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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 200      Session of  
2001

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HORSEY, SAYLOR, RUFFING, TRELLO, PALLONE, STETLER, BOYES,  
L. I. COHEN, HABAY AND BROWNE, JANUARY 24, 2001

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AS AMENDED ON THIRD CONSIDERATION, IN SENATE, JUNE 19, 2001

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AN ACT

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

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

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

1 AN ACT  
2 Providing for the rights and privileges of taxpayers, FOR ←  
3 DESIGNATION OF A TAXPAYERS' RIGHTS ADVOCATE AND FOR THE  
4 POWERS, DUTIES AND RESPONSIBILITIES OF THE DEPARTMENT OF  
5 REVENUE AND THE TAXPAYERS' RIGHTS ADVOCATE.

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5 CHAPTER 1

6 GENERAL PROVISIONS

7 Section 101. Short title.

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

10 Section 102. Legislative intent.

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

20 Section 103. Definitions.

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

24 "Assessment." An assessment, determination, settlement or  
25 appraisalment of tax liability issued by the Department of  
26 Revenue.

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

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

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

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

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

14 CHAPTER 2

15 TAXPAYERS' RIGHTS

16 Section 201. Application.

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

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

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

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

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

5 Section 202. Disclosure statement of rights of taxpayers.

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

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

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

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

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

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

1 Section 203. Procedures involving taxpayer interviews.

2 (a) Recording of interviews by taxpayer.--Any officer or  
3 employee of the department in connection with any in-person  
4 interview with any taxpayer relating to the determination or  
5 collection of any tax, the cancellation, revocation or  
6 suspension of a license, permit or registration or the denial of  
7 an application for a license, permit or registration shall, upon  
8 advance written request of the taxpayer, make an audio recording  
9 of the interview at the taxpayer's own expense and with the  
10 department's equipment. The taxpayer may also make an audio  
11 recording of the interview with the taxpayer's own equipment if,  
12 prior to commencement of the interview, the taxpayer notifies  
13 all parties present that the interview will be recorded.

14 (b) Safeguard.--

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

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

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

26 (iii) In the case of an in-person interview with the  
27 taxpayer relating to the cancellation, revocation or  
28 suspension of a license, permit or registration or to the  
29 denial of an application for a license, permit or  
30 registration, an explanation of the administrative

1 hearing and judicial review processes and the taxpayer's  
2 rights under such processes.

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

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

26 (d) Nonapplicability to certain investigations.--This  
27 section shall not apply to criminal investigations or  
28 investigations relating to the integrity of any officer or  
29 employee of the department.

30 (e) Scope.--For purposes of this section, any reference to

1 tax shall also include any associated penalty, addition to tax  
2 or interest.

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

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

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

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

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

30 (c) Abatement of any penalty or addition to tax or excess



1 interest attributable to erroneous written advice by the  
2 department.--

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

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

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

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

17 Section 205. Installment agreements.

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

24 (b) Extent to which agreements remain in effect.--

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

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

30 (i) information which the taxpayer provided to the

1 secretary prior to the date of the agreement was  
2 inaccurate or incomplete; or

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

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

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

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

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

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

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

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

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

27 Section 206. Basis for evaluating department employees.

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

30 (1) as the primary criterion to evaluate department

1 officers or employees directly involved in collection  
2 activities and their immediate supervisors; or  
3 (2) to impose or suggest collection or assessment quotas  
4 or goals with respect to department officers or employees  
5 described in this subsection.

6 (b) Exceptions.--Forecasts of enforcement results may be  
7 made and communicated for planning purposes. Tax enforcement  
8 results may be accumulated, tabulated, published and used for  
9 management and control of tax administration resources so long  
10 as tax enforcement results tabulations are not used as the  
11 primary criterion to evaluate an officer or employee described  
12 in subsection (a) or to impose or suggest production quotas or  
13 goals. In the discharge of a manager's responsibilities, but  
14 subject to the provisions of subsection (a)(1), a manager may  
15 raise questions with an officer or employee about the number of  
16 cases the officer or employee has processed, the amount of time  
17 the officer or employee has been spending on the individual case  
18 or the [kind of] results the officer or employee has been ←  
19 obtaining.

20 Section 207. Taxpayers' Rights Advocate.

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

29 Section 208. Taxpayer assistance orders.

30 (a) Authority to issue.--On application filed by a taxpayer

1 with the department Taxpayers' Rights Advocate in the form,  
2 manner and time prescribed by the secretary and after thorough  
3 investigation, the Taxpayers' Rights Advocate may issue a  
4 taxpayer assistance order if, in the determination of the  
5 Taxpayers' Rights Advocate, the manner in which the State tax  
6 laws are being administered is creating or will create an unjust  
7 and inequitable result for the taxpayer. A determination by the  
8 Taxpayers' Rights Advocate under this section to issue or to not  
9 issue a taxpayer assistance order is final and cannot be  
10 appealed to any court.

11 (b) Terms of a taxpayer assistance order.--A taxpayer  
12 assistance order may require the department to release property  
13 of the taxpayer levied on, cease any action or refrain from  
14 taking any action to enforce the State tax laws against the  
15 taxpayer until the issue or issues giving rise to the order have  
16 been resolved. The running of the period of limitation for such  
17 department action shall be suspended from the date of the  
18 taxpayer assistance order until one of the following:

19 (1) The expiration date of the order.

20 (2) If an order is modified, the expiration date of the  
21 modification order.

22 (3) If an order is rescinded, the date of the rescission  
23 order.

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

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

30 Section 209. Application of payments.

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

- 5 (1) Tax.
- 6 (2) Addition to tax.
- 7 (3) Interest.
- 8 (4) Penalty.
- 9 (5) Any other fees or charges.

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

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

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

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

30 (d) Exception.--Subsections (a) and (c) shall not apply if

1 the department, upon publication of notice, changes its policy  
2 with respect to a discretionary issue, provided that any such  
3 change in policy shall be effective prospectively only.

4 Section 211. Authority to remove lien.

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

8 (1) the debt which underlies the lien has been otherwise  
9 satisfied;

10 (2) removal of the lien will facilitate the collection  
11 of the outstanding debt; or

12 (3) the taxpayer has entered into an agreement under  
13 section 205 to satisfy the outstanding debt by means of  
14 installment payments and such agreement provides for the  
15 removal of the lien.

16 Section 212. Innocent spouse relief.

17 Under regulations promulgated by the secretary, a taxpayer  
18 filing a joint return under Article III of the act of March 4,  
19 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, for a  
20 taxable year shall be relieved of liability for tax, interest  
21 and penalties for that taxable year to the extent such liability  
22 is attributable to a substantial understatement by the  
23 taxpayer's spouse. This section shall apply only if:

24 (1) On such joint return there is a substantial  
25 understatement of tax attributable to grossly erroneous items  
26 of one spouse.

27 (2) The other spouse establishes that in signing the  
28 return such spouse did not know, and had no reason to know,  
29 that there was such substantial understatement.

30 (3) Taking into account all the facts and circumstances,

1 it is inequitable to hold the other spouse liable for any  
2 assessment for such taxable year attributable to such  
3 substantial understatement.

4 CHAPTER 3

5 [INTERDEPARTMENTAL] ~~DEPARTMENTAL~~ INTRADEPARTMENTAL ←

6 DOCUMENTS AND REPORTS

7 Section 301. Rules and regulations.

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

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

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

19 Section 302. Technical memoranda.

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

28 Section 303. Advisory opinions.

29 With respect to taxes administered by the secretary, the  
30 secretary shall be required to render advisory opinions within

1 90 days of the receipt of a petition for such an opinion. This  
2 period may be extended by the secretary, for good cause shown,  
3 for no more than 30 additional days. An advisory opinion shall  
4 be rendered to any person subject to a tax or liability under  
5 this [chapter] ACT or claiming exemption from a tax or  
6 liability. In the discretion of the secretary, they may also be  
7 rendered to any nontaxpayer, including, but not limited to, a  
8 local official, petitioning on behalf of a local jurisdiction or  
9 the head of a State agency petitioning on behalf of the agency.  
10 Advisory opinions, which shall be published and made available  
11 to the public, shall not be binding upon the secretary except  
12 with respect to the person to whom such opinion is rendered. A  
13 subsequent modification by the secretary of an advisory opinion  
14 shall apply prospectively only. A petition for an advisory  
15 opinion shall contain a specific set of facts, be submitted in  
16 the form prescribed by the secretary and be subject to the rules  
17 and regulations as the secretary may promulgate for procedures  
18 for submitting such a petition.

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19 Section 304. Reports to General Assembly.

20 The secretary shall provide to the chairman and minority  
21 chairman of the Finance Committee of the Senate and the chairman  
22 and minority chairman of the Finance Committee of the House of  
23 Representatives the reports indicated in paragraphs (1) through  
24 (4):

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



