

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

TSB-M-79 (14.1)S
Sales Tax
April 23, 1980

This memorandum should be attached to TSB-M-79(14)S dated November 2, 1979

1979 Legislation
Taxpayers Bill of Rights in Relation to
Advisory Opinions and Other Rights

Chapter 714 - Effective January 1, 1980 - In addition to providing certain rights to a purchaser in a bulk sale transaction (see TSB-M-79(14)S), this chapter also grants certain rights to a taxpayer relative to hearings, advisory opinions, access to certain publications and other information, and reduction in penalties and interest for reasonable cause.

Section one grants the following rights by adding four new subdivisions to section 171 of the Tax Law:

Subdivision Twenty-first

The right to a hearing upon request, unless such right is granted, modified or denied in another section of the law, with the stipulation that any request for a hearing where tax has been determined due must be made within 90 days of the date of assessment. If the hearing decision is unfavorable, the applicant may request a review of the determination under an Article 78 proceeding.

Subdivision Twenty-second

The right to a determination after a hearing, within nine months from the time briefs have been submitted; or where no briefs are submitted, within nine months after the completion of the hearing. The Tax Commission may extend the period three additional months for good cause, but if it fails to render a determination, the applicant may institute an Article 78 proceeding to compel the Commission to render one.

Subdivision Twenty-third

The right to obtain copies of all hearing determinations and decisions of the Tax Commission for a reasonable fee.

Subdivision Twenty-fourth

The right to have an advisory opinion, concerning taxes administered by the Tax Commission, rendered within ninety days of receipt of a petition for an advisory opinion, with the provision that the Tax Commission may have a thirty day extension for good cause.

The petition for an advisory opinion, which must contain a specific set of facts and be in a form prescribed by the Tax Commission, will be subject to rules and regulations promulgated by the Commission for the purpose of establishing procedure for submission of the petition.

The advisory opinion may be requested by any person subject to or claiming exemption from a tax or liability, and will in turn be published and made available to the public. The opinion will be binding on the Tax Commission only with respect to the person to whom it is rendered, and any subsequent modification shall be prospective.

It should be noted that the right to an advisory opinion will have no effect on the supplemental right to request a declaratory ruling.

Section two amends subdivision (a) of section 1138 of the Tax Law by adding three new paragraphs resulting in the following:

Paragraph 2 provides that where an assessment is issued based on an estimate computed from external indices, the notice of determination must contain a statement in bold face type advising the taxpayer of such fact; also that he has ninety days within which to file a petition to challenge the assessment through the hearing process.

Paragraphs 3 and 4 deal with bulk sales as explained in TSB-M-79(14)S.

Section five amends subdivision (a)(1) of section 1145 of the Tax Law by requiring the remission of all penalty, and that portion of the interest which is above the minimum amount established by the Commission, when it is determined by the Commission that the delay or failure to file or pay the tax due is for reasonable cause and not willful neglect. Section 536.1(b) of the Regulations defines "reasonable cause."

Section seven requires the Tax Commission to adopt rules and regulations to become effective the same date this legislation becomes effective. On December 22, 1979, regulations were promulgated and are available upon request.