

# BRIEFING

## Session Spotlight



### INCREASING THE INDEPENDENCE AND EFFECTIVENESS OF THE FLORIDA TAXPAYERS' RIGHTS ADVOCATE

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**THE 2018 LEGISLATURE HAS AN OPPORTUNITY** to strengthen and increase the independence of an important taxpayer safeguard—the Florida Taxpayers' Rights Advocate. Senate Bill 826 and House Bill 1345 would make the needed changes to the law.

In 1992, the Florida Taxation and Budget Reform Commission brought a proposed constitutional amendment to the ballot, requiring the Legislature to adopt a Taxpayers' Bill of Rights that “sets forth taxpayers’ rights and responsibilities and government’s responsibilities to deal fairly with taxpayers.”<sup>1</sup> The amendment was approved by over 90 percent of the voters.

The Taxpayers' Bill of Rights<sup>2</sup> includes the right to request assistance from a taxpayers’ rights advocate, who shall be responsible for facilitating the resolution of taxpayer complaints and problems not resolved through the normal administrative channels within the Department of Revenue (DOR), including any taxpayer complaints regarding unsatisfactory treatment by

department employees. The taxpayers’ rights advocate may issue a stay order if a taxpayer has suffered or is about to suffer irreparable loss as a result of an action by the department. The advocate is appointed by and reports to the executive director of DOR.

The Taxpayers’ Bill of Rights was based on recommendations by the legislatively created Taxpayers’ Bill of Rights Task Force. Florida TaxWatch chaired the Task Force, and periodically brought together taxpayers, tax practitioners, and legislators to review the Bill of Rights for potential updates and improvements.

Recently, one of these reviews developed several potential updates, but the consensus was that the most important improvement would be to increase the independence of the Taxpayers’ Rights Advocate. There was a pervasive perception that with the advocate reporting to the executive director of DOR, the state’s tax administration and collection agency, the advocate’s ability to truly represent the taxpayer was compromised.

<sup>1</sup> Article I, Section 25, Florida Constitution.

<sup>2</sup> Section 213.105, Florida Statutes. See also [http://floridarevenue.com/Pages/taxpayers\\_bill\\_of\\_rights.aspx](http://floridarevenue.com/Pages/taxpayers_bill_of_rights.aspx).

The 2018 Legislation increases the independence of the advocate by having the advocate report to, and only be removed by, the state Chief Inspector General (CIG). The advocate would still be under the general supervision of the executive director of DOR for administrative purposes. As a comparison, the National Taxpayer is housed within the Internal Revenue Service (IRS), but is similarly independent of the IRS.

The Chief Inspector General is appointed by, and serves at the pleasure of, the Governor. In addition to acting as liaison and monitoring the activities of the inspectors general, the CIG works to deter, detect, and prevent fraud, waste, mismanagement, and misconduct in government. The CIG also coordinates complaint-handling activities with the agencies and coordinates the activities of the Whistle-blower's Act.<sup>3</sup>

This reform is similar to when the Legislature increased the independence of inspectors general of agencies under the jurisdiction of the Governor in 2014. That legislation directed the inspectors general to report to the CIG and provided that they may only be hired or be removed from the office for cause by the CIG, instead of the agency head.<sup>4</sup>

In addition to increasing the advocate's independence, SB 826 and HB 1345 would also improve the accountability and effectiveness of the advocate, as well as create a mechanism to improve Florida's tax administration system.

The bill requires the advocate to produce an annual report to be furnished to the Governor, the Legislature and the CIG.

The report would include:

- The objectives of the taxpayers' rights advocate for the upcoming fiscal year;
- The number of complaints filed in the previous fiscal year;
- A summary of resolutions or outstanding issues from the previous fiscal year report;
- A summary of the most common problems encountered by taxpayers, including a description of the nature of the problems and the number of complaints for each such problem;
- The initiatives the taxpayers' rights advocate has taken or is planning to take to improve taxpayer services and the department's responsiveness;
- Recommendations for administrative or legislative action as appropriate to resolve problems encountered by taxpayers; and
- Other information the taxpayers' rights advocate deems advisable.

This is modeled after the National Taxpayer Advocate, who is required to furnish two reports<sup>5</sup> annually to Congress, providing similar information.

Since 2001, IRS has implemented hundreds of administrative changes recommended by the Taxpayer Advocate and Congress has passed 15 bills to implement legislative changes recommended by the Taxpayer Advocate.<sup>6</sup>

<sup>3</sup> The Whistle-blower's Act can be found in ss. 112.3187 - 112.31895, Florida Statutes.

<sup>4</sup> Chapter 2014-144, Laws of Florida (HB 1385).

<sup>5</sup> An Annual Report, delivered in January, and an Objectives Report, delivered in June. The 2017 Annual Report to Congress and the FY 2018 Objectives Report to Congress, as well as past reports can be accessed at <https://taxpayeradvocate.irs.gov/reports>

<sup>6</sup> Taxpayer Advocate Service, About TAS-Our Leadership. Available at <https://taxpayeradvocate.irs.gov/about/our-leadership>.

These requirements should help improve taxpayer confidence and awareness of their rights and obligations under the law and should help improve voluntary compliance with our state's tax laws.

The legislation also provides that current taxpayers' rights advocate may continue in the position until he or she leaves voluntarily or is removed by the Chief Inspector General. This legislation is not intended to question the current advocate's ability or commitment to taxpayers.

SB 826, sponsored by Sen. Dorothy Hukill, has passed all three of its committees unanimously and is now ready for the floor. HB 1345, sponsored by Rep. Stan McClain, has not yet been heard. Florida TaxWatch recommends that the advocate provisions be added to the House tax relief package.<sup>7</sup> This would be a taxpayer friendly provision that would not add to the tax package's fiscal impact.

## IN CONCLUSION

This legislation can enhance the independence and effectiveness of the Florida Taxpayers' Rights Advocate—an important taxpayer safeguard. An independent advocate can help ensure that it is truly advocating for the taxpayer. Even the perception of compromised independence reduces taxpayer confidence in the system. In addition, the reporting requirement can help ensure that taxpayer complaints are properly addressed and can make the advocate a true voice for taxpayers, leading to improvements in the Florida's tax system.

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<sup>7</sup> A proposed committee bill (WMC 3) was approved by the House Ways & Means Committee. The bill now goes to the Appropriations Committee.