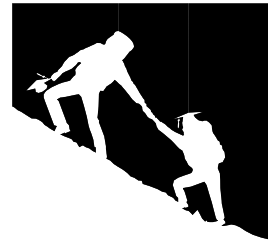




**2013**



**ANNUAL TAXPAYER  
ADVOCATE REPORT**

**Calendar Year 2012 Activity**

**January 15, 2013**



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*Agency of Administration*

January 15, 2013

*To The Honorable Members of:  
House Committee on Ways and Means  
Senate Committee on Finance*

In accordance with Title 32 V.S.A. §3205(c), I submit the 2013 Vermont Taxpayer Advocate's Report for activity in calendar year 2012. The Report catalogs challenges encountered by taxpayers when interacting with the Vermont Department of Taxes as well as tax laws and recommends administrative and legislative actions to resolve those problems. The report identifies problems that span an entire class of taxpayer or specific industry and presents solutions.

Overall, case intake by the Taxpayer Advocate increased in calendar 2012. In my opinion, the case load growth can be attributed in part to legislation codifying the taxpayer advocate position through legislation and the enactment of the extraordinary relief provisions from Act 142 in law as 32 V.S.A. §3206.

By its very nature, the Taxpayer Advocate work focuses on problems and systems when they are not working optimally. The issues in this report should not overshadow all the excellent day-to-day effort of Department staff to assist taxpayers.

Also, the Department took positive steps to improve taxpayer services and efficiency in alignment with the strategic plan established in 2011. The strategic initiatives undertaken in 2012 include creating the Policy, Outreach and Legislative Affairs Division (POLA) to increase public education and outreach, and conducting efficiency studies of various divisions to streamline and to make those procedures more effective as well as enhance the taxpayer's interaction with the Department. These initiatives support the strategic plan developed in 2011:

- Creation of the Division of Policy Outreach and Legislative Affairs (POLA)
- Application of resources toward the goal of an integrated tax processing system
- Enhancement of online filing opportunities.
- Increase in community outreach events
- Modernization of audit and collection activities with implementation of the data warehouse program
- Creation of two tax advisory boards to the Commissioner of Taxes

These initiatives enhance existing taxpayer services and help the Department continue to meet the high standard for taxpayer services established by the Department.

Respectfully submitted,

*gloria Hobson*

Gloria Hobson  
Taxpayer Advocate  
Vermont Department of Taxes



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## **DESCRIPTION OF VERMONT TAXPAYER ADVOCATE**

The Commissioner of Taxes created the Taxpayer Advocate in 2001. The original duties included intake and resolution of taxpayer issues, outreach to tax practitioners, speaking at tax seminars and workshops, participating in or writing technical bulletins and formal rulings, preparing responses for correspondence referred to the Department by the Governor's Office, and promotion of electronic filing.

In 2011, the Legislature enacted 32 V.S.A Section 3205 that required the Vermont Department of Taxes to maintain a Taxpayer Advocate position and codified the role of the Taxpayer Advocate as:

1. Identifying subject areas where taxpayers have difficulties interacting with the Department of Taxes;
2. Identifying classes of taxpayers or specific business sectors who have common problems related to the Department of Taxes;
3. Proposing solutions, including administrative changes to practices and procedures of the Department of Taxes;
4. Recommending legislative action as may be appropriate to resolve problems encountered by taxpayers;
5. Educating taxpayers concerning their rights and responsibilities under Vermont's tax laws;
6. Educating tax professionals concerning the Department of Taxes' regulations and interpretations by issuing bulletins and other written materials; and
7. Assisting individual taxpayers in resolving disputes with the Department of Taxes.

*As amended in 2012*

The legislation serves to codify the longstanding role and actions of the Taxpayer Advocate and highlights the Taxpayer Advocate's role and functions to improve taxpayer services.

Recent reorganization within the Department created the Policy Outreach and Legislative Affairs Division (POLA). POLA's policy and outreach sections are responsible for interpreting tax laws to establish policy and for issuing bulletins, and providing education outreach to tax professionals and taxpayers. It is recommended that duty #6 above be amended in light overlapping functions. The Taxpayer Advocate will continue to work cooperatively with POLA to assure tax professionals and taxpayers receive the best possible outreach services. See page 13.

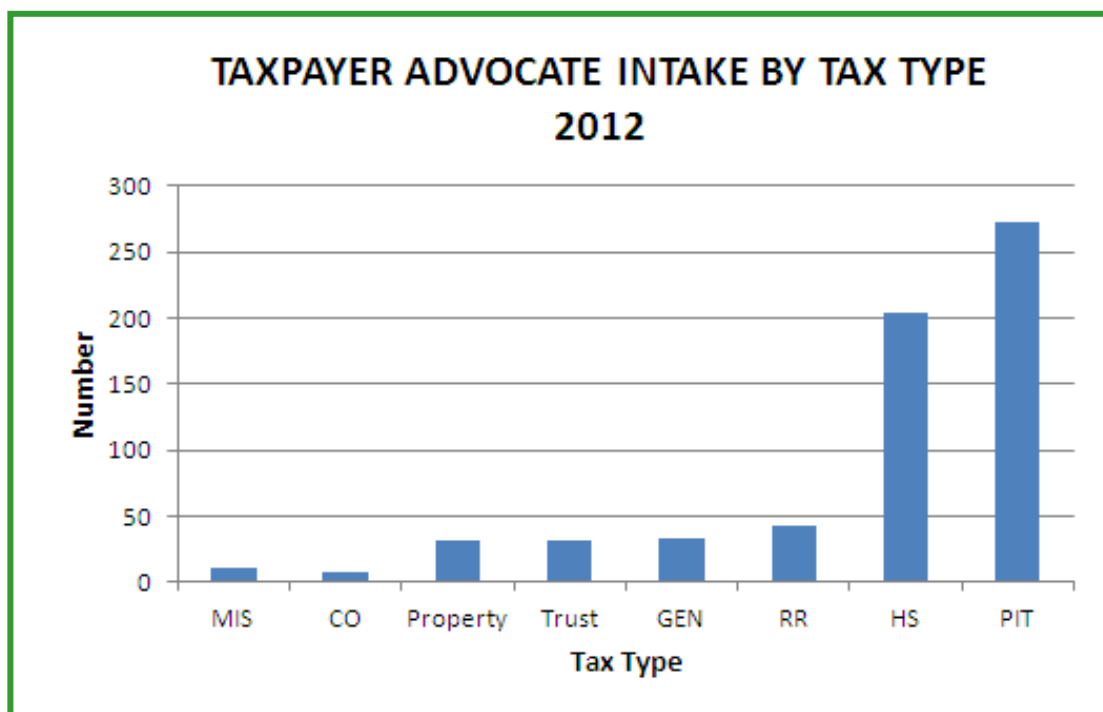
The legislation also requires the Taxpayer Advocate to report annually the actions taken by the Taxpayer Advocate in the previous year to the House Committee on Ways and Means and the Senate Committee on Finance. The Legislature prescribed the following information for the report:

- Actions taken by the Taxpayer Advocate to improve taxpayer services and responsiveness of the Department of Taxes
- Identification of problems encountered by taxpayers in interacting with the Department of Taxes
- Specific recommendations for administrative and legislative actions to resolve those problems
- Identification of problems that span an entire class of taxpayer or specific industry with proposals for class- or industry-wide solutions.

## STATISTICAL SUMMARY OF 2012 TAXPAYER ADVOCATE INTAKE

| <b>TOTAL TAXPAYER ADVOCATE INTAKE</b> |            |
|---------------------------------------|------------|
| Description                           | Number     |
| General Intake                        | 634        |
| Extraordinary Relief Intake           | 56         |
| <b>TOTAL</b>                          | <b>690</b> |

| <b>TAXPAYER ADVOCATE CASE SOURCE</b>   |        |
|--|--------|
|  | Number |
| Total 2012 Case Intake   | 634    |
| Description  |        |
| Self-referral Taxpayer Advocate – Telephone calls 305  | 544    |
| E-Mail 197   |        |
| Mail 38  |        |
| Walk-in 4  |        |
| Referred to Taxpayer Advocate by Commissioner of Taxes, Governor’s Office, State Legislature, VT Congressional Representatives | 79     |
| Referred to Taxpayer Advocate by outside agency – IRS, Community Action, AG Consumer Protection                                | 6      |
| Department referrals   | 5      |



| <b>INTAKE BY TAX TYPE</b>   |               |
|---|---------------|
| <b>Description</b>  | <b>Number</b> |
| Personal Income Tax   | 273           |
| Property Tax Adjustment   | 214           |
| Renter Rebate   | 42            |
| Property Tax  | 31            |
| Trust Fund Taxes (Meals and Rooms Tax, Sales and Use Tax, Income Tax Withholding) | 12            |
| Miscellaneous (less than 3 intakes; taxes not administered by Department)         | 14            |
| Corporate & Business Entity   | 8             |

| <b>ISSUE TYPES</b>   |               |
|--|---------------|
| <b>Description</b>   | <b>Number</b> |
| General information request  | 281           |
| Audit  | 62            |
| Adjustment to return   | 29            |
| Filing back year returns   | 6             |
| Unfiled, late or denied property tax adjustment / renter rebate claim            | 131           |
| Collection / Offset  | 75            |
| Refunds / rebate   | 20            |
| Property Tax (town assessment; how to appeal assessment; late payment penalties) | 30            |

| <b>RELIEF PROVIDED</b>                   |               |
|--|---------------|
| <b>Description</b>                       | <b>Number</b> |
| Relief for hardship                      | 0             |
| Abatement of charges granted             | 10            |
| Assessment adjusted                      | 2             |
| Explanation to taxpayer how to fix issue | 79            |

**SUMMARY OF 2012 TAXPAYER ADVOCATE EDUCATION and  
OUTREACH**

| <b>EVENT</b>      | <b>AUDIENCE</b>  | <b>DATE</b>  | <b>TAX TYPE</b>   |
|-------------------|--|--|---|
| Update for TY2011 | Retired individuals sponsored by National Association of Retired Federal Employees | 01/10/2012<br>South Burlington                           | Personal Income Tax<br>Homeowner Programs<br>Renter Rebate                    |
| Seminar           | NH CPAs, Income Tax Practitioners, Bank Employees sponsored by Mascoma Bank        | 01/17/2012<br>Hanover, NH                                | Personal Income Tax<br>Homeowner Programs<br>Renter Rebate                    |
| Update for TY2011 | Individuals Sponsored by NE Fed. Credit Union                                      | 01/19/2012<br>Williston                                  | Personal Income Tax<br>Homeowner Programs<br>Renter Rebate                    |
| Exposition        | Food industry sponsored by VT Grocers' Association                                 | 09/14/2012<br>Essex Junction, VT                         | All   |
| Workshop          | Income Tax Practitioners sponsored by National Association of Tax Professions      | 09/26/2012<br>White River Jct., VT                       | Personal Income Tax<br>Homeowner Programs<br>Renter Rebate                    |
| UVM Tax School    | CPAs, Lawyers, Income Tax Practitioners sponsored UVM Extension                    | 11/08/2012<br>Essex Junction<br>11/15/2012<br>Killington | Personal Income Tax<br>Homeowner Programs<br>Renter Rebate<br>Sales & Use Tax |
| UNH Tax Institute | CPAs, Lawyers, Income Tax Practitioners sponsored by UNH                           | 11/16/2011<br>Manchester, NH                             | Personal Income Tax<br>Homeowner Programs<br>Renter Rebates                   |
| Workshop          | Income Tax Practitioners sponsored by VT. Tax Practitioner Association             | 12/11/2012<br>Montpelier, VT                             | Personal Income Tax<br>Homeowner Programs<br>Renter Rebates                   |
| Workshop          | CPAs, Income Tax Practitioners sponsored by NH Society of Accountants              | 12/19/2012<br>Concord, NH                                | Personal Income Tax<br>Homeowner Programs<br>Renter Rebates                   |

## **ISSUES EXPERIENCED BY TAXPAYERS DURING DEPARTMENT INTERACTIONS IN 2012 CALENDAR YEAR**

The Department interacts with almost 500,000 taxpayers through return filings, letters, email, and audits and receives over 80,000 phone calls a year. Some difficult interactions are inevitable. Taxpayer issues in calendar year 2012 highlighted in this report were selected due to the number of taxpayers affected, number of taxpayer reports that suggest a trend, and/or the severity of the issue reported by taxpayers.

Any examples used in discussion of recommendations are generalized from taxpayer interactions and representative of the issues brought to the Taxpayer Advocate. The fact patterns are generalized and aggregated to assure compliance with Federal and Vermont confidentiality provisions of Internal Revenue Code §6103 and 32 V.S.A. §3201.

### **2012 TOP ISSUES**

1. Taxpayers fail to receive clear explanation of the action taken by the Department of Taxes or action required of the taxpayer.
2. Increased use of automation distances the Department from more direct communication with the taxpayer. For example, several dialogues and system options must be selected before a caller can even get the option to speak to a “real” person.
3. Insufficient education and outreach opportunities for taxpayers to learn tax obligations and keep current with tax law and policy changes. **Note:** The Taxpayer Advocate will work with the newly formed Policy Outreach and Legislative Affairs Division that is charged with the responsibility to increase education and outreach. Improvement in this area should be seen in 2013.
4. Taxpayers often are asked to resubmit duplicate documentation and correspondence because of an inefficient document management system for incoming correspondence.
5. Taxpayers experiencing significant delay in receiving refunds when the source of the refund is from an estimated income tax payment made by a Vermont entity on behalf of non-resident shareholders, partners or members.
6. Taxpayers have received discourteous treatment by Department of Taxes’ employees.

### **REVIEW OF 2011 TOP ISSUES**

1. Taxpayers do not receive clear explanation of the action taken by the Department of Taxes or action required of them.
2. Insufficient education and outreach opportunities for taxpayers to learn tax obligations and keep current with tax law and policy changes.
3. Homeowners, renters and tax practitioners continue to confuse the September 1 deadline for property tax adjustment and renter rebate claims with the extended income tax deadline.  
*RESOLVED by amending 32 V.S.A. §6068 for October 15 deadline.*
4. Taxpayers often are asked to resubmit duplicate documentation and correspondence because of an inefficient document management system for incoming correspondence.
5. Taxpayers experiencing significant delay in receiving refunds when the source of the refund is from an estimated income tax payment made by a Vermont entity on behalf of non-resident shareholders, partners or members.
6. Taxpayers have received discourteous treatment by Department of Taxes’ employees.



## RECOMMENDATIONS

| <b>COMMUNICATION</b>  |                                    |                 |
|---|------------------------------------|-----------------|
| <b>Class of Taxpayer</b>  | <b>Industry</b>                    | <b>Category</b> |
| All Taxpayers<br>Tax Practitioners  | Tax Practitioners,<br>& Department | Systemic        |
| <b>Discussion</b>   |                                    |                 |
| <p>Taxpayers and tax practitioners continue to describe Department communications as not offering clear explanation of the action taken by the Department or clear instructions for the action the Department requests.</p> <p>Some computer-generated letters lack clarity why a change was made on the taxpayer's return. While each letter contains an explanation sentence that identifies the return line where the change occurred, the sentence can be vague. For example:</p> <ul style="list-style-type: none"> <li>• Often the sentence is a combination of reasons for the change and the taxpayer must determine which applies.</li> <li>• Currently, there is a limit on the number of explanations sentences per computer-generated letter and a needed explanation may be dropped.</li> <li>• If the change to a return line results in recalculation of subsequent line entries, an explanation sentence of "math error" prints for each subsequent line affected by the previous line change. The multiple "math error" explanation means a real change to another line may not be included.</li> <li>• Tax Practitioners object to the "math error" explanation as they believe it reflects badly on their professional credibility with their client since the letter implies the tax practitioner could not do the simple math functions correctly.</li> </ul> <p>Other miscommunication or incomplete communication occur when:</p> <ul style="list-style-type: none"> <li>• Department examiners generate form letters to taxpayers that can be ambiguous.</li> <li>• Letters issued from the Department may not contain clear notification of the taxpayer's right to appeal and due process.</li> </ul> |                                    |                 |
| <b>Recommendation</b>   |                                    |                 |
| <p>Review and revise computer-generated correspondence letters for more easily understood text and explanation codes.</p> <p>Review and revise form letters initiated by staff.</p> <p>Implement more oversight of ad hoc correspondence by staff.</p> <p>Provide letter writing education to staff.</p> <p>Implement the "Writing Project" as identified in the Department's 2011 strategic plan by assigning the project to a senior manager with responsibility for the project and authority to constitute a working committee.</p>   |                                    |                 |

| <b>INCOMING CORRESPONDENCE</b>  |                                     |                 |
|---|-------------------------------------|-----------------|
| <b>Class of Taxpayer</b>  | <b>Industry</b>                     | <b>Category</b> |
| Taxpayers communicating with Department   | - Tax Practitioners<br>- Department | Systemic        |
| <b>Discussion</b>   |                                     |                 |
| <p>When the Department sends requests for additional information to taxpayers, a specific post office box number identifies the incoming correspondence in the aggregate. Identification of specific taxpayer correspondence is not made. The correspondence is generally filed chronologically by receipt. This practice makes it very difficult and time consuming to locate a specific piece of correspondence. Should the taxpayer ask to confirm receipt, he or she is often advised to resend the correspondence which compounds the problem.</p> |                                     |                 |
| <b>Recommendation</b>   |                                     |                 |
| <p>Conduct a study of best practices for incoming correspondence systems used by business and other states. Develop a plan to implement an incoming correspondence document management system.</p>  |                                     |                 |

## REQUESTS TO VERIFY HOUSEHOLD INCOME

| Class of Taxpayer   | Industry                            | Category       |
|---|-------------------------------------|----------------|
| Taxpayers Making Property Tax Adjustment & Renter Rebate Claims | - Tax Practitioners<br>- Department | Systemic Issue |

### Discussion

The Department often requires additional information from claimants to verify household income when the household income reported is less than the rent paid or property taxes or appears insufficient to meet the rent paid or property taxes plus living expenses. Because household income definition includes taxable and nontaxable income as well as income from household members, some claimants may not be aware of the need to include all required income.

The current request for household income verification is a form asking the claimant to provide dollar amounts for categories of annual living expenses. The request is not clear on why the information is sought and the table can be difficult for some claimants to complete. Two claimants brought formal appeals that the form is not authorized and/or overly intrusive. The commissioner determination held that this verification of household income is appropriate and within the Commissioner's authority.

The current request for household income information confuses taxpayers and does not clearly explain the purpose of the form or information request. It also does not explain that some income is not required to be included in household income and that may explain the gap between the household income reported and living expenses.

The stakes are high for taxpayers receiving the request. Failure to respond to this request may result in denial of a property tax adjustment or renter rebate.

### Recommendation

Verification of household income is appropriate and within the Commissioner's authority. However, the form requesting such information needs revision for clarity so the claimant knows why the request is made and the appropriate responses. A Taxpayer Advocate procedural recommendation was submitted to the Department in July 2012. The form will be revised for 2013 filing season.

## TAXPAYER INTERACTION WITH DEPARTMENT STAFF

| Class of Taxpayer                  | Industry                            | Category |
|------------------------------------|-------------------------------------|----------|
| All Taxpayers<br>Tax Practitioners | - Tax Practitioners<br>- Department | Systemic |

### Discussion

The Department interacts with approximately 500,000 taxpayers through return filings, letters, email, and audits, and receives over 80,000 phone calls a year. Some difficult interactions are inevitable. Taxpayers often do not understand the tax law or that the examiners must work within the authority delegated to them. A taxpayer may interpret an examiner's denial of the request to make an exception as rude.

Taxpayer complaints generally fall into the following categories:

1. Not listening to taxpayer's explanations
2. Lack of empathy for the taxpayer's situation
2. Did not get an answer the question
3. Treated rudely
4. Intimidating tactics

Taxpayers may be difficult in their interactions with Department staff. Taxpayers can be rude to the examiner and use intimidating tactics, especially if the taxpayer does not get the result desired. Examiners are the front line representatives of tax law and the only opportunity to vent dissatisfaction with the tax law to a "real" person.

Department staff must realize that State government, like any business, must treat the customer (aka taxpayer) with respect. The question may be the tenth time the examiner has responded to the same issue; however, it is important and unique to the taxpayer as this is the first time the taxpayer has encountered the issue.

### Recommendation

Provide communication training to staff. (Note – some staff received training in December 2012)

Monitor telephone conversations through the recording function on the automatic telephone system.

Counsel Department staff that are having difficulty with taxpayer interactions.

Develop standard protocol for handling difficult taxpayer interactions.

**Note:** The Department upgraded its telecommunication system to allow telephone calls to be recorded. Recording will be implemented in 2013. The additional data will allow the Department to better understand the scope of the problem and determine appropriate action to resolve the issue.

| <b>TELEPHONE SYSTEM</b>  |                                 |                 |
|--|---------------------------------|-----------------|
| <b>Class of Taxpayer</b>   | <b>Industry</b>                 | <b>Category</b> |
| All  | Tax Practitioners<br>Department | Systemic        |
| <b>Discussion</b>  |                                 |                 |
| <p>Increased use of automation distances the Department in communications with taxpayers. The use of automation is necessary for the Department to handle its taxpayer communication efficiently; however, it is not always effective.</p> <p>Taxpayers find the Department's automated telephone system confusing and frustrating.</p> <p>Taxpayers' main complaint is they cannot get to a "real person." According to EasyIVR.com website, "talking to computers" remains one of the most common complaints callers have about phoning businesses and governments. Our system presents the option to speak to an examiner at the fifth and last option. One may dial an examiner's direct extension, if known, but dialing the direct extension number is the third option. Taxpayers react negatively to "talking to computers."</p> <p>In a small state like Vermont, taxpayers expect more personal attention. Not all interactions can be personal, but we can design our systems to make the taxpayer experience as easy and pleasant as possible.</p> |                                 |                 |
| <b>Recommendation</b>  |                                 |                 |
| <p>The Department should investigate best practices for automated telephone systems and conduct an analysis of the existing set-up for its automated telephone system. Most automatic telephone systems are in their second generation and there exists a significant base of experience about what works and what doesn't, and what customers like or dislike.</p>  |                                 |                 |

| <b>RETURN STATUS INFORMATION</b>   |                                     |                 |
|--|-------------------------------------|-----------------|
| <b>Class of Taxpayer</b>   | <b>Industry</b>                     | <b>Category</b> |
| Taxpayers filing Vermont forms   | - Tax Practitioners<br>- Department | Systemic        |
| <b>Discussion</b>  |                                     |                 |
| <p>The Department provides to taxpayer self-help information on the status of Vermont returns by telephone and online. The current information indicates a return has been "received" and then transitions to "processed" when it enters the computer system.</p> <p>Taxpayers often take confirmation that a return is "received" or "processed" to mean that the return was accepted as filed or the filing was complete. Consequently, when the Department later requests additional information or to provide missing forms, taxpayers may ignore the communication as they believe that return has been accepted and is complete.</p> <p>Property tax adjustment and renter rebate claims are particularly vulnerable as the action may take place after the deadline and the claim will be denied.</p> |                                     |                 |
| <b>Recommendation</b>  |                                     |                 |
| <p>The telephone and online information applications need to be revised to distinguish between receipt of the return and a processed return.</p> <p>A Taxpayer Advocate procedural recommendation was made to the Department in December 2012.</p>   |                                     |                 |

## CORRECTING ERRONEOUS ENTRIES ON PROPERTY TAX & RENTER REBATE CLAIMS

| Class of Taxpayer  | Industry                        | Category    |
|--|---------------------------------|-------------|
| Taxpayers Making Property Tax Adjustment Claims<br>Taxpayers Making Renter Rebate Claims | Tax Practitioners<br>Department | Legislative |

### Discussion

32 VSA §6074 restricts amending information on the property tax adjustment claim to correcting household income. All other information on the claim must remain static after the September deadline (October for 2013 claims).

For practical application, the Department allows changes up to the deadline as the homeowner or renter could file a new claim. Errors after the deadline cannot be corrected unless there was a data input error by the Department.

The recent legislative change to October 15 deadline assists homeowners who do not receive their property tax bill after September 1. However, the mortgage or escrow company often receives the property tax bill and the homeowner may not be aware of an error until after October 15.

The most common line corrections for property tax adjustment claims are housesite value and ownership interest. Both these values can significantly affect the amount of a property tax adjustment.

The reported housesite value calculates the property taxes used to calculate the adjustment. For example, the housesite value on the property tax bill is \$195,000 but the entry on the claim is \$95,000. The education property tax eligible for adjustment will be reduced to the tax on the \$95,000 housesite value.

Ownership interest percentage also affects the property tax adjustment calculation. If the ownership interest is entered as zero, no adjustment will be calculated.

Renter rebate claims needing to correct an erroneous entry are rare.

The inability to correct taxpayer or tax preparer entry errors significantly affects the benefits from these two programs. For homeowners, the error may not be noticed until receipt of the property tax bill or when the property tax escrow amount is increased which may be after October 15.

Payment of any additional property tax adjustment directly to the homeowner, as authorized by 32 V.S.A. §6066a(b), holds the municipalities harmless for any additional administrative work.

Changing an entry must be for correction of an existing entry only and based on the claimant's circumstances for the claim year. For instance, a claimant that owns the property with others on April 1 cannot use a deed giving him or her full ownership dated in April 20 that year to amend the ownership interest to 100% for the claim year.

### Recommendation

Enact legislation to allow amending line errors on filed, completed property tax adjustment or renter rebate claims up to December 1 of the current year. Amending means correcting a line entry that reflects the correct information for the claim year of April 1. Amending does not mean providing an entry for the first time where no line entry previously existed or changing an entry to information not in effect on April 1 of the claim year.

Retain the current household income amendment for up to three years from the due date.

| <b>INNOCENT SPOUSE</b>   |  |                 |
|--|--|-----------------|
| <b>Class of Taxpayer</b>   | <b>Industry</b>                                    | <b>Category</b> |
| Individual Income Taxpayers  | - Tax Practitioners<br>- Attorneys<br>- Department | Legislative     |
| <b>Discussion</b>  |  |                 |
| <p>Spouses filing a joint individual income tax return become liable for the tax liability jointly and severally. If the taxing authority determines the income is understated or items omitted, both spouses are liable for additional tax, interest and penalties even if the underreported income or improperly claimed deductions or credits are attributable to only one spouse.</p> <p>An innocent spouse is one who signed a jointly filed return but had no knowledge of, or reasonable cause to believe, that the return underreported income or improperly claimed deductions or credits. The Internal Revenue Service determines the degree to which an innocent spouse may be relieved of the tax liability through their procedures for innocent spouse relief, separation of liability, and equitable relief.</p> <p>Innocent spouse relief releases the spouse from an obligation to pay none or some of the tax when that spouse has no knowledge of the underreported income or improperly claim deduction or credit. Separation of liability allocates additional tax between the joint filers. Equitable relief may be available if there is an assessment of additional tax on the joint return or the tax was correctly reported on a joint return but not paid and it would be unfair to that taxpayer to be held liable for payment.</p> <p>Twenty-eight states have innocent spouse options - eleven states determine innocent spouse at the discretion of the state taxing authority and seventeen states enacted legislation to assure an eligible innocent spouse receives such protection. Vermont does not have an innocent spouse law. Innocent spouse relief for Vermont taxes is considered only when Internal Revenue Service documentation shows such relief is provided at the federal level. The Department reviews the IRS determination to consider if innocent spouse relief is applicable for Vermont income tax, but there is no guarantee the relief will be granted. Situations may occur where the Internal Revenue Service relieved the innocent spouse of liability through procedural action rather than an official innocent spouse determination. For example, the Internal Revenue Service discovers Taxpayers A and B did not file a return for tax year X. The taxpayers are now divorced. Spouse Taxpayer B did not have any income for that year. The Internal Revenue Service creates a married filing separate return and bills only Taxpayer A. When the assessment report reaches Department through information sharing with IRS, Vermont creates a joint account (as was filed previously) and Spouse Taxpayer B has no recourse to receive innocent spouse for Vermont taxes because the Internal Revenue Service did not issue an innocent spouse determination.</p> <p>Innocent spouse situation may also exist for taxes other income. For example, a business jointly owned by husband and wife where the husband controls the financials. The wife has no knowledge of the information reported to the Department. However, innocent spouse relief is not available if it is not income tax as the issue would not have received an innocent spouse relief from the IRS.</p> |  |                 |
| <b>Recommendation</b>  |  |                 |
| <p>Enact legislation to protect the innocent spouse similar to the provisions of 32 V.S.A. §5935 that allows a spouse not responsible for the debt (injured spouse) to receive his or her share of the refund. It is recommended that the Internal Revenue Service criteria to determine innocent spouse be adopted to determine innocent spouse for Vermont for purposes. A Vermont innocent spouse provision is not a guarantee of relief but allows Vermont to consider innocent spouse independent of or in conjunction with an Internal Revenue Service designation.</p> <p>See chart of innocent spouse provisions by state.</p>   |  |                 |

## INNOCENT SPOUSE PROVISIONS BY STATE

| STATE                | INNOCENT SPOUSE ALLOWED | BY LAW | BY PROCEDURE | SEP STATE FORM |                                      |     |
|----------------------|-------------------------|--------|--------------|----------------|--------------------------------------|-----|
| Alabama              | Y                       | Y      |              | N              |                                      |     |
| Arizona              | Y                       |        |              | Y              | Form 200                             |     |
| Arkansas             | N                       |        |              |                |                                      |     |
| California           | Y                       | Y      |              | Y              | FTB-705                              |     |
| Colorado             | Y                       | Y      |              | N              |                                      |     |
| Connecticut          | Y                       | Y      |              | Y              | CT-8857                              |     |
| <b>Delaware</b>      | ?                       |        |              |                | email inquiry                        |     |
| Georgia              | Y                       | Y      |              | N              | Need IRS 8857 O.C.G.A. §48-7-86(g)   |     |
| Hawaii               | Y                       | Y      |              | Y              | N-379                                |     |
| Idaho                | N                       |        |              |                |                                      |     |
| Illinois             | Y                       | Y      |              | Y              | IL-8857                              |     |
| Indiana              | Y                       | Y      |              | Y              | IN-40 SP                             |     |
| Iowa                 | Y                       |        | Y            |                | follow IRS                           |     |
| Kansas               | Y                       |        | Y            |                | follow IRS                           |     |
| <b>Kentucky</b>      |                         |        |              |                |                                      |     |
| Louisiana            | Y                       | Y      |              | N              | RS 47:101(B)(7)                      |     |
| Maine                | Y                       | Y      |              | N              | 36 M.R.S.A. §5287                    |     |
| <b>Maryland</b>      | ?                       |        |              |                |                                      |     |
| Massachusetts        | Y                       | Y      |              | Y              | Form 88 MGL Ch. 62C, sec. 84         |     |
| <b>Michigan</b>      | ?                       |        |              |                |                                      |     |
| Minnesota            | Y                       |        | Y            |                | follow IRS                           |     |
| <b>Mississippi</b>   | ?                       |        |              |                |                                      |     |
| Missouri             | Y                       |        |              |                | may petition to split tax liability  |     |
| Montana              | Y                       | Y      | Y            |                |                                      |     |
| Nebraska             | Y                       |        | Y            |                | follow IRS                           |     |
| New Jersey           | Y                       |        | Y            |                | case-by-case after IRS determination |     |
| New Mexico           | Y                       | Y      |              | N              | Sec. 7-1-17.1 NMSA 1978              |     |
| New York             | Y                       | Y      |              | Y              | IT-285                               |     |
| North Carolina       | Y                       |        | Y            | N              | follow IRS                           |     |
| North Dakota         | N                       |        |              |                |                                      |     |
| Ohio                 | Y                       |        |              |                |                                      |     |
| Oklahoma             | Y                       | Y      |              | N              | OAC 710:50-3-60                      |     |
| Oregon               | Y                       |        | Y            | N              |                                      |     |
| Pennsylvania         | Y                       | Y      |              | Y              | PA-8857                              |     |
| <b>Rhode Island</b>  |                         |        |              |                |                                      |     |
| South Carolina       | Y                       | Y      |              | Y              | SC-8857                              |     |
| <b>Tennessee</b>     |                         |        |              |                |                                      |     |
| Utah                 | Y                       |        | Y            | Y              | TC-8857 treated as Offer Compromise  |     |
| Vermont              | Y                       | N      | Y            | N              | case-by-case                         |     |
| Virginia             | Y                       |        |              | Y              | case-by-case if Fed return amended   |     |
| <b>West Virginia</b> |                         |        |              |                |                                      |     |
| <b>Wisconsin</b>     |                         |        |              |                |                                      |     |
|                      | AK                      | N/A    | NH           | N/A            | WA                                   | N/A |
|                      | FL                      | N/A    | SD           | N/A            | WY                                   | N/A |
|                      | NV                      | N/A    | TX           | N/A            |                                      |     |

## STATUTORY DUTIES OF TAXPAYER ADVOCATE

| Class of Taxpayer | Industry   | Category    |
|-------------------|------------|-------------|
| N/A               | Department | Legislative |

### Discussion

In 2011, the Legislature enacted 32 V.S.A. §3205 to establish the office of Taxpayer Advocate in the Vermont Department of Taxes. The Legislature also list the functions an duties of the taxpayer advocate as:

- (1) identify subject areas where taxpayers have difficulties interacting with the department of taxes;
- (2) identify classes of taxpayers or specific business sectors who have common problems related to the department of taxes;
- (3) propose solutions, including administrative changes to practices and procedures of the department of taxes;
- (4) recommend legislative action as may be appropriate to resolve problems encountered by taxpayers;
- (5) educate taxpayers concerning their rights and responsibilities under Vermont’s tax laws;
- (6) educate tax professionals concerning the department of taxes regulations and interpretations by issuing bulletins and other written materials; and
- (7) assist individual taxpayer in resolving disputes with the department of taxes.

With recent Department reorganizations and establishment of the Policy Outreach and Legislative Affairs Division (POLA), the education functions contained in §3205(6) are now more appropriately assigned to POLA. Issuing bulletins and other written policy materials may compromise the Taxpayer Advocate's objectivity should advocacy be requested on that topic. The Taxpayer Advocate's education role now becomes, in coordination with POLA, a presenter at education seminars which is fitting and expands the resources for taxpayer outreach.

It is also recommended that the assistance to “individual taxpayers” in section 7 be broadened to “taxpayers” rather than limited to individuals

### Recommendation

Amend 32 V.S.A. §3205(b) to the following functions and duties of the taxpayer advocate:

- (1) identify subject areas where taxpayers have difficulties interacting with the department of taxes;
- (2) identify classes of taxpayers or specific business sectors who have common problems related to the department of taxes;
- (3) propose solutions, including administrative changes to practices and procedures of the department of taxes;
- (4) recommend legislative action as may be appropriate to resolve problems encountered by taxpayers;
- (5) ~~assist educate~~ taxpayers in understanding ~~concerning~~ their rights and responsibilities under Vermont’s tax laws; and
- (6) ~~educate~~ participate in education outreach for tax professionals and taxpayers; and ~~concerning the department of taxes regulations and interpretations by issuing bulletins and other written materials.~~
- (7) assist ~~individual~~ taxpayers in resolving disputes with the department of taxes.



## OTHER RECOMMENDATIONS

The Taxpayer Advocate presents the following recommendations to recognize taxpayer rights that are not specifically driven by criteria set forth earlier in this report. These other recommendations are to help resolve reported or anticipated difficulties:

- **R-1** Non-profit organizations need guidance material to meet their new tax obligations for reporting unrelated business income, and the vendors that transact business with non-profits need guidance material to determine when a sale to a non-profit is exempt.

| <b>R - 1</b>  |   |  |
|---|---|--|
| <b>Class of Taxpayer</b>  | <b>Industry</b>   | <b>Systemic Issue</b>  |
| Non-Profit Organizations  | Non-Profit Organizations, Retailers, Hospitality Operators, & Tax Practitioners | Uncertainty of tax filings and obligations by non-profit organizations<br>Uncertainty by vendors when a non-profit may purchase tax exempt |
| <b>Discussion</b>   |   |  |
| Recent changes to 32 V.S.A. §9743 such as sales tax on entertainment and gross receipts thresholds as well as the requirement to file a return and pay an income tax on unrelated business income have created uncertainty for non-profit organizations. The extent of the uncertainty was evidenced at the UVM Tax School in November 2011. Usually questions focus on Vermont income tax; however, this year the attendees brought up six issues relating to non-profit tax questions, including nonrelated business income tax, sales & use tax, and meals & rooms tax. Tax practitioners also expressed confusion on the filing requirements for non-profits with unrelated business income under 32 VSA §5911(D). The filing for the non-profit is included on the VT C corporation return. There is a different due date for C corporations and the Federal 990 non-profit return. Even though the statute requires this return to be filed when the Federal return is due, the practitioners are asking for more specific guidance on filing the nonrelated business income for Vermont. |   |  |
| <b>Recommendation</b>   |   |  |
| The Department should issue technical bulletins for these issues, a nonprofit tax guide or both in 2012 calendar year, as well as offer education workshops. A recommendation has been made to the Department.  |   |  |

## **EXTRAORDINARY RELIEF**

The 2012 Legislature enacted 32 V.S.A. §3206 to provide taxpayers with an opportunity to seek a remedy when Vermont tax laws apply to the taxpayer's circumstances in a way that is unfair and unforeseen or that results in significant hardship; and the taxpayer has no available appeal rights or administrative remedies to correct the issue that led to such unfair result or hardship. These provisions became effective July 1, 2012.

### **EXTRAORDINARY RELIEF REQUESTS**

The extraordinary relief requests received to date are requests to allow filing or completing property tax adjustment and renter rebate claims after the deadline. While many requests made compelling presentations, very few reached the level of extraordinary.

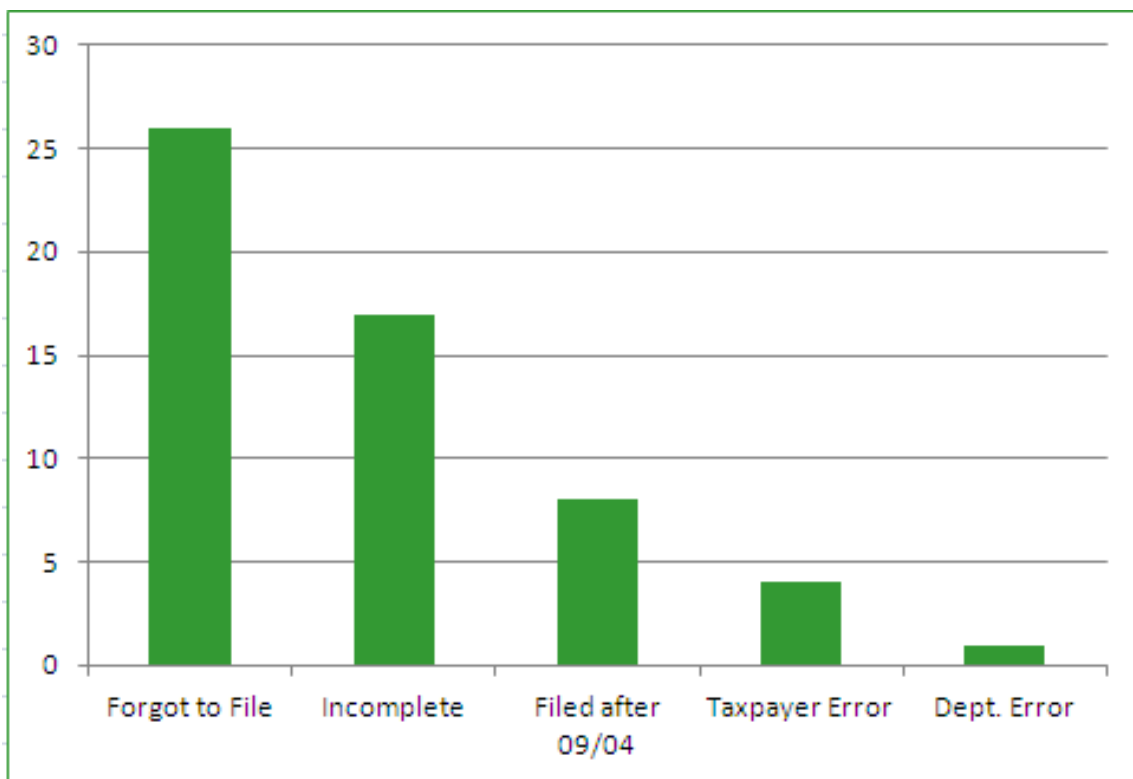
## **EXTRAORDINARY RELIEF INTAKE AND STATISTICS**

| <b>EXTRAORDINARY RELIEF TAX TYPE</b> |               |
|--------------------------------------|---------------|
|                                      | <b>Number</b> |
| Property Tax Adjustment              | 53            |
| Renter Rebate                        | 3             |
| Total Requests                       | 56            |

| <b>EXTRAORDINARY RELIEF CASE SOURCE</b> |               |
|---|---------------|
| <b>Referred by</b>                      | <b>Number</b> |
| Self Referral                           | 48            |
| Governor's Office                       | 3             |
| Legislative member                      | 3             |
| Tax Practitioner                        | 2             |
| Total Requests                          | 56            |

| EXTRAORDINARY RELIEF REQUEST BASIS |           |                                   |                      |                         |                       |             |
|------------------------------------|-----------|-----------------------------------|----------------------|-------------------------|-----------------------|-------------|
| Tax Type                           | No Filing | Incomplete<br>No info by<br>09/04 | Filed after<br>09/04 | Taxpayer<br>Entry Error | Return by<br>Preparer | Dept. Error |
| Property Tax<br>Adjustment         | 25        | 16                                | 7                    | 4                       | 13                    |             |
| Renter<br>Rebate                   | 1         | 1                                 | 1                    |                         |                       |             |
| Homestead<br>Classification        |           |                                   |                      |                         |                       | 1           |

### EXTRAORDINARY RELIEF REQUEST BASIS CHART



| EXTRAORDINARY RELIEF GRANTED |                         |   |                 |
|------------------------------|-------------------------|---|-----------------|
| #                            | Tax Type                | Description                                   | Cost            |
| 3                            | Property Adjustment     | Medical issues; elderly; financial hardship   | \$ 5,012        |
| 2                            | Property Adjustment     | Medical issues; financial hardship            | \$ 9,384        |
| 1                            | Property Adjustment     | Extenuating circumstances, financial hardship | \$ 2,791        |
| 1                            | Renter Rebate           | Medical issues; financial hardship            | \$ 1,031        |
| 1                            | Property Classification | Department error                              | \$ 808          |
| <b>TOTAL COST</b>            |                         |   | <b>\$19,206</b> |

