
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 200 Session of
2001

INTRODUCED BY ADOLPH, BARRAR, ALLEN, ARGALL, M. BAKER, BARD,
BELARDI, BENNINGHOFF, BISHOP, CALTAGIRONE, CAPPABIANCA,
CAPPELLI, CLARK, CLYMER, M. COHEN, CORRIGAN, COY, CURRY,
DeLUCA, D. EVANS, FAIRCHILD, FEESE, FICHTER, FLICK, FRANKEL,
FREEMAN, GABIG, GEIST, GEORGE, GODSHALL, GORDNER, HARHAI,
HENNESSEY, HERMAN, HERSHEY, HESS, HUTCHINSON, JADLOWIEC,
KAISER, KELLER, KENNEY, LAUGHLIN, LEH, MAHER, MANDERINO,
MANN, MARSICO, McNAUGHTON, MELIO, MICOZZIE, R. MILLER,
S. MILLER, NAILOR, ORIE, PETRARCA, PETRONE, PIPPY, PISTELLA,
RAYMOND, ROHRER, ROSS, RUBLEY, SATHER, SCHRODER, SCHULER,
SHANER, S. H. SMITH, SOLOBAY, STABACK, T. STEVENSON,
E. Z. TAYLOR, TIGUE, VANCE, WALKO, WATSON, WILT, WOGAN,
WRIGHT, YEWCIC, ZUG, YUDICHAK, CIVERA, SEMMEL, SAINATO,
METCALFE, STEELMAN, McCALL, C. WILLIAMS, LEDERER, DeWEESE,
HORSEY, SAYLOR, RUFFING, TRELLO, PALLONE, STETLER, BOYES,
L. I. COHEN, HABAY AND BROWNE, JANUARY 24, 2001

SENATOR EARLL, FINANCE, IN SENATE, AS AMENDED, MAY 22, 2001

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:

13 AN ACT

1 Providing for the rights and privileges of taxpayers.

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1 CHAPTER 1

2 GENERAL PROVISIONS

3 Section 101. Short title.

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

6 Section 102. Legislative intent.

7 It is the intent of the General Assembly to provide equitable
8 and uniform procedures for the operation of the Department of
9 Revenue and for all taxpayers when dealing with the department.

10 In order to ensure the equitable administration of the tax law,
11 the relative rights and responsibilities of citizens and of
12 their State government should be clearly set forth and adhered
13 to. This act is intended as a minimum procedural code, and the
14 Department of Revenue may adopt or grant additional procedures
15 not inconsistent with this act.

16 Section 103. Definitions.

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

20 "Assessment." An assessment, determination, settlement or
21 appraisement of tax liability issued by the Department of
22 Revenue.

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

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

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

27 "Taxpayer." An individual, partnership, association,
28 society, company, corporation, estate, trust, trustee, receiver,
29 liquidator, fiduciary or other entity subject to or claiming
30 exemption from any tax administered by the Department of Revenue

1 pursuant to the authority of the laws of this Commonwealth or
2 under a duty to perform an act for itself or for another under
3 or pursuant to the authority of such laws.

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

10 CHAPTER 2

11 TAXPAYERS' RIGHTS

12 Section 201. Application.

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

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

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

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

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

1 Section 202. Disclosure statement of rights of taxpayers.

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

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

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

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

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

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

27 Section 203. Procedures involving taxpayer interviews.

28 (a) Recording of interviews by taxpayer.--Any officer or
29 employee of the department in connection with any in-person
30 interview with any taxpayer relating to the determination or

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

10 (b) Safeguard.--

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

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

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

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

29 (2) If the taxpayer clearly informs an officer or
30 employee of the department at any time during an interview,

1 other than an interview initiated by a subpoena, writ or
2 other lawful process, that the taxpayer wishes to consult
3 with an attorney, certified public accountant or any other
4 person permitted to represent the taxpayer, such officer or
5 employee shall suspend the interview regardless of whether
6 the taxpayer may have answered one or more questions.

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

22 (d) Nonapplicability to certain investigations.--This
23 section shall not apply to criminal investigations or
24 investigations relating to the integrity of any officer or
25 employee of the department.

26 (e) Scope.--For purposes of this section, any reference to
27 tax shall also include any associated penalty, addition to tax
28 or interest.

29 Section 204. Abatement of certain interest, penalties and
30 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

1 to the taxpayer in writing by an officer or employee of the
2 department, acting in the officer's or employee's official
3 capacity, if:

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

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

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

13 Section 205. Installment agreements.

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

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

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

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

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

29 (ii) the secretary believes that collection of any
30 liability to which an agreement under this section

1 relates is in jeopardy.

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

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

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

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

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

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

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

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

23 Section 206. Basis for evaluating department employees.

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

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

29 (2) to impose or suggest collection or assessment quotas
30 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 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

1 Taxpayers' Rights Advocate, the manner in which the State tax
2 laws are being administered is creating or will create an unjust
3 and inequitable result for the taxpayer. A determination by the
4 Taxpayers' Rights Advocate under this section to issue or to not
5 issue a taxpayer assistance order is final and cannot be
6 appealed to any court.

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

15 (1) The expiration date of the order.

16 (2) If an order is modified, the expiration date of the
17 modification order.

18 (3) If an order is rescinded, the date of the rescission
19 order.

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

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

26 Section 209. Application of payments.

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

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

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

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

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

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

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

30 Section 211. Authority to remove lien.

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

4 (1) the debt which underlies the lien has been otherwise
5 satisfied;

6 (2) removal of the lien will facilitate the collection
7 of the outstanding debt; or

8 (3) the taxpayer has entered into an agreement under
9 section 205 to satisfy the outstanding debt by means of
10 installment payments and such agreement provides for the
11 removal of the lien.

12 Section 212. Innocent spouse relief.

13 Under regulations promulgated by the secretary, a taxpayer
14 filing a joint return under Article III of the act of March 4,
15 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, for a
16 taxable year shall be relieved of liability for tax, interest
17 and penalties for that taxable year to the extent such liability
18 is attributable to a substantial understatement by the
19 taxpayer's spouse. This section shall apply only if:

20 (1) On such joint return there is a substantial
21 understatement of tax attributable to grossly erroneous items
22 of one spouse.

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

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

1 [INTERDEPARTMENTAL] DEPARTMENTAL DOCUMENTS AND REPORTS

2 Section 301. Rules and regulations.

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

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

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

14 Section 302. Technical memoranda.

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

23 Section 303. Advisory opinions.

24 With respect to taxes administered by the secretary, the
25 secretary shall be required to render advisory opinions within
26 90 days of the receipt of a petition for such an opinion. This
27 period may be extended by the secretary, for good cause shown,
28 for no more than 30 additional days. An advisory opinion shall
29 be rendered to any person subject to a tax or liability under
30 this chapter or claiming exemption from a tax or liability. In

1 the discretion of the secretary, they may also be rendered to
2 any nontaxpayer, including, but not limited to, a local
3 official, petitioning on behalf of a local jurisdiction or the
4 head of a State agency petitioning on behalf of the agency.
5 Advisory opinions, which shall be published and made available
6 to the public, shall not be binding upon the secretary except
7 with respect to the person to whom such opinion is rendered. A
8 subsequent modification by the secretary of an advisory opinion
9 shall apply prospectively only. A petition for an advisory
10 opinion shall contain a specific set of facts, be submitted in
11 the form prescribed by the secretary and be subject to the rules
12 and regulations as the secretary may promulgate for procedures
13 for submitting such a petition.

14 Section 304. Reports to General Assembly.

15 The secretary shall provide to the chairman and minority
16 chairman of the Finance Committee of the Senate and the chairman
17 and minority chairman of the Finance Committee of the House of
18 Representatives the reports indicated in paragraphs (1) through
19 (4):

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

26 (2) A report containing a summary of the results of any
27 customer or taxpayer satisfaction survey conducted by the
28 department. This report shall be submitted by March 1 of each
29 year for any such survey completed during the prior calendar
30 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. This report shall be submitted by March 1 of odd numbered years. The report shall contain a numeric review of incidents or conduct investigated or reported under the standards of conduct or code of ethics as well as the resolutions of such reviews or investigations.~~

~~(5) All reports required under this section shall be placed on the department's Internet homepage for public review.~~

(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] 2004.

Section 402. Effective date.

This act shall take effect in 60 days.

Section 2. This act shall be retroactive to January 1, 2001.

1 Section 3. This act shall take effect immediately.