

New York's Taxpayer Rights Advocate Highly Motivated

by Nicola M. White — nwhite@tax.org

New Yorkers confused about audits, trying to work out tax payment plans, or who just want to complain to someone about the state's 42 different taxes have a new pal in the New York State Department of Taxation and Finance. Meet Jack Trachtenberg, the state's first taxpayer rights advocate.

"I think there is a sense out there that as enforcement has been ramped up, that there had to be a check on the system," Trachtenberg told Tax Analysts.

Indeed, New York has made no bones about the fact that its tax department has upped the ante when it comes to cracking down on fraud and increasing its audits. Trachtenberg said he has no problem with that. But when it comes to noncompliance as the result of an honest mistake, taxpayers should be given more leeway, he said.

"I think the pendulum has swung too far in the enforcement direction and too broadly," he said.

Trachtenberg, 33, who practiced tax law at Hodgson Russ LLP in Buffalo, was appointed by Gov. David Paterson (D) to the newly created taxpayer advocate position in October and earns \$150,500. Working within the Department of Taxation and Finance, he is tasked with looking at the agency with a critical eye and offering recommendations for change. By the end of his first year, he must turn in a report with observations and ideas for improvements within the department.

Some of the proposals could include legislative changes. Trachtenberg and his staff have several in mind already.

For example, the advocate's office will recommend reform in how the department deals with people who have overwhelming tax liabilities, he said, adding that there should be legislation proposed at some point next year.

The advocate's office also is calling for a statute of limitations on collections. The IRS's statute of limitations is 10 years, but it can be extended to a maximum of 20. New York has a starting point at 20 years, and it can get extended any time the taxpayer acknowledges his debt, Trachtenberg said.

The problem is that "acknowledgment" has been interpreted as writing a letter or making any payment on the debt, including involuntary payments such as wage garnishments. As a result, the

debt gets extended, more interest accrues, and the taxpayer falls deeper into debt, Trachtenberg said.

"I've seen, as an example, liabilities dating back to the 1970s or 1980s for \$30,000 now be several hundred thousand," he said.

Trachtenberg is recommending a strict 20-year statute of limitations. He is not sure if the tax department is on board, but he said he will suggest it.

While the newly formed systemic advocacy unit handles agencywide issues relating to law or policy, the case advocacy unit assists most taxpayers on day-to-day matters. Since October the staff has worked on 1,200 taxpayer cases and has resolved almost half of them. The unit expects to field 2,000 cases by the end of the year, Trachtenberg said.

More than 50 percent of the cases have involved people who aren't necessarily contesting their tax



Mandy Pickering, Hodgson Russ

Jack Trachtenberg is New York's first taxpayer rights advocate.

liability but are having difficulty paying it. The office works with them to come up with a payment plan, Trachtenberg said.

Many other cases involve audits in which the taxpayer is either confused about how the audit is being conducted or thinks the auditor is taking an unreasonable position.

Before the advocate's office — comprised entirely of transfers from other areas of the department, other than Trachtenberg himself — was established, taxpayers with issues contacted collections call centers. But there was a fundamental flaw with this model, Trachtenberg said.

"The concern is that the primary goal of the collection folks is to collect money," he said. "They do try to deal with problems, but they're limited to the enforcement side of the coin."

Some taxpayers are skeptical that Trachtenberg's office isn't completely independent because he is still a department employee. However, he maintains that he has no interaction with the officials in the enforcement part of the department and that he reports directly to the commissioner and the deputy commissioner.

Trachtenberg fields questions like these when he speaks at conferences. That is another part of his job: public outreach. To reach even more people, the advocate's office plans to start a blog in the next month, he said.

Most states have some kind of taxpayer advocate, although some are called ombudsmen, said Verenda Smith, senior manager of administration and policy for the Federation of Tax Administrators.

She said:

The idea is there's a person on the inside who's watching what's happening to the taxpayers and who can hear the taxpayers and can both fix that taxpayer's problem and can work with the agency employees to fix broken places in the system.

That's what Trachtenberg said he hoped to accomplish when he first took the job.

"What intrigued me the most was the opportunity to have the most impact on the system," he said. ☆