

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

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February 8, 1993

Chapter 770 of the Law of 1992

On August 7, 1992, the Governor signed Chapter 770 of the Laws of 1992 which includes "The Taxpayers' Bill of Rights" and certain equity provisions for corporate and personal income tax filer.

TAXPAYERS' BILL OF RIGHTS

The Bill of Rights is intended to provide taxpayers with a codified set of rules which explain their rights and responsibilities at each 'Step in the administration and collection of New York State's taxes. The new law applies to all taxes and fees administered and collected by the Department of Taxation and Finance including city income and local sales and use taxes, but does not apply to taxes administered directly by the City of New York. Failure by the Department to comply with the provisions of this legislation will not excuse the taxpayer from the payment of tax which is properly due or from complying with the Tax Law.

The following is a description of the pertinent provisions of the Taxpayers' Bill of Rights.

Disclosure of Taxpayers' Rights

The Department of Taxation and Finance is required to furnish a taxpayer with nontechnical statements explaining taxpayers' rights with respect to the audit process, protests and review of adverse decisions, refunds, and compliance and enforcement procedures.

Taxpayer Interviews

Whenever a taxpayer has an in-person interview with an employee or officer of the Department of Taxation and Finance 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, either the taxpayer or the Department may, upon advance notice to the other, make an audio recording of the interview. If the Department records an interview, the taxpayer may request a transcript or copy of the recording. A charge may be made for such transcript or copy.

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An interview (other than an interview initiated by a subpoena) must be suspended if an unrepresented taxpayer indicates that he or she wants to consult with a qualified representative.

An attorney, CPA, IRS enrolled agent or other qualified representative holding a valid power of attorney from the taxpayer may represent the taxpayer at an interview, without the taxpayer being present, unless the taxpayer was subpoenaed, in which case the taxpayer must attend. Department personnel may, with a supervisor's consent, inform the taxpayer that the representative is causing an unreasonable delay or hindrance.

These provisions related to interviews do not apply to criminal investigations or investigations relating to the integrity of any officer or employee of the Division of Taxation.

Abatement of Penalty or Interest

The Commissioner of Taxation may abate all or part of the interest due on a deficiency or payment of tax when such interest results from an error or delay by an employee or officer of the Department of Taxation and Finance in performing a ministerial act. Error or delay shall be considered only if no significant aspect of the error or delay can be attributed to the taxpayer, and only after the Department has contacted the taxpayer in writing. Administrative and judicial review of abatement of interest resulting from Departmental error or delay is limited to review of whether the failure to abate would be widely perceived as grossly unfair.

Also, the Commissioner will abate any portion of a penalty, addition to tax or excess interest imposed pursuant to the sales or use tax provisions attributable to erroneous written advice furnished to a taxpayer by an officer or employee of the Department of Taxation and Finance, acting in his or her official capacity. But abatement shall occur only if the taxpayer having made the request for advice in writing reasonably relied on the written advice and the portion of the penalty, addition to tax or excess interest did not result from a failure by the taxpayer to provide adequate or accurate information.

The Commissioner may also abate all or any part of the interest on a deficiency assessed against an individual income tax taxpayer where the deficiency resulted from a mathematical error made by the Department when assisting the taxpayer in preparing his or her income tax return.

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Abatement of interest may occur only for the period on or before the tenth day following the Department's notice and demand to the taxpayer to pay the deficiency.

Installment Payment Agreements

The Commissioner of Taxation has been granted the authority to enter into a written agreement with a taxpayer under which the taxpayer may satisfy his/her liability for any tax (including penalty, interest or additions to tax) in installment payments, if the Commissioner determines that the agreement will facilitate ... collection of the liability.

Evaluation of Department Employees

Records of enforcement results may not be used as the primary criterion to evaluate officers or employees directly involved in collection activities or to impose or suggest production quotas or goals with respect to such officers or employees. Such records may be used for other valid tax administration purposes.

Notices to Tax Debtors

Before collecting any tax by levy, the Commissioner of Taxation must give prominent, written notice to the tax debtor that the Department has certain rights to levy on the taxpayer's real or personal property in a manner similar to how a judgment creditor may levy on property. The notice must be in clear and concise language and be set off from any other text contained in the correspondence with the taxpayer.

Uneconomical Levies

Property will not be levied upon if the Commissioner of Taxation estimates that the expenses to levy and sell the property are greater than the expected proceeds of the sale.

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Sales of Seized Property

Property subject to a tax lien must be sold at no less than fair market value, consistent with the fair market value of similar property sold under similar circumstances.

Where property is seized, the owner may request that the Commissioner of Taxation sell the property within 60 days of the request or a specified longer period. This request will be complied with unless the Commissioner of Taxation notifies the taxpayer within the indicated time period that such compliance is not in the best interests of the State.

Authority to Release Levy and Return the Property

The Commissioner of Taxation shall release a levy on all or a portion of property and give prompt notice to the property owner, if:

1. the underlying liability is satisfied or is unenforceable by lapse of time;
2. the release of the levy will facilitate collection of the liability;
3. the taxpayer entered into an installment payment agreement (described above) and such agreement provides for the release of levy; or
4. the property's fair market value exceeds the tax liability and release of a levy on part of the property will not hinder timely collection of the liability.

Where seized tangible personal property is essential to the taxpayer's trade or business, the Commissioner of Taxation shall expeditiously determine whether the property may be released from the levy on the above grounds.

Any release of a levy under this section does not prevent subsequent levy on the same property.

If property has been wrongfully levied upon, the Commissioner of Taxation may return with interest:

1. the subject property;
2. money equal to the amount of money levied on; or
3. money equal to the property's fair market value.

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EQUITY PROVISIONS

Chapter 770 of the Laws of 1992 also contains equity provisions for both Corporate Tax Filers and Personal Income Tax Filers.

Corporation Tax

Taxpayers that file combined reports under Article 9-A, 32 or 33 must now file a report of changes made by the IRS with the Department of Taxation within 120 days (instead of 90 days) of the final determination, change or correction by the Internal Revenue Service. The amendment is effective with final determinations, changes or corrections made by the IRS after November 30, 1993.

A corporate tax filer who, with the intent to evade payment of tax, fails to file a report or return for each of three (3) consecutive years is guilty of a felony where the unpaid tax for each of the three years exceeds the applicable fixed dollar minimum tax. Thus, the criminal penalty will not apply to corporate taxpayers that only owe a minimum tax.

Personal Income Tax

Under prior New York law, a married resident individual who filed a joint federal income tax return with his or her spouse was required to file a joint New York State, New York City or Yonkers resident income tax return. The only exception permitted was where one spouse was a resident and the other was a nonresident or part-year resident. However, situations arose in which a married or formerly married individual filed a joint federal return but did not file a joint state or city tax return at the same time. When the time came to prepare the state or city return, the individual's spouse could not be located or would not cooperate in the joint filing of a state or city return. As a result, one spouse could be held liable for the joint tax liability of both spouses. To alleviate the unfairness of this situation, Chapter 770 of the Laws of 1992 amended the Tax Law to allow certain individuals who filed a joint federal return but failed to file joint state or city returns to file separate state and city returns, using the filing status "Married filing separate" whereby the tax liability of

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each spouse will be calculated separately. A separate return may be filed only if the individual can demonstrate that all the conditions set forth in either (1) or (2) below have been met: "

- (1) - the address and whereabouts of the individual's spouse is unknown;
- reasonable efforts have been made to locate the spouse; and
- good cause existed for the failure to file a joint state or city income tax return, or
- (2) - the individual's spouse has refused to sign a joint state or city return;
- reasonable efforts have been made by the individual to have the spouse sign a joint return;
- there exists objective evidence of alienation of the individual from the spouse, such as a judicial order of protection, legal separation under a decree of divorce or separate maintenance, separation under a written separation agreement or judicial decree of separation, living apart at all times during the twelve months immediately preceding the date on which the return is being filed, the commencement of an action for divorce, or the commencement of proceedings in family court which evidence the alienation; and
- good cause existed for the failure to file a joint state or city return.

An individual who files a separate return under these provisions must submit, with his or her return, documentation to establish that all the criteria specified in (1) or (2) have been met. These provisions apply to taxable years starting after 1991.