

## EVOLUTION OF THE OFFICE OF THE TAXPAYER ADVOCATE

The Office of the Taxpayer Ombudsman was created by the Internal Revenue Service in 1979 to serve as the *primary advocate*, within the IRS, for taxpayers. This position was codified in the Taxpayer Bill of Rights (TBOR 1), included in the Technical and Miscellaneous Revenue Act of 1988, (TAMRA), Pub. L. No. 100-647. In TBOR 1, Congress added IRC § 7811, granting the Ombudsman the statutory authority to issue a Taxpayer Assistance Order (TAO) “if, in the determination of the Ombudsman, the taxpayer is suffering or about to suffer a significant hardship as a result of the manner in which the internal revenue laws are being administered by the Secretary.”<sup>1</sup> Further, the Taxpayer Ombudsman and the Assistant Commissioner (Taxpayer Services) were directed to jointly provide an annual report to Congress about the quality of taxpayer services provided by the IRS. This report was delivered directly to the Senate Committee on Finance and the House Committee on Ways and Means.<sup>2</sup>

In 1996, Taxpayer Bill of Rights 2 (TBOR 2) amended IRC § 7802 (the predecessor to IRC § 7803), replacing the Office of the Taxpayer Ombudsman with the Office of the Taxpayer Advocate.<sup>3</sup> The Joint Committee on Taxation set forth the following reasons for change:

To date, the Taxpayer Ombudsman has been a career civil servant selected by and serving at the pleasure of the IRS Commissioner. Some may perceive that the Taxpayer Ombudsman is *not an independent advocate* for taxpayers. In order to ensure that the Taxpayer Ombudsman has the necessary stature within the IRS to represent fully the interests of taxpayers, Congress believed it appropriate to elevate the position to a position comparable to that of the Chief Counsel. In addition, in order to ensure that the Congress is systematically made aware of recurring and unresolved problems and difficulties taxpayers encounter in dealing with the IRS, the Taxpayer Ombudsman should have the authority and responsibility to make independent reports to the Congress in order to advise the tax-writing committees of those areas.<sup>4</sup>

In TBOR 2, Congress not only established the Office of the Taxpayer Advocate but also described its functions:

1. To assist taxpayers in resolving problems with the Internal Revenue Service;

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<sup>1</sup> TAMRA, Pub. L. No. 100-647, Title VI, Sec. 6230, 102 Stat. 3342, 3733 (Nov. 10, 1988).

<sup>2</sup> TAMRA, Pub. L. No. 100-647, Title VI, Sec. 6235 (b), 102 Stat. 3342, 3737 (Nov. 10, 1988).

<sup>3</sup> Pub. L. No. 104-168, Sec. 101, 110 Stat. 1452, 1453 (July 30, 1996).

<sup>4</sup> Joint Committee on Taxation, *General Explanation of Tax Legislation Enacted in the 104<sup>th</sup> Congress* JCS-12-96, 20 (Dec. 18, 1996).

2. To identify areas in which taxpayers have problems in dealings with the Internal Revenue Service;
3. To the extent possible, propose changes in the administrative practices of the IRS to mitigate those identified problems; and
4. To identify potential legislative changes which may be appropriate to mitigate such problems.<sup>5</sup>

Congress did not provide the Taxpayer Advocate with direct line authority over the regional and local Problem Resolution Officers (PROs) who handled cases under the Problem Resolution Program. At the time of the enactment of TBOR 2, Congress believed it sufficient to require that “all PROs should take direction from the Taxpayer Advocate and that they should operate with sufficient independence to assure that taxpayer rights are not being subordinated to pressure from local revenue officers, district directors, etc.”<sup>6</sup>

TBOR 2 also replaced the joint Assistant Commissioner / Taxpayer Advocate report to Congress with two annual reports to Congress issued directly and independently by the Taxpayer Advocate. The first report is to contain the objectives of the Taxpayer Advocate for the fiscal year beginning in that calendar year. This report is to provide full and substantive analysis in addition to statistical information and is due not later than June 30 of each calendar year. The second report is on the activities of the Taxpayer Advocate during the fiscal year ending during that calendar year. The report must identify the initiatives the Taxpayer Advocate has taken to improve taxpayer services and IRS responsiveness, contain recommendations received from individuals who have the authority to issue a Taxpayer Assistance Order (TAO), describe in detail the progress made in implementing these recommendations, contain a summary of at least 20 of the most serious problems which taxpayers have in dealing with the IRS, include recommendations for such administrative and legislative action as may be appropriate to resolve such problems, describe the extent to which regional problem resolution officers participate in the selection and evaluation of local problem resolution officers, and include other such information as the Taxpayer Advocate may deem advisable. The stated objective of these reports is “for Congress to receive an unfiltered and candid report of the problems taxpayers are experiencing and what can be done to address them. The reports by the Taxpayer Advocate are not official legislative recommendations of the Administration; providing official legislative recommendations remains the responsibility of the Department of Treasury.”<sup>7</sup>

Finally, TBOR 2 amended IRC § 7811, extending the scope of the Taxpayer Assistance Order (TAO), by providing the Taxpayer Advocate with broader authority “to affirmatively take any action as permitted by law with respect to

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<sup>5</sup> Pub. L. No. 104-168, Sec. 101, 110 Stat. 1452, 1453-54 (July 30, 1996).

<sup>6</sup> Joint Committee on Taxation, *General Explanation of Tax Legislation Enacted in the 104<sup>th</sup> Congress* JCS-12-96, 21 (Dec. 18, 1996). (Emphasis added.)

<sup>7</sup> *Id.*

taxpayers who would otherwise suffer a significant hardship as a result of the manner in which the IRS is administering the tax laws.”<sup>8</sup> For the first time, the TAO could specify a time period within which the IRS must act on the order. The statute also provided that only the Taxpayer Advocate, the IRS Commissioner, or the Deputy Commissioner could modify or rescind a TAO, and that any official who so modifies or rescinds a TAO must respond in writing to the Taxpayer Advocate with his or her reasons for such action.

In 1997, The National Commission on Restructuring the Internal Revenue Service called the Taxpayer Advocate the “voice of the taxpayer.” In its discussion of the office of the Taxpayer Advocate, the Commission noted:

Taxpayer Advocates play an important role and are essential for the protection of taxpayer rights and to promote taxpayer confidence in the integrity and accountability of the IRS. To succeed, the Advocate must be viewed, in both perception and reality, as an independent voice for the taxpayer within the IRS. Currently, the national Taxpayer Advocate is not viewed as independent by many in Congress. This view is based in part on the placement of the Advocate within the IRS and the fact that only career employees have been chosen to fill the position.<sup>9</sup>

In response to these concerns, in the IRS Restructuring and Reform Act of 1998 (RRA 98), Pub. L. No. 105-206, Congress amended IRC § 7803(c), renaming the Taxpayer Advocate as the National Taxpayer Advocate and mandating that the National Taxpayer Advocate could not be an officer or an employee of the IRS for two years preceding or five years following his or her tenure as the National Taxpayer Advocate (Service as an employee of the Office of the Taxpayer Advocate is not considered IRS employment under this provision).<sup>10</sup>

RRA 98 provided for Local Taxpayer Advocates (LTAs) to be located in each state, and mandated a reporting structure for LTAs to report directly to the National Taxpayer Advocate. As indicated in IRC § 7803(c)(4)(B), each LTA must have a phone, facsimile, electronic communication, and mailing address separate from those of the IRS. The LTA must advise taxpayers at their first meeting of the fact that “the taxpayer advocate offices operate independently of any other Internal Revenue Service office and report directly to Congress through the National Taxpayer Advocate.”<sup>11</sup> Congress also granted the LTAs discretion to not disclose the fact that the taxpayer contacted the Office of the Taxpayer Advocate or any information provided by the taxpayer to that office.<sup>12</sup>

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<sup>8</sup> Joint Committee on Taxation, *General Explanation of Tax Legislation Enacted in the 104<sup>th</sup> Congress* JCS-12-96, 22 (Dec. 18, 1996).

<sup>9</sup> Report of the Commission on Restructuring the Internal Revenue Service: *A Vision for a New IRS* 48 (June 25, 1997).

<sup>10</sup> Pub. L. No. 105-206, Sec. 1102, 112 Stat. 685, 697 (July 22, 1998).

<sup>11</sup> IRC § 7803(c)(4)(A)(iii).

<sup>12</sup> IRC § 7803(c)(4)(A)(iv).

The definition of “significant hardship” in IRC § 7811 was expanded in 1998 to include four specific circumstances: (1) an immediate threat of adverse action; (2) a delay of more than 30 days in resolving taxpayer account problems; (3) the taxpayer’s incurring of significant costs (including fees for professional representation) if relief is not granted; and (4) the taxpayer will suffer irreparable injury or a long-term adverse impact. The committee reports make clear that this list is a nonexclusive list of what constitutes significant hardship.<sup>13</sup>

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<sup>13</sup> H.R. Conf. Rep. No. 105-599, at 215 (1998).