

VERMONT DEPARTMENT OF TAXES

2020 TAXPAYER ADVOCATE REPORT

2020 TAXPAYER ADVOCATE ANNUAL REPORT

SUBMITTED TO

House Committee on Ways and Means
Senate Committee on Finance

SUBMITTED BY

Jeffrey M. Dooley, Taxpayer Advocate
Vermont Department of Taxes

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January 15, 2020

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

In accordance with 32 V.S.A. § 3205(c), I submit the Vermont Taxpayer Advocate Annual Report for activity in calendar year 2019. 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.

The reporting period of this year's report contains activity from December 1, 2018 to December 1, 2019. During this period, the Taxpayer Advocate fielded over 1,000 phone calls. From January through May, the majority of the phone calls dealt with refunds that taxpayers were waiting to receive. From May through December, the majority of calls were concerning property tax adjustments. The majority of issues brought to the Department through these calls were able to be resolved with minimal intervention by the Taxpayer Advocate working with the Taxpayer Services division of the Department of Taxes. Approximately 50 cases were reviewed for potential Extraordinary Relief. 80% of these cases involved Property Tax Adjustments, 15% involved Renter Rebate, and 5% involved Personal Income Tax.

Respectfully submitted,

Jeffrey M. Dooley



Description of Taxpayer Advocate

The Vermont Commissioner of Taxes created the Taxpayer Advocate in 2001. Under 32 V.S.A § 3205, the Vermont Department of Taxes must maintain a Taxpayer Advocate. The duties of that position include:

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.

The legislation serves to codify the longstanding role and functions performed by the Taxpayer Advocate and highlights the Taxpayer Advocate's position to improve taxpayer services.

The legislation also requires the Taxpayer Advocate to report annually to the House Committee on Ways and Means and the Senate Committee on Finance. 32 V.S.A. § 3205(c). 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, including specific recommendations for administrative and legislative actions to resolve the identified problems
- Identification of any problems that span an entire class of taxpayer or specific industry, proposing class or industry-wide solutions.

New Administrative Initiatives

Property Tax Adjustment Reminder Letters

Issue: Every year, hundreds of Vermont taxpayers that are eligible for a Property Tax Adjustment fail to file their claim before the October 15 deadline. The reasons for this vary from simply failing to fill out the forms to answering eligibility questions incorrectly in taxpayers' tax software. This results in a significant number of Vermont taxpayers paying significantly more in property taxes than they are legally required to pay.

Administrative Resolution: In early September, at the request of the Taxpayer Advocate, the Department ran a query of its integrated tax system attempting to identify taxpayers who appeared eligible for a Property Tax Adjustment but did not file a claim for one. The query produced a list of 1,790 taxpayers. The Department sent letters to these taxpayers explaining that they appeared to be eligible for a Property Tax Adjustment but had not filed a claim. The letter also provided instructions on how to file a claim prior to the October 15 deadline.

In response to the Department's letter, 643 taxpayers who would have otherwise not received a Property Tax Adjustment, filed for and received an adjustment.

The Department plans to continue to attempt to identify and notify taxpayers that are eligible for a Property Tax Adjustment but have not filed a claim prior to the October 15 deadline.

Data-Driven Refund Review

During the 2017 filing season, the Department issued Personal Income Tax refunds at slower rate than was acceptable to the public or to the Department. As a result, the Department committed itself to more efficient processing of refunds in 2018. Numerous changes were made to the fraud filters in the Department's tax processing system to allow for faster processing of low risk refunds while still flagging high risk refunds for review. As a result of this effort, the Department released a significantly higher percentage of refunds at a much faster pace in 2018.

The Department continued to refine its procedures for processing returns and releasing refunds. The Department continued to process refunds at good pace in 2019. The Department released 75% of refunds within 30 days of receipt, 93% within 60 days of receipt, and released 92% of refunds requested on timely filed returns by June 1.



Statutory Proposals

Homestead Declaration/Property Tax Credit

1. **Issue:** Property Tax Credit (formerly known as Property Tax Adjustment) claims have a statutory extended deadline of October 15. Currently, pursuant to 32 V.S.A. § 6068(b), a taxpayer is not entitled to any Property Tax Credit benefit if a claim is filed after October 15. This results in significant financial hardship for hundreds of Vermont taxpayers every year. The majority of other tax programs have a graduated penalty structure for late filed returns or claims.

Proposed resolution: 32 V.S.A. § 6068(b) & (c) is amended to read:

(b) Late-filing penalties. If the claimant fails to file a timely claim, the amount of the property tax credit under this chapter shall be reduced by \$15.00, but not below \$0.00, which shall be paid to the municipality for the cost of issuing an adjusted homestead property tax bill. No benefit shall be allowed in the calendar year unless the claim is filed with the Commissioner on or before October 15. Any claim filed after October 15 but on or before November 15 shall be assessed a 10% penalty. Any claim filed after November 15 but on or before December 15 shall be assessed a 20% penalty. Any claim filed after December 15 but on or before January 15 shall be assessed a 30% penalty. Any claim filed after January 15 but on or before February 15 shall be assessed a 40% penalty. No benefit shall be allowed unless a claim is filed with the Commissioner on or before February 15. Any property tax credit benefit issued under this chapter after October 15 will be issued directly to the claimant and will not alter the grand list of the town of the claimant's property.

(c) No request for allocation of an income tax refund ~~or for a renter rebate claim~~ may be made after October 15. Any renter rebate claim filed after October 15 but on or before November 15 shall be assessed a 10% penalty. Any renter rebate claim filed after November 15 but on or before December 15 shall be assessed a 20% penalty. Any renter rebate claim filed after December 15 but on or before January 15 shall be assessed a 30% penalty. Any renter rebate claim filed after January 15 but on or before February 15 shall be assessed a 40% penalty. No benefit shall be allowed unless a claim is filed with the Commissioner on or before February 15.

2. **Issue:** Simplified Employee Pension (SEP) accounts are used by self-employed individuals and businesses with few employees as retirement accounts, instead of pensions or 401k plans. The IRS allows a deduction for contributions to SEPs, but the distributions are taxable in the year they are taken. Vermont does not currently allow a deduction from household income for the SEP in the year of the contribution and includes distributions in household income in the year they are taken. In effect, this means that Vermont is including amounts in these accounts in household income twice.

Proposed resolution: 32 V.S.A. § 6061(5)(D) is amended to read:

(D) Without the inclusion of adjustments to total income except certain business expenses of reservists, one-half of self-employment tax paid, alimony paid, deductions for tuition and fees, health insurance costs of self-employed individuals, contributions to Simplified Employee Pension (SEP) plans in the year in which the contribution is made, and health savings account deductions.



Personal Income Tax

Issue: After the Department has assessed a taxpayer on a prior year, the taxpayer will occasionally provide additional information showing the assessment is inaccurate. In some instances, while the Department and the taxpayer were working with each other, either the taxpayer will make a payment to stop penalty and interest from running or the Department will offset a current year refund to pay off the assessment. If the three-year statute of limitations has passed once the matter is resolved, the taxpayer is not legally entitled to the having that payment or offset refunded. I propose amending 32 V.S.A. § 5884 to allow refunds to be issued if a payment or offset was made as the result of an incorrect assessment by the Department.

Proposed resolution: 32 V.S.A. §5884(a) is amended to read:

(a) At any time within three years after the date a return is required to be filed under this chapter, six months from the date a tax is paid or paid by offset, or six months after a refund was received from the United States with respect to an income tax liability, or an amount of taxable income, under the laws of the United States, reported in a return filed under the laws of the United States for the taxable year, with respect to which that return was filed under this chapter, whichever is later, a taxpayer may petition the Commissioner for the refund of all or any part of the amount of tax paid with respect to the return or payment. Unless the period is extended by agreement of the Commissioner and the taxpayer, the Commissioner shall thereafter, upon notice to the taxpayer, hold a hearing on the claim and shall notify the taxpayer of his or her determination of the claim within 30 days of the hearing. The failure of the Commissioner to refund the amount claimed by a taxpayer within six months of the date of the petition for the refund, under this subsection, shall be considered to be a notification to the taxpayer of the Commissioner's determination concerning the claim. The notification shall be considered to have been given on the date of the expiration of the six-month period.

Long Term Considerations

Simplify and Remove Tight Time Restrictions from Property Tax Credit Program

By far, the amount of time and resources spent on assisting taxpayers with property tax issues outweighs time and resources spent on any other tax type. There are several reasons. Those receiving property tax credits tend to be lower income taxpayers that are less sophisticated in dealing with paperwork and do not have the resources to hire a preparer or accountant. The forms and the overall process are some of the most complicated forms and processes that the Department administers. The deadlines are the strictest and have the harshest penalties for missing them of any tax type. The amount of a property tax credit tends to be significant relative to taxpayers' income so the consequences of not receiving it are often significant.

Some of the factors listed above cannot be helped given the nature of the program. Some of the factors should be looked at and consideration should be given to whether there is a better way to administer this program. The two factors that should be looked at are the complexity of the program and the strict nature of the deadlines.

As mentioned above, the property tax credit forms are among the most complicated forms that the Department of Taxes administers. It requires the filing of two forms that are two pages each with a total over 100 fields to potentially be filled in by the taxpayer. The forms have several fields that if not filled in or if accidentally filled in incorrectly will result in the taxpayer be denied a property tax credit entirely. This leads to many taxpayers making mistakes or omissions on their forms that result in a reduced or denied property tax credit. The Department sends letters to the majority of taxpayers that made a mistake or missed a required field but, even then, most taxpayers do not understand what went wrong or how to correct it.

A possible solution to this issue is to simplify the program. This can be done by moving away from the concept of household income that is used for the program and towards a concept similar to modified adjusted gross income (MAGI) that is used at the federal level for health care purposes.

The strict nature of the deadlines is also a major problem for many taxpayers. For most tax types, taxpayers have three years to amend their returns. A three-year period for property tax credit claims is unworkable for several reasons but the current October 15 deadline is also problematic. It gives taxpayers that filed on extension very little time to work with the Department to correct a problem with a property tax credit claim. In addition, a taxpayer that is notified of a problem well before October 15 may not understand the letter they receive or the consequences of the issue because of the complexity discussed above. These taxpayers may not realize what has happened until they receive their property tax bills in late September or early October and then will only have a week or two to correct the issue.

Further, some towns' first property tax payments are not due until November 15. This means that some taxpayers do not realize that something went wrong until they go to make their first payment, which is a month after they no longer have any remedy. Another problem is taxpayers whose mortgage company makes the property tax payments on the taxpayers' behalf. These taxpayers often do not find out what happened until they are contacted by their bank because their mortgage payment has gone up because they do not have enough in escrow. One possible solution to this specific issue would be the graduated penalty structure recommended in the "Statutory Proposals" section.



Taxpayer Class or Industry Tax Issues

Class or Industry	Issue	Recommendation
Manufacturing	Misinterpretation of exempt purchases for manufacturing such as taxable fuels, fixed assets, office supplies, materials, tools, and when direct sales are taxable	Continue to issue comprehensive written guidelines; taxpayer education.
Retailers	<p>Purchasing items tax free for business use that are taxable such as software, fixed assets, office supplies, materials & supplies.</p> <p>Collecting local option tax continues to be overlooked.</p> <p>Problems occur when untaxed sales are erroneously purchased with exemption certificates. These issues are commonly detected during audits.</p>	Continue to issue comprehensive written guidelines; work with retail associations; taxpayer education.
Food & Lodging	<p>Purchasing items sales tax-free for business use that are taxable such as fixed assets, office supplies, materials & supplies.</p> <p>Tax-free sales of meals and under reporting of alcohol sales occur.</p> <p>Local option tax compliance issue with both sales tax and meals and rooms tax.</p>	Continue to issue comprehensive written guidelines; taxpayer education.
Vendors of Online Products	Online commerce continues to evolve and vendors can struggle to determine the taxability of transactions when new business models emerge.	Continue to issue comprehensive written guidelines; taxpayer education.