

February 7, 2011

The Honorable Andrew M. Cuomo
Governor of New York State
New York State Capitol Building
Albany, NY 12224

Re: The Office of the New York State Taxpayer Rights Advocate

Dear Governor Cuomo:

We are contacting you on behalf of the New York State Society of Certified Public Accountants, representing more than 28,000 CPAs in public practice, industry, government and education. Part of the mission of the Society is to be a leader in the area of Taxation through the following:

1. Fostering a relationship with the Commissioners and officials of the various Tax Departments and maintaining open lines of communications with them.
2. Providing technical assistance and disseminating information to the NYSSCPA members and their clients through:
 - a. Educational programs including annual conferences, seminars and technical sessions.
 - b. Answering questions of our members by telephone or over our website.
 - c. Writing articles on current events for our publications: *The CPA Journal*, *The Trusted Professional* and *The Tax Stringer*.
3. Proposing and reviewing legislative and regulatory changes in the current tax laws and procedures to simplify New York State and local taxation.

The Office of the New York State Taxpayer Rights Advocate (OTRA) is an independent organization within the Tax Department that was administratively created in 2009 to assist taxpayers in resolving problems with the Tax Department, identify problems and legislative solutions, and work with the Tax Department to improve processes. The Office is currently under the supervision and direction of Deputy Commissioner and Taxpayer Rights Advocate, Jack Trachtenberg. Acting Commissioner Jamie Woodward appointed Mr. Trachtenberg to that position in October 2009.¹

¹ See generally, N.Y.S. Dep't of Tax'n & Fin., Press Release, *Tax Department Announces Initiatives to Improve Taxpayer Rights, Efforts Include Comprehensive Review of Practices and Policies to Help Taxpayers; Department Names Public Taxpayer Rights Advocate to Spearhead Efforts*, October 1, 2009.

The Taxpayer Rights Advocate is an employee of the Tax Department and reports to the Commissioner of Taxation and Finance. The Office is currently divided into two units: the Case Advocacy Unit that assists individual and business taxpayers with case-specific tax problems and the Systemic Advocacy Unit that addresses broader issues that adversely affect multiple taxpayers (instances in which Tax Department procedure has failed to produce the intended result).

Recommendation:

As Certified Public Accountants, we are the primary representatives of taxpayers in their dealings with the New York State Department of Taxation and Finance. In the 15 months that the Office has existed, OTRA has been responsive to our CPA members and their clients, and has been effective in helping to resolve their concerns. In fact, of the 1,921 cases presented, OTRA has resolved approximately 1,300. Given this track record of success, we believe that the Office of the New York State Taxpayer Rights Advocate should be continued, and legislation should be enacted to formally codify the Office within the Department of Taxation and Finance.

Taxpayers involved in disputes with tax authorities do not always feel that they are getting an objective and unbiased hearing. An Office of the Advocate, backed by statute, would establish a permanent Office that provides taxpayers with an impartial review of their problems and advocacy on their behalf when appropriate. To ensure OTRA's independence, the statute should be written to prevent individuals subject to the Advocate's jurisdiction from eliminating the Office or removing the Advocate. In addition, a statute is needed to ensure that information provided by taxpayers to the Advocate remains confidential. Absent confidentiality, some taxpayers might be reluctant to bring their problems or concerns to the attention of the Advocate.

The inherent value of adopting the tax ombudsman role has been recognized at both the national and state levels for many years. The Internal Revenue Service Office of the Taxpayer Advocate has been functioning effectively for over thirty years. Systemic problems have been identified and prioritized because of the Federal Taxpayer Advocate. The Taxpayer Advocate role has been adopted by 28 states; 15 of which have legislation that codifies the Office. The New York Taxpayer Rights Advocate would operate on a similar platform, and the Office would continue outreach efforts with practitioners and taxpayers. This, we believe, will have the effect of enhancing voluntary compliance with the tax laws.

We believe the independence of the Office is extremely important. We suggest that a term of Office be established. The Advocate should serve the term, and not be subject to removal except for cause. The law should require the Advocate to submit an annual report to the Legislature that includes a discussion of the top problems facing New York State taxpayers and recommendations for reform. The annual report should be submitted directly to the Legislature without prior review or approval by the Tax Department or the Governor. Finally, the Advocate should report to the Commissioner of Taxation and Finance as opposed to any of the Agency's enforcement functions.

We believe that the Office of the New York State Taxpayer Rights Advocate serves a vital role in the important function of administering the New York State Tax Laws, and we strongly recommend that its role be codified within them.

Sincerely,

A handwritten signature in cursive script that reads "Margaret Ann Wood".

Margaret A. Wood
President

cc: Thomas H. Mattox, Acting Commissioner of NYS Dept. of Taxation and Finance
Jamie Woodward, Executive Deputy Commissioner of NYS Dept. of Taxation and Finance