

MAINE STATE LEGISLATURE

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**TAXPAYER
BILL OF RIGHTS
COMMISSION**

FINAL REPORT

December 1989



TAXPAYER BILL OF RIGHTS COMMISSION

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Executive Summary

Maine taxpayers have historically held the Bureau of Taxation in high regard. In an effort to maintain this level of confidence in the system, taxpayers' rights must be expanded to include new levels of protection. When required by statute and subsequently incorporated into rules and regulations regarding operating procedures, these new rights will help both the taxpayer and the Bureau meet their obligations to one another. In addition, taxpayers currently have many rights that they are either unaware of or unable to easily understand. To overcome these problems at the federal level, the IRS has published a document describing both new and existing taxpayer rights in simple and nontechnical language. The Taxpayer Bill of Rights Commission believes that fairness, equity and the need to protect Maine taxpayers' rights to the fullest extent possible require a similar commitment from the State of Maine. Therefore the Commission makes the following recommendations:

- The State Tax Assessor shall prepare a statement describing in simple and nontechnical terms the rights of a taxpayer; the obligations of the Bureau of Taxation during an audit; and the procedures by which a taxpayer can appeal an adverse decision.
- The State Tax Assessor shall distribute the Bill of Rights statement to any taxpayer contacted with respect to the determination or collection of any tax.
- Taxpayers shall have the right to record any interview with the Bureau of Taxation subject to advance notice.
- Taxpayers shall have the right to bring to any interview or informal conference an attorney, certified public accountant, enrolled agent, enrolled actuary or any other person permitted to represent the taxpayer.
- The taxpayer shall have the right to stop an interview and consult with any attorney, CPA, etc. if the taxpayer has not brought such a person to the interview.
- Taxpayers shall have 30 days to decide to contest an adverse determination instead of 15 days.
- Taxpayers shall have the right to 10 working days notice of an informal conference, unless a mutually convenient time and place can be arranged.
- The Joint Standing Committee on Taxation shall review and examine the need for giving the State Tax Assessor the power to suspend, deny or revoke any professional business or occupational license or certificate of authority for failure to pay taxes. If it decides to do so, the Committee shall amend the implementing legislation contained in this report to allow such power of enforcement.

INTRODUCTION

When asked what "rights" they have as individuals, many people will list three or four found in the Constitution of the United States (as well as most State Constitutions) such as the right to bear arms, the right to free speech, the right to practice the religion of their choice, etc. Others will recall the right to due process as described in the Miranda warning given to someone who has been arrested: "You have the right to remain silent; you have the right to obtain a lawyer, etc..." Hardly anybody would identify "...the right to be treated fairly, professionally, promptly and courteously by Internal Revenue Services employees"¹ or their counterparts at the State Bureau of Taxation. In fact, most people perceive their only right during the annual April 15 ritual is the right to send too much money to either the federal or state government. This report is intended to dispel that notion and provide the reader with a better understanding of his or her rights as a taxpayer.

Why a Bill of Rights?

Maine has long provided certain statutory "rights" to its taxpayers (which will be discussed below). In this regard, Maine is no different than any other State or even the federal government. Unfortunately, most people are unaware of these rights or are unable to easily determine what their right is when it is described as: "The State Tax Assessor's decision on reconsideration constitutes final agency action which is subject to review by the Superior Court in accordance with the Maine Administrative Procedure Act, except that the absence of a record shall be resolved exclusively by a hearing de novo on review."

To rectify these problems at the Federal level, the U.S. Congress required "...the Secretary of the Treasury (to) prepare a statement describing in simple and nontechnical terms the rights of a taxpayer..." as part of the Technical and Miscellaneous Corrections Act of 1988.² This statement, as amended, is included as Appendix A. Other states began considering similar legislation (see Appendix B for a summary of California's Bill of Rights) and Maine began debate on SP 582, LD 1644, Resolve, to Establish the Taxpayers' Bill of Rights (see Appendix C). While the LD itself failed of enactment, a modified

¹Dept. of the Treasury, Internal Revenue Service, Publication 1 (8-88)
See Appendix A.

²Public Law No. 100-647, 100 stat. 3342 (1988).

version of the Commission was funded through the Legislative Council so that Maine, too, could decide if a simple, nontechnical statement of taxpayers rights was necessary and, if so, be developed.

Taxpayer Rights in Maine

Maine statutes require the State Tax Assessor to administer and enforce the tax laws of the state.³ As a matter of course, administration and enforcement activities create numerous areas of interaction between taxpayers and the Assessor.⁴ In these areas, especially audits, taxpayers are often concerned, confused or unaware of what can or should be done on their behalf. Current statutory safeguards provided to the taxpayer include the following major rights.

1. The right to appeal a tax determination. 36 MRSA, §151 states that:

"Any person who is entitled by law to receive notice of a determination of the State Tax Assessor and who is aggrieved by that determination may petition in writing, within 15 days after receipt of notice of that determination, for reconsideration by the State Tax Assessor of that determination."

This is perhaps the most important "right" granted to a taxpayer. By and large nearly every communication between the State Tax Assessor and a taxpayer is nothing more than a form filled out by an individual which is then examined and reviewed by the Assessor in order to determine the correct tax liability. Typographical errors, misinformation, incomplete or incorrect forms can all result in an adverse determination. Therefore, the ability for a taxpayer to provide additional information, tell his side of the story or just have the opportunity to correct an innocent error is of major importance.

2. The right to an informal conference. Section 151 also states that if an appeal is made, the taxpayer can do so informally. Many peoples' perception of the tax collector is such that they believe nothing can be accomplished without a battery of lawyers, CPAs or professional tax preparers. We forget that two reasonable people can oftentimes reach consensus simply by identifying the problem and discussing various alternatives. The ability to meet informally allows this cooperative atmosphere to develop more readily than does the confrontative environment inherent

³36 MRSA §112 et seq.

⁴See for example 36 MRSA §112 sub§§3 & 4; §135; §141; and §§171-177.

in most situations involving lawyers. Therefore, the right to attempt settlement on an informal basis is also an important one.

3. The right to additional review. Section 151 further allows for review of any "final determination" by the State Tax Assessor by the Superior Court. This is important because some disagreements simply cannot be resolved without intervention by an impartial third party. Thus, individual taxpayers need not be overly concerned if they fail to convince the Assessor of the merits of their argument during the informal conference. Of course, at this level, the time and expense of further disagreement become important considerations.
4. The right to interest abatement. Section 186 allows the Assessor to charge interest on most taxes not paid by their respective due date. Therefore, this additional amount is almost always added to the original determination made by the Assessor that leads to the appeal by the taxpayer. However, §186 also says that if the failure to pay a tax when required is explained to the satisfaction of the State Tax Assessor, presumably during the informal conference, the Assessor may abate or waive the payment of all or any part of that interest. This is important in terms of fairness inherent in any rights issue.
5. The right to penalty abatement. Section 187 allows the Assessor to charge penalties in addition to any tax and interest due the State. Once again, these penalties can be waived or abated in whole or part, but only for cause. The law doesn't define "for cause" in this section, but the rationale is probably the same as that used in 4 above. That is, a legitimate reason for non-payment of taxes on time could result in the waiver of penalties as well as interest. A good example is the 1988-1989 waiver of all penalties due as a result of underpayment of income taxes by less than \$2,500 because the State's withholding tables were inaccurate.
6. The right to privacy. Section 191 of the statutes provide that any information included on any tax return is strictly confidential with only very specific exceptions. This right also enhances the fairness of State tax policy by enabling taxpayers to file their returns without fear of disclosing personal information to anyone without a need to know about them.

Title 36 also provides some taxpayer rights that are not as important as those listed above, but are in the statutes nonetheless. These include:

1. The right to have any illegal tax levy cancelled or abated. This right is contained in §142 and would be important if it happened frequently, but it is hard to imagine the type of situation where this could occur too often. Still, on the outside chance that a tax could be levied illegally it is good to have an easily accessible remedy.
2. The right to pay an assessment without giving up the right to appeal. Section 152 allows taxpayers to avoid interest and penalties for nonpayment of taxes by paying the tax when due, but retaining the right to contest the payment. This is important only to the extent that it prevents a taxpayer from adding to his or her troubles while an appeal is being held.
3. The right to additional warnings. Section 171 provides a taxpayer with a final notice after all appeals and reviews have been decided that if payment is not received within 10 days, collection of the amount due will proceed by one of various methods.⁵

Additional or Amended Rights

The major focus of the study by the Taxpayer Bill of Rights Commission was the comparison between Maine statute and the federal Taxpayer Bill of Rights.⁶ The Commission found, much like the U.S. Congress did, that many taxpayer rights existed, but they had never been combined in a single document, they were not necessarily easy to understand and they were rarely discussed with a taxpayer before, during or after an audit, interview or conference. In effect, the taxpayer had no rights because the taxpayer didn't know those rights existed. Even though "ignorance of the law is no excuse", the perception of a taxpayer being taken advantage of by the IRS or the State Bureau of Taxation goes a long way towards reinforcing an image of our tax system as unfair, dishonest or unjust. And, according to John J. Cross, "fairness is an important component of a voluntary tax assessment system such as ours."⁷ Therefore, the Commission recommends that the State Tax Assessor prepare a statement similar to IRS Publication 1.⁸ The Commission further recommends that, once prepared, the statement be sent to any taxpayer contacted with respect to the determination or collection of any tax.

⁵See 36 MRSA §§172-177

⁶op cit

⁷ABA Journal, June 1989

⁸op cit. See also Appendix D, Implementing Legislation.

The review of the federal Bill of Rights legislation also indicated that certain rights existed at that level that should be incorporated in the Maine Bill of Rights. These include:

1. The right to record interviews. Some people may find themselves in situations where an exact recollection of the events that occur in a conference is necessary. Others may be unable to bring a representative, lawyer or CPA with them to a conference and believe that a record of the actual session would be better than their own memory when retelling the events. Still others may just feel more comfortable with a tape recorder. To protect these individuals, the Commission has included the right to record interviews in its suggested legislation.⁹ The right is granted to both the taxpayer and the Assessor and either side must be notified in advance that a recording is going to be made.
2. The right to bring someone else to an interview. Some people don't like machines such as tape recorders and only feel comfortable having a friend or representative in the same room with them. Others may have had professional assistance in preparing their tax returns and would only be able to answer questions about their return if such a professional were present. Still others believe in the old adage that a "lawyer that represents himself has a fool for a client." Thus, the right to bring someone else to an interview is an important one. The State Tax Assessor informed the Commission that agents or representatives of taxpayers had never been denied access to a hearing, so this recommendation more or less formalizes existing policy rather than breaks new ground. The Commission also discussed whether or not this "right" would defeat the purpose of the "informal conference" concept, but decided that it was important to provide the opportunity to exercise the right to have additional support people attend a hearing with the taxpayer. By placing this right in statute, all taxpayers know that they can bring someone with them if they so choose.
3. The right to stop an interview. This right is an important corollary to the one above. That is, some taxpayers may come to an informal conference alone, only to find that they should have brought professional assistance. Therefore, the Commission recommends that taxpayers have the right to stop the interview if they wish to consult with someone else. In an effort to ensure that the right is not abused to simply delay a hearing, only a 10-day rescheduling period is allowed.

⁹Appendix D

4. Amend the time period for notice of appeal. As discussed earlier, the most important right a taxpayer has is the right to appeal an adverse decision by the State Tax Assessor.¹⁰ Unfortunately, this right must be invoked within 15 days after receipt of notice of that decision. The State Tax Assessor believes and the Commission agreed, that this is too short a time period in which to petition for reconsideration. Therefore, the Commission recommends that the 15-day limit be expanded to 30 days.
5. Amend the time period for notice of informal conference. Current statute requires the Assessor to give 10 days notice of the time and place of the informal conference. The Commission again believed that this time period was potentially too short to adequately protect taxpayer rights. Therefore, the recommendation has been made to require at least 10 working days notice, with the provision that a conference may be held in less than 10 working days if a mutually convenient time and place can be arranged between the taxpayer and the State Tax Assessor.

Conclusion

The Taxpayer Bill of Rights Commission found that Maine taxpayers enjoy many rights regarding their transactions with the State Tax Assessor and the Bureau of Taxation, but that a lack of knowledge and understanding of those rights inhibited their practical usage. Some additional rights were needed so that taxpayers were protected to the fullest extent and some existing rights needed to be amended for the same reason. While making the necessary changes and additions, the Commission further recommended that all taxpayer rights be listed in a single publication, described in simple, nontechnical terms and distributed to any taxpayer contacted in regards to the determination and collection of any tax. This document would also be available to any taxpayer requesting one.

The Commission does not make these recommendations lightly. We realize that the exercise of one's rights can take time and resources that otherwise would not be used. However, any additional "red tape" created is a small price to pay concerning taxpayer rights. If by making the recommendations included in this report we have come closer to guaranteeing that all Maine taxpayers have "the right to be treated fairly, professionally, promptly and courteously" by the State Tax Assessor and the Bureau of Taxation, then we have met our mandate.

¹⁰See 36 MRSA §151

Addendum

During the review conducted by the Taxpayer Bill of Rights Commission a discussion occurred surrounding taxpayer responsibilities in relation to their rights. The Commission believes that taxpayers have the right to avoid paying taxes that they are not required to pay, but all taxpayers have the responsibility to pay their fairly assessed taxes. To the extent that some taxpayers fail to recognize their responsibility, the remaining taxpayers unfairly subsidize the tax system.

In an effort to enforce compliance with tax law, the State Tax Assessor has numerous types of collection and penalty imposition powers. A major penalty can be imposed through 36 MRSA §175 which enables the State Tax Assessor to effectively revoke any license or certificate of authority to conduct a profession, trade, or business in the State of Maine. This penalty can only be imposed, however, for failure to file a required tax return. There are two exceptions to this section: liquor licenses and motor vehicle dealers can have their license revoked if any tax is unpaid and due in an amount exceeding \$1,000. Any other licensee can file a return, refuse to pay taxes due in any amount and still conduct their business.

The Commission views this as conceptually unfair and regards it to be unequal enforcement of a tax policy that should be enforced uniformly across the board. Many other states hold all licensees to the same penalty provisions that Maine only applies to liquor licensees and motor vehicle dealers. And, since Maine treats all non-filers the same, there is some concern as to why non-payers are treated differently.

There are, however, additional concerns to be discussed. For example, can or should the State treat non-paying licensees differently than non-payers who don't have a license that can be revoked? Will the State be able to collect taxes due from an individual if that individual cannot operate professionally without a license? Is this penalty only going to be another enforcement tool available to the Assessor or would the State be creating a weapon that could be used too easily without adequate safeguards? Making the punishment fit the crime is an important concept in our Judicial system, and prohibiting someone from making a living is a substantial punishment.

Given the perceived unfairness of present statute, the many questions yet to be answered and the fact that additional enforcement powers were not specifically within the purview of the Taxpayer Bill of Rights Commission, we recommend that the full Taxation Committee entertain this issue during the review and debate of the implementing legislation attached to this report (Appendix D). If the Committee believes it is good tax policy to provide this additional enforcement power to the Tax Assessor, then the necessary amendment to the bill can be made and presented to the full Legislature for its consideration.

APPENDIX A

Your Rights

AS A TAXPAYER



As a taxpayer, you have the right to be treated fairly, professionally, promptly, and courteously by Internal Revenue

Service employees. Our goal at the IRS is to make sure that your rights are protected, so that you will have the highest confidence in the integrity, efficiency, and fairness of our tax system. To ensure that you always receive such treatment, you should know about the many rights you have at each step of the tax process.

Free Information and Help in Preparing Returns

You have the right to information and help in complying with the tax laws. In addition to the basic instructions we provide with the tax forms, we make available a great deal of other information.

Taxpayer publications. We publish over 100 free taxpayer information publications on various subjects. One of these, Publication 910, *Guide to Free Tax Services*, is a catalog of the free services we offer. You can order these publications and any tax forms or instructions you need by calling us toll-free at 1-800-424-FORM (3676).

Other assistance. We also provide walk-in tax help at many IRS offices, and recorded telephone information on many topics (through our *Tele-Tax* system). The telephone numbers for *Tele-Tax*, and the topics covered, are in the tax forms instructions. We make many of our materials available in Braille (at regional libraries for the handicapped) and in Spanish. We provide assistance for the hearing impaired via special telephone equipment.

We have produced informational videotapes that you can borrow. In addition, you may want to attend our education programs for specific groups of taxpayers, such as farmers and those with small businesses. In cooperation with local volunteers, we offer free tax return preparation assistance to low-income and elderly taxpayers through the Volunteer Income Tax Assistance (VITA) and Tax Counseling for the Elderly (TCE) Programs. You can get information on these programs by calling the toll-free telephone number for your area listed at the end of this publication.

Copies of tax returns. If you need a copy of your tax return for an earlier year, you can get one by filling out Form 4506, *Request for Copy of Tax Form*, and paying a small fee.

However, you often only need certain information, such as the amount of your reported income, the number of your exemptions, and the tax shown on the return. You can get this information free if you write or visit an IRS office, or call the toll-free number for your area listed at the end of this publication.

If you have trouble clearing up any tax matter with the IRS through normal channels, you can get special help from our Problem Resolution Office, as explained later.

Privacy and Confidentiality

You have the right to have your personal and financial information kept confidential. You also have the right to know why we are asking you for information, exactly how any information you give will be used, and what might happen if you do not give the information.

Information sharing. Under the law, we may share your tax information with State tax agencies with which we have information exchange agreements, the Department of Justice and other federal agencies under strict legal guidelines, and certain foreign governments under tax treaty provisions.

Courtesy and Consideration

You are entitled to courteous and considerate treatment from IRS employees at all times. If you ever feel that you are not being treated with fairness, courtesy, and consideration by an IRS employee, you should tell the employee's supervisor.

Payment of Only the Required Tax

You have the right to plan your business and personal finances in such a way that you will pay the least tax that is due under the law. You are liable only for the correct amount of tax. Our purpose is to apply the law consistently and fairly to all taxpayers.



Department of the Treasury
Internal Revenue Service
Publication 1 (8-88)

Fairness if Your Return is Examined

Most taxpayers' returns are accepted as filed. But if your return is selected for examination, it does not suggest that you are dishonest. The examination may or may not result in more tax. Your case may be closed without change. Or, you may receive a refund.

Arranging the examination. Many examinations are handled entirely by mail. For information on this, get Publication 1383, *The Correspondence Process (Income Tax Accounts)*, available free by calling 1-800-424-FORM (3676). If we notify you that your examination is to be conducted through a face-to-face interview, or you request such an interview, you have the right to ask that the examination take place at a reasonable time and place that is convenient for both you and the IRS. If the time or place suggested by the IRS is not convenient, the examiner will try to work out something more suitable. However, in any case, the IRS makes the final determination of how, when, and where the examination will take place.

Representation. Throughout the examination, you may represent yourself, have someone else accompany you, or, with proper written authorization, have someone represent you in your absence.

Recordings. You may make a sound recording of the examination if you wish, provided you let the examiner know in advance so that he or she can do the same.

Repeat examinations. We try to avoid repeat examinations of the same items, but this sometimes happens. If we examined your tax return for the same items in either of the 2 previous years and proposed no change to your tax liability, please contact us as soon as possible so that we can see if we should discontinue the repeat examination.

Explanation of changes. If we propose any changes to your return, we will explain the reasons for the changes. It is important that you understand the reasons for any proposed change. You should not hesitate to ask about anything that is unclear to you.

Interest. You must pay interest on additional tax that you owe. The interest is figured from the due date of the return. But if our error caused a delay in your case, and this was grossly unfair, you may be entitled to a reduction in the interest. Only delays caused by procedural or mechanical acts that do not involve the exercise of judgment or discretion qualify. If you think we caused such a delay, please discuss it with the examiner and file a claim.

Business taxpayers. If you are in an individual business, the rights covered in this publication generally apply to you. If you are a member of a partnership or a shareholder in a small business corporation, special rules (which may be different from those described here) may apply to the examination of your partnership or corporation items. The examination of partnership items is discussed

in Publication 556, *Examination of Returns, Appeal Rights, and Claims for Refund*. The rules for regular corporations are covered in Publication 542, *Tax Information on Corporations*. The rules for S corporations are described in Publication 589, *Tax Information on S Corporations*. You can get these publications free by calling us at 1-800-424-FORM (3676).

An Appeal of the Examination Findings

If you do not agree with the examiner's report, you may meet with the examiner's supervisor to discuss your case further. If you still don't agree with the examiner's findings, you have the right to appeal them. The examiner will explain your appeal rights and will give you a copy of Publication 5, *Appeal Rights and Preparation of Protests for Unagreed Cases*. This publication explains your appeal rights in detail and tells you exactly what to do if you want to appeal. You can get it by calling us toll-free at 1-800-424-FORM (3676).

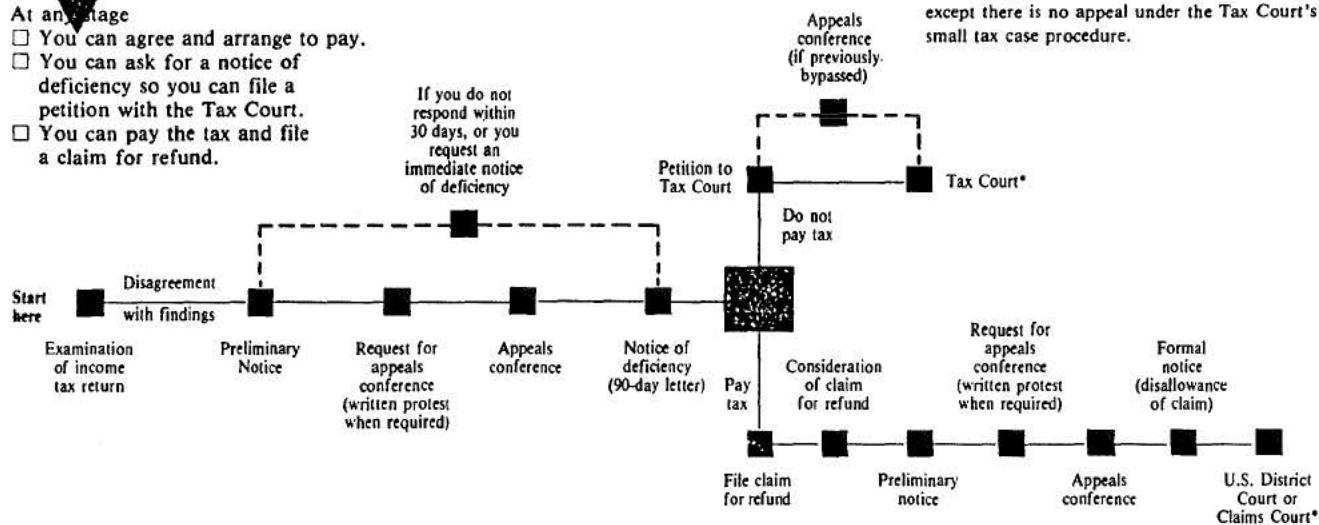
Appeals Office. You can appeal the findings of an examination within the IRS through our Appeals Office. Most differences can be settled through this appeals system without expensive and time-consuming court trials. If the matter cannot be settled to your satisfaction in Appeals, you can take your case to court.

Appeals to the courts. Depending on whether you first pay the disputed tax, you can take your case to the

Income Tax Appeal Procedure

At any stage

- ☐ You can agree and arrange to pay.
- ☐ You can ask for a notice of deficiency so you can file a petition with the Tax Court.
- ☐ You can pay the tax and file a claim for refund.



U.S. Tax Court, the U.S. Claims Court, or your U.S. District Court. These courts are entirely independent of the IRS. As always, you can represent yourself or have someone admitted to practice before the court represent you.

If you disagree about whether you owe additional tax, you generally have the right to take your case to the Tax Court if you have not yet paid the tax. Ordinarily, you have 90 days from the time we mail you a formal notice (called a "notice of deficiency") telling you that you owe additional tax to file a petition with the Tax Court.

If you have already paid the disputed tax in full and filed a claim for refund for it that we disallowed (or on which we did not take action within 6 months), then you may take your case to the U.S. District Court or U.S. Claims Court.

Recovering litigation expenses. If the court agrees with you on most issues in your case, and finds the IRS's position to be largely unjustified, you may be able to recover some of your litigation expenses from us. But to do this, you must have used up all the administrative remedies available to you within the IRS, including going through our Appeals system.

Publication 556, *Examination of Returns, Appeal Rights, and Claims for Refund*, will help you more fully understand your appeal rights. You can get it free by calling us at 1-800-424-FORM (3676).

Fair Collection of Tax

Whenever you owe tax, we will send you a bill. Be sure to check any bill you receive to make sure it is correct. You have the right to have your bill adjusted if it is incorrect, so you should let us know about an incorrect bill right away.

If we tell you that you owe tax because of a math or clerical error on your return, you have the right to ask us to send you a formal notice (a "notice of deficiency") so that you can dispute the tax, as discussed earlier. You do not have to pay the additional tax when you ask us for the formal notice, if you ask for it within 60 days of the time we tell you of the error.

If the tax is correct, we will give you a specific period of time to pay the bill in full. If you pay the bill within the time allowed, we will not have to take any further action.

Payment arrangements. You should make every effort to pay your bill in full. However, if you can't, you should pay as much as you can and contact us right away. In order to make other payment arrangements with you, we may ask you for a complete financial statement to determine how you can pay the amount due. You may qualify for an installment agreement based on your financial condition, or we may arrange for your employer to deduct amounts from your pay to be sent to us. We will give you copies of all agreements you make with us.

Only after we have tried to contact you and given you the chance to pay any tax due voluntarily, do we take any enforcement action (such as recording a tax lien, or levying on or seizing property). Therefore, it is very important for you to respond right away to our attempts to contact you (by mail, telephone, or personal visit). If you do not respond, we may have no choice but to begin enforcement.

Release of liens. If we have to place a lien on your property (to secure the amount of tax due), you can expect us to release the lien promptly when you pay the tax and certain charges.

Property that is exempt from levy. If we must seize (levy on) your property, you have the legal right to keep:

- A limited amount of personal belongings, clothing, furniture, and business or professional books and tools.
- Unemployment, worker's compensation, and certain pension benefits.
- Court-ordered child support payments.
- Mail.
- An amount of wages, salary, and other income (\$75 per week, plus \$25 for each legal dependent).

If at any time during the collection process you do not agree with the collection employee, you can discuss your case with his or her supervisor.

Access to your private premises. A court order is not generally needed for a collection employee to seize your property. However, you don't have to allow the employee access to your private premises, such as your home or the non-public areas of your business, if the employee does not have court authorization to be there.

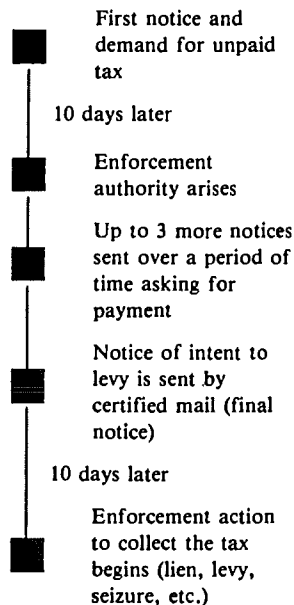
Withheld taxes. If we believe that you were responsible for seeing that a corporation paid us income and social security taxes withheld from its employees, and the taxes were not paid, we may look to you to personally pay an amount based on the unpaid taxes. If you feel that you don't owe this, you have the right to discuss the case with the collection employee's supervisor. Also, you generally have the same IRS appeal rights as other taxpayers. Because the Tax Court has no jurisdiction in this situation, you must pay at least part of the withheld taxes and file a claim for refund in order to take the matter to the U.S. District Court or U.S. Claims Court.

Publications 586A, *The Collection Process (Income Tax Accounts)*, and 594, *The Collection Process (Employment Tax Accounts)*, will help you understand your rights during the collection process. You can get these publications free by calling us at 1-800-424-FORM (3676).

The Collection Process

To stop the process at any stage, you should pay the tax in full. If you cannot pay the tax in full, contact us right away to discuss possible ways to pay the tax.

Start here



Refund of Overpaid Tax

Once you have paid all your tax, you have the right to file a claim for a refund if you think the tax is incorrect. Generally, you have 3 years from the date you filed the return or 2 years from the date you paid the tax (whichever is later) to file a claim. If we examine your claim for any reason, you have the same rights that you would have during an examination of your return.

Interest on refunds. You will receive interest on any income tax refund delayed more than 45 days after the later of either the date you filed your return or the date your return was due.

Checking on your refund. Normally, you will receive your refund about six weeks after you file your return. If you have not received your refund in 8 weeks after mailing your return, you may check on it by calling the toll-free *Tele-Tax* number in the tax forms instructions.

If your refund is reduced because of a debt you owe another Federal agency or because you owe child support, we must notify you that this has occurred. However, if you have a question about the debt that caused the reduction, you should contact the other agency.

Cancellation of Penalties

You have the right to ask that certain penalties (but not interest) be cancelled (abated) if you can show reasonable cause for the failure that led to the penalty (or can show that you exercised due diligence, if that is the applicable standard for that penalty).

If you relied on wrong advice given to you by IRS employees on the toll-free telephone system, we will cancel certain penalties that may result. But you have to show that your reliance on the advice was reasonable.

Special Help to Resolve Your Problems

We have a Problem Resolution Program for taxpayers who have been unable to resolve their problems with the IRS. If you have a tax problem that you cannot clear up through normal channels, write to the Problem Resolution Office in the district or Service Center with which you have the problem. You may also reach the Problem Resolution Office by calling the IRS taxpayer assistance number for your area listed at the

end of this publication. If the tax problem is causing or will cause you significant hardship, the Problem Resolution Officer will arrange for an immediate review of your problem. During the review, we will not take any enforcement action.

Taxpayer Assistance Numbers

You should use the following telephone numbers in getting answers to your tax questions.

You may also use these numbers to reach the Problem Resolution Office if you need special help in resolving problems that you have not been able to resolve through normal IRS channels. Ask for the Problem Resolution Office when you call.

If your state and/or local area is not listed separately below, call toll-free 1-800-424-1040.

ALASKA

Anchorage, 561-7484

ARIZONA

Phoenix, 257-1233

CALIFORNIA

Please call the telephone number shown in the white pages of your local telephone directory under U.S. Government, Internal Revenue Service, Federal Tax Assistance.

COLORADO

Denver, 825-7041

DISTRICT OF COLUMBIA

Call 488-3100

FLORIDA

Jacksonville, 354-1760

GEORGIA

Atlanta, 522-0050

HAWAII

Oahu, 541-1040

ILLINOIS

Chicago, 435-1040

INDIANA

Indianapolis, 226-5477

IOWA

Des Moines, 283-0523

MARYLAND

Baltimore, 962-2590
Montgomery County, 488-3100
Prince George's County, 488-3100

MASSACHUSETTS

Boston, 523-1040

MICHIGAN

Detroit, 237-0800

MINNESOTA

Minneapolis, 291-1422
St. Paul, 291-1422

MISSOURI

St. Louis, 342-1040

NEBRASKA

Omaha, 422-1500

NEW JERSEY

Newark, 622-0600

NEW YORK

Bronx, 732-0100
Brooklyn, 596-3770
Buffalo, 855-3955
Manhattan, 732-0100
Nassau, 222-1131
Queens, 596-3770
Rockland County, 997-1510
Staten Island, 596-3770
Suffolk, 724-5000
Westchester County, 997-1510

OHIO

Cincinnati, 621-6281
Cleveland, 522-3000

OREGON

Portland, 221-3960

PENNSYLVANIA

Philadelphia, 574-9900
Pittsburgh, 281-0112

PUERTO RICO

San Juan Metro Area, 766-5040
Isla DDD, 766-5549

TENNESSEE

Nashville, 259-4601

TEXAS

Dallas, 742-2440
Ft. Worth, 263-9229
Houston, 965-0440

VIRGINIA

Bailey's Crossroads, 557-9230
Richmond, 649-2361

WASHINGTON

Seattle, 442-1040

WISCONSIN

Milwaukee, 271-3780

U.S. Taxpayers Abroad May Write for Information to:

Internal Revenue Service
Attn: IN:C:TPS
950 L'Enfant Plaza South, S.W.
Washington, D.C. 20024

Telephone Assistance Services for Deaf Taxpayers Who Have Access to TV/Telephone-TTY Equipment
Hours of Operation

8:00 a.m. to 6:45 p.m. EST (Jan. 1-Apr. 17)
8:00 a.m. to 4:30 p.m. EST (Apr. 18-Dec. 31)

Indiana Residents 1-800-382-4059

Elsewhere in U.S., including Alaska, Virgin Islands, and Puerto Rico, 1-800-428-4732

Number for Ordering Tax Forms and Publications. Call
1-800-424-FORM (3676)

ADDENDUM TO PUBLICATION 1

Your Rights AS A TAXPAYER



After Publication 1 was printed, new legislation was passed which expanded and defined certain rights that you have. These changes are listed here so you will be aware of them.

Fairness if Your Return is Examined

If your return is examined, you also have the following rights.

Representation. If you wish to consult with an attorney, a certified public accountant, an enrolled agent, or any other person permitted to represent a taxpayer during an interview for examining a tax return or collecting tax, we will stop and reschedule the interview. We cannot suspend the interview if you are there because of an administrative summons.

Recordings. You can make an audio recording of an interview with Collection or Examination. You must notify us ten days before the meeting and bring your own recording equipment. The IRS can also record an interview. If we do so we will notify you ten days before the meeting and a copy of the recording will be available to you at your expense.

Appeal of the Examination Findings

Recovering administrative and litigation expenses. If the court agrees with you on most issues in your case, and finds that our position was largely unjustified, you may be able to recover some of your expenses necessary to obtain the correct result. To do this, you must have used all the administrative remedies

available within the IRS. This includes going through our Appeals system and giving us the facts of the case.

Fair Collection of Tax

When you owe tax, we will send you a bill describing the tax and stating the amounts you owe in tax, interest, and penalties. You should make every effort to pay. If you cannot pay the full amount and we approve an installment payment agreement, the agreement will stay in effect only if:

- You give correct and complete financial information,
- You pay each installment on time,
- You satisfy other tax liabilities on time,
- You provide current financial information when asked, and
- We determine that collecting the tax is not at risk.

We may review your financial situation and may revise the agreement to reflect your situation. We will notify you 30 days before we change the terms of the agreement.



Department of the Treasury
Internal Revenue Service
Notice 855 (3-89)

Release of liens. You have the right to appeal the filing of a Notice of Federal Tax Lien if you believe we filed the lien in error. If we agree, we will immediately issue a certificate of release, including a statement that we filed the lien in error.

A lien is incorrect if:

- You pay the amount due before we filed a lien,
- We make a procedural error in a deficiency assessment, or
- We assess a tax in violation of the automatic stay provisions in a bankruptcy case.

We will release a Notice of Federal Tax Lien within 30 days after we learn that you have paid the tax liability in full or it has become legally unenforceable. You can recover actual economic damages and costs if we do not release the lien within the 30 days. However, before damages can be awarded, you must provide us with written notice that we have failed to release the lien. You may also be able to recover direct economic damages and costs, if we recklessly or intentionally failed to follow the laws and regulations for the collection of taxes.

If we seize your property, you have the right to request that it be sold within 60 days after your request. You can request a time period greater than 60 days. We will comply with your request

unless it is not in the best interest of the government. Your personal residence can be seized only with the approval of a District Director or Assistant District Director, except where collecting the tax may be at risk.

Levies. Property exempt from levy now includes job training and welfare benefits. The weekly amount of exempt wages, salary, and other income is now equal to your standard deduction and allowable personal exemptions divided by 52.

If your bank account is levied after July 1, 1989, the bank will hold your account for 21 days. This allows you to resolve your tax bill before the bank turns over the funds to the IRS. We will release a levy if:

- You pay the tax, penalty, and interest for which the levy was made,
- The IRS determines the release will help collect the tax, or
- You have an approved installment agreement for the tax shown on the levy.

Filing Returns

If you do not file a return, we will contact you. If you do not respond and we believe that you should have filed a return, we may prepare a return and assert the tax based on whatever information is available. You have a right to prepare and

file a correct tax return within 30 days of our notice. If you state that you are not liable, but we feel otherwise, you can appeal the proposed assessed amount. We will send you the rules for filing an appeal with the proposed assessment.

Cancellation of Penalties

If you relied on incorrect written advice from the IRS in response to a specific written request you made after January 1, 1989, we will cancel any penalties that may result. You need to give us a copy of your written request and our written response. You must show that you gave sufficient and correct information, and filed your return after you received the advice.

Special Help to Resolve Your Problem

If you suffer or are about to suffer a significant hardship because of the administration of tax laws, you may request assistance on Form 911, Application For Taxpayer Assistance Order to Relieve Hardship. The Taxpayer Ombudsman or a Problem Resolution Officer will review your application and may issue a Taxpayer Assistance Order (TAO). You can get copies of Form 911 in IRS offices or by calling the toll-free telephone number 1-800-424-FORM(3676).

A P P E N D I X B

TAXPAYERS' BILL OF RIGHTS

COMPARISON OF CALIFORNIA TO FEDERAL

C A L I F O R N I A		F E D E R A L		
Code Section	Provisions	Act Section	IRC Section	Provisions
21004	Establishes Taxpayers' Rights Advocate and allows the Advocate to stop collection actions under certain circumstances. Advocate (California) actions can be modified or rescinded only by the Franchise Tax Board Executive Officer.	6230	7811	Allows the Ombudsman to stop collection actions under certain circumstances. Ombudsman (federal) issues taxpayer assistance orders which can be modified or rescinded by specified IRS directors.
21005	Requires Franchise Tax Board (FTB) to develop and implement public education program explaining most common taxpayer errors.			No comparable federal section
21006(a)	Requires FTB to prepare annual report by 10/1 identifying areas of recurrent taxpayer non-compliance.			No comparable federal section
21006(b)	Requires FTB to conduct annual hearing where the public can present proposals on law changes.			No comparable federal section
21007	FTB must disclose to taxpayers procedures, remedies and rights during audit, appeals and collection proceedings. FTB must also disclose taxpayers' rights with most notices and in tax booklets.	6227		Similar to California
21008	Prohibits FTB from evaluating employees on the revenue they generate through additional tax assessed or taxes collected.	6231		Similar to California
21009	FTB must evaluate employees' performance with respect to contact with taxpayers.			No comparable federal section
21010	FTB is required to develop a plan by July 1, 1989 to reduce the time required to resolve protests and appeals.			No comparable federal section
21011	FTB may record protest hearings. Taxpayers must be notified in advance and they are entitled to receive a copy of the recording.	6228	7520	Similar to California
21012	Taxpayers' reliance on erroneous FTB written advice may result in abatement of penalties and interest. Tax may be waived in the event of an erroneous chief counsel ruling.	6229	6404	Taxpayers' reliance on IRS erroneous written advice may result in abatement of penalties only.
21013	FTB may be required to reimburse taxpayers for certain costs and fees if FTB is determined by the Board of Equalization to be unreasonable in its action.	6239	7430	Similar to California
21014	Prohibits FTB from conducting investigations for non-tax purposes.			No comparable federal section
21015	Allows FTB to settle tax disputes of \$5,000 or less if approved by Board of Control.			No comparable federal section
21016	Requires FTB to release taxpayer's seized property under certain conditions.	6236(f)	6343	Similar to California
21017	Requires FTB to adjust all exemptions from levy to changes in the California Consumer Price Index over 5%.	6236(c)	6334	Federal provision increased the exemptions from levy for certain types of property and income.
21018	Authorizes FTB to reimburse bank charges to taxpayer because of an erroneous levy.			No comparable federal provision
21019	Requires FTB to notify taxpayers 30 days prior to filing a lien. FTB required, upon taxpayer's request, to notify major credit reporting companies of erroneous lien.	6238	6326	Federal provision allows taxpayers to appeal the lien after the lien has been filed.
21020	Requires FTB to notify corporations 60 days prior to suspending rights, powers, and privileges.			No comparable federal provision
21021	Allows taxpayers to sue FTB for reckless disregard of published procedures.	6240	7433 & 7432	Similar to California
21022	Grants a California extension to file if taxpayer applied for federal extension and made payment.			No comparable federal provision

There are numerous provisions in the federal law which were not included in California Assembly Bill 2788. In most cases these provisions do not apply to California law (e.g., jurisdictional authority of Tax Court) or were already included in prior California legislation or current practice (e.g., installment payment of tax liability; jeopardy assessment procedures. provision for Assistant Commissioner for Taxpayer Services).

APPENDIX C

STATE OF MAINE

**IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-NINE**

S.P. 582 - L.D. 1644

**Resolve, to Establish the
Taxpayers' Bill of Rights**

Sec. 1. Commission established; membership. Resolved: That the Taxpayers' Bill of Rights Commission is established. The commission shall be composed of 7 members to be appointed within 30 days of the effective date of this resolve: 2 Senators, appointed by the President of the Senate, representing the Joint Standing Committee on Taxation; 3 members of the House of Representatives, appointed by the Speaker of the House of Representatives, representing the Joint Standing Committee on Taxation; and 2 members of the public, to be jointly appointed by the President of the Senate and the Speaker of the House of Representatives; and be it further

Sec. 2. Bill of Rights; development. Resolved: That the Taxpayers' Bill of Rights Commission shall clearly outline taxpayers' legal rights and the responsibilities of the Bureau of Taxation to the State's taxpayers; and be it further

Sec. 3. Compensation. Resolved: That the members of the commission who are Legislators shall receive the legislative per diem, as set out in the Maine Revised Statutes, Title 3, section 2, for days in attendance at commission meetings. All members of the commission, except employees of the State, shall receive reimbursement for expenses upon application to the Legislative Council; and be it further

Sec. 4. Convening of commission. Resolved: That, when the appointment of all commission members is completed, the Governor shall call the commission together for its first meeting. At the first meeting, the members shall elect a chair and other officers; and be it further

Sec. 5. Staff assistance. Resolved: That, if assistance is desired, the commission may request necessary staff assistance from the Legislative Council; and be it further

Sec. 6. Report. Resolved: That the commission submit its report, together with any necessary implementing legislation, to the 114th Legislature no later than December 1, 1989; and be it further (Subsequently Amended to December 29, 1989)

Sec. 7. Appropriation. Resolved: That the following funds are appropriated from the General Fund to carry out the purposes of this resolve.

1989-90

LEGISLATURE

Study Commission - Funding

Personal Services	\$1,375
All Other	4,425

Provides funds for the legislative per diem, meetings and related expenses of the commission.

LEGISLATURE

TOTAL

\$5,800

(Pursuant to a letter from the Legislative Council, the Commission membership was reduced from 7 members to 5, to consist only of members of the Taxation Committee.)

APPENDIX D

State of Maine

In the Year of our Lord
Nineteen Hundred and Ninety

An Act to Establish the
Taxpayer Bill of Rights

Be it enacted by the People of the State of Maine as follows:

- Sec. 1. 36 MRSA §112, sub-§3 as enacted by PL 1981, c. 364 is amended by adding at the end of the first paragraph the following: Any person summonsed under this section shall receive at the same time a copy of the Taxpayer Bill of Rights statement required to be prepared under subsection 7-A of this section.
- Sec. 2. 36 MRSA §112 sub-§7-A is enacted to read:
7-A. Taxpayer Bill of Rights. The State Tax Assessor shall prepare a statement describing in simple and nontechnical terms the rights of a taxpayer and the obligations of the Bureau of Taxation during an audit. The statement shall also explain the procedures by which a taxpayer may appeal any adverse decision of the State Tax Assessor, including the informal conference and judicial appeals. This statement must be distributed by the Bureau of Taxation to any taxpayer contacted with respect to the determination or collection of any tax, excluding the normal mailing of tax forms.
- Sec. 3. 36 MRSA §151 as amended by PL 1981, c. 364 is repealed and the following is enacted in its place:

§151. Review of determinations of State Tax Assessor

Any person who is entitled by law to receive notice of a determination of the State Tax Assessor and who is aggrieved by that determination may petition in writing, within 30 days after receipt of notice of that determination, for reconsideration by the State Tax Assessor of that determination.

If a petition for reconsideration is filed within the specified time period, the State Tax Assessor shall reconsider his determination. If the petitioner has so requested in his petition, the State Tax Assessor shall hold an informal conference with the petitioner to receive additional information and to hear argument regarding the protested determination and shall give the petitioner at least 10 working days notice of the time and place of the conference. However, the conference may be held with less than 10 working days notice if a mutually convenient time and place can be arranged between the petitioner and the State Tax Assessor. The reconsideration, with or without an informal conference, shall not be deemed to be an "adjudicatory proceeding" within the meaning of that term in the Maine Administrative Procedure Act.

The State Tax Assessor's decision on reconsideration constitutes final agency action which is subject to review by the Superior Court in accordance with the Maine Administrative Procedure Act, except that the absence of a record shall be resolved exclusively by a hearing de novo on review.

Sec. 4. 36 MRSA §151-A is enacted to read:

151-A Additional Safeguards.

1. **Recording of interviews.** The State Tax Assessor must, upon advance request, allow a taxpayer to make an audio recording of any in-person interview concerning the determination and collection of any tax. The recording will be made at the taxpayer's own expense and with his or her own equipment.

The State Tax Assessor may record the interview if the State Tax Assessor (1) informs the taxpayer of the recording prior to the interview and (2) upon request of the taxpayer, provides the taxpayer with a transcript or copy of the recording, but only if the taxpayer provides reimbursement for the cost of the transcription and reproduction of the transcript or copy.

2. **Representative of the taxpayer.** The taxpayer has the right to bring to any interview or informal conference any attorney, certified public accountant, enrolled agent, enrolled actuary or any other person permitted to represent the taxpayer. If the taxpayer does not bring anyone to the conference but clearly states at any time during the informal conference that he or she wishes to consult with an attorney, certified public accountant, enrolled agent, enrolled actuary or any other person permitted to represent the taxpayer, then the State Tax Assessor must suspend the interview. The suspension must occur even if the taxpayer has answered one or more questions up to that point. The conference shall be rescheduled to be held within 10 working days.

Statement of Fact

This Bill implements the recommendations of the Taxpayer Bill of Rights Commission. It requires the State Tax Assessor to create a document that states in simple and nontechnical terms all of the rights of a taxpayer, including the rights established herein, and provide this information to anyone contacted with respect to the determination or collection of any tax.