary for the exercise of its powers and the performance of its duties under this act, including regulations which shall advise the public of the following:

(1) The various methods by which the department communicates tax policy and interpretations to taxpayers, tax practitioners, personnel of the department and the general public.

(2) The legal force and effect, precedential value and binding nature of each method of communication.

Section 302. Technical memoranda.

Technical memoranda issued by the secretary shall be provided to taxpayers and others of existing interpretations of laws and regulations by the department or changes to the statutory or case law of interest to the public. Where and to the extent that an opinion of the legal counsel of the department is deemed to be of sufficient significance and general applicability to a group or group of taxpayers, the opinion shall be likewise provided.

Section 303. Advisory opinions.

With respect to taxes administered by the secretary, the secretary shall be required to render advisory opinions within 90 days of the receipt of a petition for such an opinion. This period may be extended by the secretary, for good cause shown, for no more than 30 additional days. An advisory opinion shall be rendered to any person subject to a tax or liability under this [chapter] *act* or claiming exemption from a tax or liability. In the discretion of the secretary, they may also be rendered to any nontaxpayer, including, but not limited to, a local official, petitioning on behalf of a local jurisdiction or the head of a State agency petitioning on behalf of the agency. Advisory opinions, which shall be published and made available to the public, shall not be binding upon the secretary except with respect to the person to whom such opinion is rendered. A subsequent modification by the secretary of an advisory opinion shall apply prospectively only. A petition for an advisory opinion shall contain a specific set of facts, be submitted in the form prescribed by the secretary and be subject to the rules and regulations as the secretary may promulgate for procedures for submitting such a petition.

Section 304. Reports to General Assembly.

The secretary shall provide to the chairman and minority chairman of the Finance Committee of the Senate and the chairman and minority chairman of the Finance Committee of the House of Representatives the reports indicated in paragraphs (1) through (4):

(1) A report containing statistical information relating to the number of cases handled by the Taxpayers' Rights Advocate, the types of taxes addressed in the cases and the resolution of the cases. This report shall be submitted by March 1 of each year for cases handled during the prior calendar year.

(2) A report containing a summary of the results of any customer or taxpayer satisfaction survey conducted by the department. This report shall be submitted by March 1 of each year for any such survey completed during the prior calendar year.

(3) A report containing the department's strategic plan or any updates thereto. This report shall be submitted by March 1 of odd-numbered years.

(4) A report containing the standards of conduct or the content of any code of ethics for department employees regarding the improper access and/or disclosure of confidential taxpayer information. This report shall be submitted by March 1 of odd-numbered years. The report shall contain a numeric review of incidents concerning the improper access and/or disclosure of confidential taxpayer information by department employees which are referred for investigation by the department to the Office of Inspector General and the status of any such investigations.

CHAPTER 4 MISCELLANEOUS PROVISIONS

[Section 401. Expiration.

This act shall expire on December 31, 2000.]

Section 402. Effective date.

This act shall take effect in 60 days.

Section 2. This act shall be retroactive to December 30, 2000.

Section 3. This act shall take effect immediately.

APPROVED—The 22nd day of June, A.D. 2001.

THOMAS J. RIDGE