



# 2014 TAXPAYER ADVOCATE ANNUAL REPORT

Calendar Year 2013 Activity  
and Recommendations

January 15, 2014



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*Agency of Administration*

January 15, 2014

*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 Vermont Taxpayer Advocate's Annual Report for activity in calendar year 2013. The Vermont Taxpayer Advocate Annual Report is required to identify problems encountered by taxpayers interacting with the Vermont Department of Taxes as well recommend administrative and legislative actions to resolve those problems. The report shall also identify problems that affect an entire class of taxpayer or specific industry and present solutions.

Case intake by the Taxpayer Advocate decreased in calendar 2013. The change in the Homestead Declaration filing requirement presented a potential for increased case intake. However, the Vermont Department of Taxes' conducted a successful outreach program to alert the public of the filing requirement change and case intake (as well as calls to the Department in general) concerned the late filing penalty assessed by towns and not the filing dates.

Due to the nature and complexity of Vermont tax laws, there will continue to be a high volume of taxpayer questions and issues. Just by law of averages, not all taxpayers will be happy with our telephone system or responses. Identifying such issues does not imply an increase, but rather a prompt to the Department to be mindful of the public's concerns.

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 other educational materials, 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 of overlapping functions. The Taxpayer Advocate will continue to work cooperatively with POLA to assure tax professionals and taxpayers receive the best possible outreach services.

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.

**2013 SUMMARY OF  
TAXPAYER ADVOCATE EDUCATION and OUTREACH**

<b>EVENT</b>	<b>AUDIENCE</b>	<b>DATE</b>	<b>TAX TYPE</b>
Update for TY2012	Individuals sponsored by NE Fed. Credit Union	01/15/2013 Williston	Personal Income Tax Homeowner Programs Renter Rebate
Update for TY2012	National Association of Retired Federal Employees	02/12/2013 South Burlington	Personal Income Tax Homeowner Programs Renter Rebate
Workshop	Income Tax Practitioners sponsored by National Association of Tax Professionals	06/04/2013 South Burlington	Taxpayer Advocate program
Meeting	Tax Practitioner Liaison meeting sponsored by IRS	06/06/2013 Montpelier	Personal Income Tax Homeowner Programs Renter Rebate

## **ISSUES EXPERIENCED BY TAXPAYERS DURING DEPARTMENT INTERACTIONS IN 2013 CALENDAR YEAR**

The Department interacts with almost 500,000 taxpayers through return filings, letters, email, and audits plus over 80,000 phone calls a year. Some difficult interactions are inevitable and a complete elimination of issues will never occur. However, issues need to be acknowledged.

Taxpayer difficulties in calendar year 2013 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 difficulty reported by taxpayers.

### **2013 TOP ISSUES**

1. Assessment of late filing penalty on homestead declarations filed between April 16 and October 15. **New**
2. Taxpayers do not receive clear explanation of the action taken by the Vermont Department of Taxes or action required of them.
3. Failure to file homestead declarations and property tax adjustment claims by the final deadline. **New**
4. Difficulty finding forms on the Department's web site – particularly Form IN-151, Extension of Time to File. **New**
5. Cannot electronically file Form IN-151, Extension of Time to File. **New**
6. The processing schedule for homestead declarations and property tax adjustment claims delays processing of income tax returns and renter rebates. **New**
7. Estimated income tax assessments become a fixed liability and if not appealed within the 60-day period, a return cannot be filed later to amend that fixed liability and the taxpayer cannot dispute the estimated fixed liability. **New**
8. Increased use of automation distances the Department from more direct communication with the taxpayer.
9. Taxpayers have received discourteous treatment by Vermont Department of Taxes employees. (Relisting is not an indication of an increase in occurrences; this is a prompt to be mindful of the public's concerns)

### **REVIEW OF 2012 TOP ISSUES**

1. Taxpayers do not receive clear explanation of the action taken by the Vermont Department of Taxes or action required of them. **Continues**
2. Increased use of automation distances the Department from more direct communication with the taxpayer. **Continues**
3. Insufficient education and outreach opportunities for taxpayers to learn tax obligations and keep current with tax law and policy changes. *The newly formed Policy Outreach and Legislative Affairs Division increased education and outreach.*
4. Taxpayers often are asked to resubmit duplicate documentation and correspondence because the Vermont Department of Taxes lacks a document management system. *A manual tracking was established that significantly mitigated this issue in 2013 filing season.*
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. *Improved but still some issues with the processing system.*
6. Taxpayers have received discourteous treatment by Vermont Department of Taxes employees. **Continues**

## ***FUTURE ISSUES FOR THE VERMONT DEPARTMENT OF TAXES***

With the potential that the new health care program at the Federal and State level will become integrated into the Vermont income tax return, the Vermont Department of Taxes will need to address its dual role as collector of taxes and administrator of benefit programs.

At present, the Department administers five benefit programs<sup>1</sup> and economic tax incentive credits program. Deadlines to process benefit programs compete with, and sometimes eclipse, the processing of tax returns. Each benefit program requires a specialized skill set to examine. Each program diverts Department resources away from its core revenue processing and collection functions and can diminish taxpayer service for taxes themselves.

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<sup>1</sup> Vermont Earned Income Tax Credit, Low Income Child Care Credit, Renter Rebate, Property Tax Adjustment, Homestead Declaration

**STATISTICAL SUMMARY OF 2013 TAXPAYER ADVOCATE INTAKE** (as of 12/30/2013)

<b>TOTAL TAXPAYER ADVOCATE INTAKE</b>		<b>Number</b>	
<b>Description</b>	<b>2012</b>	<b>2013</b>	
General Intake	634	493	
Extraordinary Relief Intake	56	35	
<b>TOTAL</b>	<b>690</b>	<b>528</b>	

<b>TAXPAYER ADVOCATE CASE SOURCE</b>				<b>Number</b>	
				<b>2012</b>	<b>2013</b>
Total Case Intake				634	358
<b>Description</b>					
Directly to Taxpayer Advocate –	<u>2012</u>	<u>2013</u>		544	344
Telephone calls	305	301			
E-Mail	197	156			
Mail	38	26			
Walk-in	4	2			
Referred to Taxpayer Advocate by Commissioner of Taxes, Governor's Office, State Legislators, VT Congressional Representatives				79	12
Referred to Taxpayer Advocate by outside agency – IRS, Community Action, AG Consumer Protection				6	2
Department referrals				5	0

<b>TAX TYPE</b>		<b>Number</b>	
		<b>2012</b>	<b>2013</b>
Property Tax Adjustment Claim		214	187
Personal Income		273	176
Renter Rebate		42	54
Property		31	32
Trust Fund (Sales/Use, Meals/Rooms, Withholding)		12	23
Homestead Declaration		0	14
Corporate/Entity Income		8	7



<b>ISSUE TYPES</b>		<b>Number</b>	
<b>Description</b>	<b>2012</b>	<b>2013</b>	
General Information Requests	281	140	
Status	20	99	
Audits	62	45	
Return Adjustment Explanation	29	35	
Returns Not Filed	6	20	
Property Tax Adjustment / Renter Rebate Late file; Denial	131	18	
Collection Action; Offset; Payment Plans	75	28	
Abatement		9	
Homestead Declaration Late Fee		8	
Property Tax late payment penalty from town	30	4	
ID Theft		3	

<b>ECONOMIC BURDEN</b>		<b>Number</b>	
<b>Description</b>	<b>2012</b>	<b>2013</b>	
Suffering, or about to suffer, a significant hardship	4	18	
Immediate threat of adverse impact	1	6	
Will suffer irreparable injury or long-term adverse impact	0	0	

<b>SYSTEMIC ISSUES</b>		<b>Number</b>	
<b>Description</b>	<b>2012</b>	<b>2013</b>	
Delay of more than 90 days to resolve an issue	10	2	
Response or resolution not received by the date promised.	5	4	
System failed to operate as intended	33	6	
Failure to resolve taxpayer's problem /dispute within VT Department of Taxes	2	0	

<b>RELIEF PROVIDED</b>		<b>Number</b>	
<b>Description</b>	<b>2012</b>	<b>2013</b>	
Relief for hardship	5	8	
Abatement of charges granted	12	16	
Assessment adjusted	5	20	
Requests how to enter payment plans		12	

## **TAXPAYER ADVOCATE RECOMMENDATIONS**

### **2013 PROCEDURAL RECOMMENDATIONS TO DEPARTMENT**

No.	Date	Recommendation Summary	Department Response
13-01	Jan. 03	Revise property tax adjustment calculation letter to highlight changes made to claim	The Department is currently looking into making some modifications to the notice. We may be limited in what we can change in the current system.
13-02	Feb. 01	Increase electronic income tax filing through practitioner partnership	The Tax Department encourages electronic filing. However, the Dept. does not have the necessary resources to reimburse tax preparer's. It would also be difficult to find a tax preparer willing and able to volunteer their time during tax season. The Tax Department will continue to provide paper returns for those Vermonters without access to a computer.
13-04	Apr. 04	Prepare written guidelines for netting of Federal Form 1040 Schedule C for sole proprietorships	A ticket has been created for POLA to look into this.
13-06	May 02	Prepare and publish an Audit brochure/handbook to be presented at the beginning of the audit.	The Department is working on this initiative as part of an overall review of the appeal and hearings process with an eye to developing a comprehensive SOP addressing these issues. Once the SOP is developed, more condensed communication pieces, such as a brochure or short handbook, can be developed. This will provide a general overview of procedures and direct taxpayers to the SOP for more detailed information.
13-07	Jun. 25	Revise edits that stop processing of all renter rebate claims for multiple landlord certificates to a more selective population	<p>The Department agrees that the current renter rebate process is inefficient and cumbersome for taxpayers and the Department. The Department has assembled an internal workgroup that is looking at ways to streamline the process and make recommendations to the Legislature for modifications to the program. This review is ongoing and we are collaborating with various stakeholder groups, to include legal aid and tax preparers to move this initiative forward.</p> <p>We are currently discussing whether to remove the multiple LC-142 edits altogether. There could be some benefit to this.</p>

13-08	Sep. 04	Eliminate use of Social Security Numbers on 23 letters generated by the Department	<p>For 13-08 &amp; 13-09 The Department's internal IT division has identified the taxpayer correspondence that contains unmasked SSN's or uses the FEIN. There is a multi-pronged approach to addressing this issue.</p> <ol style="list-style-type: none"> <li>1. When taxpayer communications are changed pursuant to legislative changes, those communications will mask the SSN.</li> <li>2. IT has identified those communications with unmasked SSNs that can be masked without undermining the integrity of any data/billing that is linked to the SSN. Those changes are being made.</li> <li>3. Changes to the payment coupons which rely upon the SSN/FEIN would require a change to the architecture of Advantage Revenue. There is no other identifying number to utilize, as the SSN/FEIN and Name direct the posting of money and what year to apply it to. Upon deployment of the Department's new ITS, the identifier will be changed and will not key off of the SSN/FEIN.</li> <li>4. The Department intends to move away from utilizing the FEIN as the business account number upon deployment of the new ITS.</li> </ol> <p>In short, the changes recommended by the taxpayer advocate are good ones and will be implemented as part of the Department's adoption of an ITS.</p>
13-09	Sep. 25	Cease use of FEIN as external VT. business tax account number	See 13-08
13-10	Oct. 08	Formalize Identity Theft Procedures	The Department has had internal discussions related to developing a formal policy regarding identify theft notification procedures. The Department intends to develop a formal letter to send to taxpayers who we discover have been the victims of fraud. POLA and TPS will coordinate on this.

13-11	Nov. 15	Clarify notice of change to property tax adjustment claims and bill homeowner immediately to allow repayment of excess adjustment before penalty and interest is due.	<p>-The Department is investigating the possibility of adding additional reason codes related to adjustment notices. There may be limitations based on the current technology. This type of change also may cause the adjustment notice to become user generated.</p> <p>- Taxpayer Services is looking at making some revisions to the calculation worksheet. We may be somewhat restricted in the changes we can make in the current system.</p> <p>- The system will not allow the issuing of a bill before the due date. This is something the Department has previously considered. The Department would like to make this change and hopes to leverage the new ITS to do so.</p>
13-12	Nov. 18	Establish data base of power of attorney and authorization to release tax information	The creation and maintenance of such a database would be inefficient and result in a cost that outweighs the benefit. The long term solution to this issue is being resolved by the implementation of a new integrated tax system that will contain this information in one system for efficient use by staff.
13-13	Dec. 03	Defer billing of extended income tax returns until all payments are posted to taxpayer accounts	<p>This was a problem the Department had at the extended filing due date. This was created because a number of payments were not DV'd. The returns were processed and posted and the bills were issued. This is not a common occurrence and was an isolated circumstance.</p> <p>Discussions with Financial Services and Revenue Processing staff revealed that Department policy is that payments are always a DV priority. Delayed billing for late returns does not make sense, especially since the payment was actually due on April 15<sup>th</sup>.</p>
13-14	Dec. 04	Add review/edit function to VTBizFile online filing system to allow taxpayers to manage their payments.	The Department has contacted the vendor (VIC) about making this change. This is not a common occurrence however, since it has happened more than once recently, we have decided to add this function to VTBizFile. It will likely take some time to implement.

13-15	Dec. 30	Implement an offer-in-compromise program as authorized by 32 VSA §5887(c)	<p>The Voluntary Disclosure and Offers in Compromise are very different programs and the Department contends that they should not be combined. Voluntary Disclosure concerns coming forward to determine the correct amount of tax and waiving penalties because the Department did not have to do discovery and then audit. Offer in Compromise is about someone's ability to pay rather than what they owe. The Department already works with taxpayers to determine the type of payment plan most appropriate for them. If there is an uncollectible balance we can put it in hardship or non-collectible status based on the individual's fact pattern. Individual situations change to such a degree that we have had occasions when a previously uncollectible balance was discovered to be collectible, e.g. the NOIG program.</p> <p>To properly administer an Offer in Compromise program the Department would need to create a standard methodology for reviewing each person's financial situation. This would also take discretion away from the Department and would be highly complex. There are pages and pages of rules and requirement for the IRS Offer in Compromise program. That broad brush approach may not be appropriate for Vermont's scale.</p> <p>As part of the Department's overall review of the audit and appeal process, the Department will review current practices in this area as well.</p>
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## LEGISLATIVE RECOMMENDATIONS

Examples in recommendations are generalized and aggregated and represent issues brought to the Taxpayer Advocate to assure compliance with confidentiality provisions 32 V.S.A. §3201 and IRC §6103.

Class of Taxpayer	Industry	Legislative Recommendation Procedural Recommendation
Individual Income Taxpayers	- Tax Practitioners - Attorneys	Enact Vermont legislation for innocent spouse provision
<b>Discussion</b>		
<p>Spouses filing 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 only one spouse earned all the income or claimed improper deductions or credits.</p> <p>An innocent spouse is one who signed a jointly filed return but had no knowledge of, or reasonable cause to believe, the income was understated or items omitted. The Internal Revenue Service (IRS) determines the degree of relief which an innocent spouse is eligible under innocent spouse relief, separation of liability, and equitable relief.</p> <p>Innocent spouse relief releases the spouse without knowledge of the understated or omitted income from any obligation to pay the tax. 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.</p> <p>Vermont does not have an innocent spouse law. Generally, innocent spouse relief is contemplated only when IRS documentation shows relief is allowed for federal income tax. The Department reviews the IRS determination for Vermont income tax purposes, but there is no guarantee the relief will be granted. Situations may occur where the IRS took procedural action to relieve the innocent spouse of liability and this does not result in official innocent spouse determination. For example, the Internal Revenue Service discovers unreported income for Taxpayer A. Spouse Taxpayer B did not have any income for that year. The IRS creates a single account 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 in Vermont) and Spouse Taxpayer B has no recourse to receive innocent spouse for Vermont taxes because the IRS did not issue an innocent spouse determination.</p> <p>The IRS recently expanded the time for filing for innocent spouse and allowed retroactive relief. In some instances, the innocent spouse relief received from the IRS was not available when the Department commenced collection activity or received a judgment. If Vermont maintained its own innocent spouse statute, those taxpayers could have applied under Vermont law.</p> <p>The Commissioner currently holds authority to compromise taxes under 32 V.S.A. §§3201(5) and 5887(c).</p>		
<b>Recommendation</b>		
<p>1] 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. While the Department may continue to base innocent spouse on IRS determination, a specific Vermont innocent spouse would have provided taxpayers with the ability to apply for the status even if an application could not be made at IRS. See attached innocent spouse treatment by other states. 2] In lieu of legislation, the Department establish written guidelines and procedures for innocent spouse relief using the authority granted under 32 V.S.A. §§3201(5) and 5887(c).</p>		

STATE	INNOCENT SPOUSE	LAW	ADMINISTRATIVE	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 OIC
Vermont	Y				case-by-case
Virginia	Y			Y	case-by-case if Fed return amended
<b>West Virginia</b>	?				
<b>Wisconsin</b>	?				
<b>No State Income Tax</b>					
Alaska	N/A	S. Dakota	N/A		
Florida	N/A	Texas	N/A		
Nevada	N/A	Washington	N/A		
New Hampshire	N/A	Wyoming	N/A		

Class of Taxpayer	Industry	Legislative Recommendation
Homeowners	Municipalities	Modify late filing penalties for Homestead Declarations filed after April 15 but before September deadline. 32 V.S.A. §§5410(g) and (i)
<b>Discussion</b>		
<p>The law considers Homestead Declarations filed by April 15 as timely and establishes a period between April 16 and September 1 as late filed but the filer receives the homestead designation with the homestead education property tax rate. Homestead Declarations filed after September 1 are late, do not receive the homestead designation and are taxed at the higher education property tax rate.</p> <p>32 V.S.A. §5410 allows municipalities to assess, bill and collect a late filing penalty. The late filing penalty in (g) of this section applies to a homestead declaration made on property not the owner's homestead or a failure to file a homestead. The penalty is 3% of the education property tax if the homestead rate is higher than the nonresidential rate. The penalty is 8% of the education property tax if the homestead rate is lower than the nonresidential rate. The penalty in (g) of this section also allows assessment for fraudulent intent at 100% of the education property tax.</p> <p>The language in (g) appears to aim at property owners who fail to file a declaration or file a declaration that is inaccurate (and possibly fraudulent). However, the modifier of these filings "as required under this section" includes all sections of Section 5410 and owners who file between April 16 and September 1 are assessed late filing penalties under both (g) and (h).</p> <p>32 V.S.A. §5410(i) also addresses late filing penalties for homestead declarations filed after the September 1 deadline. In this instance, the owner corrects or rescinds an existing homestead declaration or files a new homestead declaration. This penalty results in the property not being classified as a homestead. Any resulting additional property tax may be assessed interest and the additional property tax and interest considered an additional penalty. Excess property tax paid at the nonresidential education property tax rate is not refunded.</p> <p>The language in (i) appears to aim at property owners who file a new declaration, or correct an existing declaration, or rescinds an erroneous declaration after September 1. However, the modifier of these filings as "constitute an additional penalty, to be assessed and collected in the same manner a penalties under subsection (g) of this section" combines the penalties of (g) and (i).</p> <p>The 3% and 8% of education property tax imposes a significant burden on homeowners who voluntarily file during the statutorily-created late filing period of April 16 to September 1 and filed without intent to evade filing or to declare a property that is not their homestead. See chart for sample penalty costs for a \$230,000 homestead.</p>		
<b>Recommendation</b>		
<ul style="list-style-type: none"> <li>• Set a flat late filing penalty for homestead declarations filed between the statutory late period of April 16, to September 1 to compensate municipalities for administrative expenses to reclassify grand list property and issue corrected property tax bills. See 32 V.S.A. §</li> <li>• Apply the penalty at 3% or 8% of education property tax to homestead declarations filed after the September deadline.</li> <li>• Retain fraudulent filing penalty as written.</li> <li>• Modify 32 V.S.A. §5410(i) to apply to a homestead declaration voluntarily filed, corrected or rescinded without fraudulent intent and eliminate the designation as an "additional penalty" to separate from subsection (g) penalty.</li> </ul>		



## 32 VSA §5410 Homestead Declaration Late Filing Penalty on \$230,000 Homestead Value

		Sample Education Property Tax Rate		§5410(g) Penalty		
Town	Homestead Value	Homeste ad	Nonresidential	3%	8%	Penalty Amount
A	\$230,000	\$1.5171	\$1.4733		✓	\$279
B	\$230,000	\$1.4537	\$1.4123		✓	\$267
C	\$230,000	\$1.5408	\$1.4741		✓	\$284
D	\$230,000	\$1.7222	\$1.6138		✓	\$317
E	\$230,000	\$1.8547	\$1.4952		✓	\$341
F	\$230,000	\$1.7580	\$1.4569		✓	\$323
G	\$230,000	\$1.3654	\$1.6661	✓		\$ 94
H	\$230,000	\$1.5640	\$1.4318	✓		\$108
I	\$230,000	\$1.3638	\$1.4891	✓		\$ 94
J	\$230,000	\$1.0905	\$1.4612	✓		\$ 75

Class of Taxpayer	Industry	Legislative Recommendation
N/A	Department	Amend 32 V.S.A. §3205 to reflect current Department reorganization
<b>Discussion</b>		
<p>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 and duties of the taxpayer advocate as:</p> <ol style="list-style-type: none"> <li>(1) identify subject areas where taxpayers have difficulties interacting with the department of taxes;</li> <li>(2) identify classes of taxpayers or specific business sectors who have common problems related to the department of taxes;</li> <li>(3) propose solutions, including administrative changes to practices and procedures of the department of taxes;</li> <li>(4) recommend legislative action as may be appropriate to resolve problems encountered by taxpayers;</li> <li>(5) educate taxpayers concerning their rights and responsibilities under Vermont’s tax laws;</li> <li>(6) educate tax professionals concerning the department of taxes regulations and interpretations by issuing bulletins and other written materials; and</li> <li>(7) assist individual taxpayer in resolving disputes with the department of taxes.</li> </ol> <p>With recent Department reorganizations and establishment of the Policy Outreach and Legislative Affairs Division (POLA), the education functions contained in §3205(6) are mainly 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 is now on an as-needed basis as a presenter at education seminars and generally concerning the Taxpayer Advocate functions.</p> <p>It is also recommended that the assistance to “individual taxpayers” in section 7 be broadened to “taxpayers” rather than limited to individuals.</p>		
<b>Recommendation</b>		
<p>Amend 32 V.S.A. §3205(b) to the following functions and duties of the taxpayer advocate:</p> <ol style="list-style-type: none"> <li>(1) identify subject areas where taxpayers have difficulties interacting with the department of taxes;</li> <li>(2) identify classes of taxpayers or specific business sectors who have common problems related to the department of taxes;</li> <li>(3) propose solutions, including administrative changes to practices and procedures of the department of taxes;</li> <li>(4) recommend legislative action as may be appropriate to resolve problems encountered by taxpayers;</li> <li>(5) <del>assist educate</del> taxpayers <del>in understanding concerning</del> their rights and responsibilities under Vermont’s tax laws; and</li> <li>(6) <del>educate</del> participate in education outreach for tax professionals and taxpayers. <del>and concerning the department of taxes regulations and interpretations by issuing bulletins and other written materials.</del></li> <li>(7) assist <del>individual</del> taxpayers in resolving disputes with the department of taxes.</li> </ol>		

## **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. Other recommendations are to help resolve reported or anticipated difficulties:

- **R-1** Formalize the offer-in-compromise provision of 32 V.S.A. §5887(c) and provide taxpayer awareness of the provision.
- **R-2** 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.
- **R-3** Review of the Department’s automated telephone system to enhance the taxpayer’s level of service and ease of use.

### **R - 1**

Class of Taxpayer	Industry	Systemic
Taxpayers	Preparers	Develop offer-in-compromise as authorized in 32 V.S.A. §5887(c)
<b>Discussion</b>		
<p><b>Statutory Provisions</b></p> <p>32 V.S.A. §§3203 and 5882 allow the Department to assess a deficiency in the payment of income tax. If the deficiency occurs from a return filed with the Department, the assessment must within three years after the original date the tax should have been paid. In cases where no return was filed, no time limitation exists for making the deficiency assessment.</p> <p>32 V.S.A. §5883 provides the taxpayer a 60-day appeal period from date of the deficiency notice and 32 V.S.A. §3203 makes mailing of the notice presumptive proof the taxpayer received the notice.</p> <p>32 V.S.A. §5887 establishes an appeal of the assessment within the 60-day period as the exclusive remedy of a taxpayer. If no appeal, the assessment becomes a fixed liability. The taxpayer cannot contest the assessment thereafter, directly or indirectly. The taxpayer also cannot contest enforcement/collection activity to collect the assessed amount. While the appeal is the exclusive remedy, the law provides a safety net.</p> <p>32 V.S.A. §5887(c) allows the Commissioner to consider an offer in compromise for assessments not appealed if there is doubt as to the tax liability assessed or the debt is collectible, or both.</p> <p><b>Discussion</b></p> <p>32 V.S.A. §5887 provides the exclusive remedy for contesting an assessment by the Department and strict enforcement of assessments of income tax liability as well as for the taxes using the enforcement provisions of Chapter 151 by reference.<sup>1</sup> Unless an appeal is filed within the 60-day period, the taxpayer is barred from any further protest of the liability at any level. This provision also appears to override the ability of a taxpayer to amend a filed return within the three-year statutory limitation if the Department made an assessment that was not appealed 60 days after notification.</p> <p>32 V.S.A. §5887(c) authorizes the Commissioner to consider an offer-in-compromise on a tax liability not appealed within the 60-day period. However, the taxpayer must be aware of this provision to present an offer in compromise to the commissioner.</p> <p>There is not an established offer in compromise. The taxpayer is generally not aware there is an offer-in-compromise program. Currently, taxpayers make requests for relief as abatements and/or financial hardship. These requests are handled case-by-case and ad hoc.</p>		

**Recommendation**

The Department should formalize its offer-in-compromise program authorized in 32 V.S.A. §5887(c). Formalizing the offer-in-compromise program provides a uniform protocol and equitable treatment for taxpayers. Formalizing the offer-in-compromise program does not require direct application of the Internal Revenue Service program. However, some aspects could be adopted, such as the eligibility screening questionnaire.

The Department should publicize the offer-in-compromise so taxpayers are aware of the option.

- <sup>1</sup> Land use change tax 32 V.S.A. § 3757
- Wind-powered electric generating facilities tax 32 V.S.A. §5404c
- Landlord certificate penalty 32 V.S.A. § 6069
- Telephone Companies 32 V.S. A. § 8521
- Land Gains and Real Estate Withholding 32 V.S.A. §§10007(e)
- Chapter 151 taxes – personal income, estate and trust, income tax withholding, corporate income, S corporation, LLC, Partnership

**R - 2**

Taxpayer	Industry	Category
Non-Profit Organizations	Non-Profit Organizations, Retailers, Hospitality Operators, & Tax Practitioners	Systemic

**Discussion**

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 bought 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. There was also uncertainty by vendors when a non-profit may purchase tax exempt.

**Recommendation**

The Department should issue technical bulletins for these issues, a nonprofit tax guide or both in 2014 calendar year, as well as offer education workshops.

Class of Taxpayer	Industry	Category
All	Tax Practitioners 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 automated telephone system set-up. 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>		

## **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

Requests for extraordinary relief predominantly involved failure to file or complete property tax adjustment and renter rebate claims by the deadline. Those making extraordinary relief requests in the effective year 2012 misunderstood the process. They believed that making a request with the reason of forgetting to file or filing just a day or two late was sufficient cause as they had always received a property tax adjustment or a renter rebate previously. It has been an education process for taxpayers and preparers that statutory criteria must be met to make the situation extraordinary.

Experience with the extraordinary relief program and the October 15th due date for the property tax adjustment claims significantly reduced the extraordinary relief requests received in the second half of 2013. Property tax adjustment claims remain the majority of requests for extraordinary relief.

<b>EXTRAORDINARY RELIEF CASE SOURCE</b>	
Extraordinary Relief Cases began in 2012 and completed in 2013	15
Extraordinary Relief Cases began in 2013 and completed in 2013	35
Total	50
<b>Referred by</b>	<b>Number</b>
Self Referral	48
Tax Practitioner	2

<b>EXTRAORDINARY RELIEF TAX TYPE</b>	
Property Tax Adjustment Claim	46
Renter Rebate Claim	2
Personal Income Tax	2
Total	50

<b>EXTRAORDINARY RELIEF APPLICATIONS MADE IN 2013</b>	
Recommended	10
Not recommended	11
Taxpayer did not complete process	2
Pending	2
<b>Total</b>	<b>35</b>

<b>EXTRAORDINARY RELIEF ISSUED IN 2013 CALENDAR YEAR</b>			
#	Tax Type	Description	Cost
4	Property Adjustment	Medical issues; elderly; financial hardship	\$ 7,973
4	Property Adjustment	Medical issues; financial hardship	\$ 8,001
1	Property Adjustment	Financial hardship	\$ 3,713
3	Property Adjustment	Extenuating circumstances, financial hardship	\$ 4,334
1	Property Classification	Town error	\$ 426
<b>TOTAL COST</b>			<b>\$24,447*</b>
* \$12,341 for claims made in 2012 but processed in 2013			

<b>EXTRAORDINARY RELIEF ISSUED IN 2012 CALENDAR YEAR</b>			
#	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>

<b>2013 EXTRAORDINARY RELIEF PROVIDED</b>	
Property Tax Adjustment provided retroactively	11
Property classification corrected	1

