

The Ohio Taxpayers' Bill of Rights

Introduction

This publication is intended to help taxpayers better understand their rights and responsibilities under the law, particularly when facing an audit or in other important interactions with the Ohio Department of Taxation (the Department).

Some of these rights are outlined in Ohio Revised Code (R.C.) 5703.50 through 5703.54. These code sections were enacted in 1989 and are known as the "Ohio Taxpayers' Bill of Rights." This document is, in part, a summary of these rights, which apply to state taxes such as the individual income tax (including employer withholding, the commercial activity tax, the financial institutions tax, the petroleum activity tax, and the sales and use taxes.

While the Department takes the responsibilities outlined in this publication seriously, please note that the failure of an employee of the Department to comply with a provision of the Taxpayers' Bill of Rights does not excuse a taxpayer from payment of taxes that are owed.

Tax Returns

A key responsibility for taxpayers is to periodically document tax liability through the filing of a tax return. The frequency with which returns must be filed varies according to the tax:

- Individual income and financial institutions tax returns are filed annually.
- Commercial activity tax returns are filed quarterly or annually, depending on the amount of gross receipts realized by the taxpayer.
- Petroleum activity tax returns are filed quarterly.
- Employer withholding tax returns are due quarterly, monthly or even more frequently, depending on the amount of tax withheld.
- Sales and use tax returns are filed monthly or as otherwise determined by the Department.

More information on the reporting responsibilities for each tax, including filing instructions, is available at www.tax.ohio.gov.

Audits

Sometimes the Department needs additional information from the taxpayer to make certain that the correct amount of tax has been reported and paid. This is usually a simple matter with the taxpayer only needing to supply the information requested.

Occasionally, Department tax examiners need to examine (audit) the basis of the reported tax. The Department's role during an audit is to review and examine the taxpayer's books, records, and other materials to determine if the taxpayer has complied with the tax laws. The taxpayer's role during an audit is to make records available upon request and provide access to people within the entity who can answer questions and provide information as needed.

In the event of an audit, the taxpayer has the right to:

- Know when the audit begins.*
- Have the audit conducted during regular business hours after the Department has provided reasonable notice.*
- Be assisted or represented by an attorney, accountant, bookkeeper, or other tax practitioner. Because of laws protecting taxpayer information from unauthorized disclosure, the Department will need a completed authorization form (a "TBOR 1" form, available at tax.ohio.gov) before it provides information to the representative.
- Refuse to answer any questions during an audit until consulting with a tax adviser. However, the Department's Tax Examiner can continue to inspect the taxpayer's records during this time.
- Record, electronically or otherwise, the audit examination.
- Pursue additional legal remedies if the Tax Examiner acted outside the scope of the law.

* These two provisions may not apply if the taxpayer is being investigated for suspected criminal activity.

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Assessments

In most cases, an assessment is a formal bill from the state for taxes not paid or underpaid, plus interest and penalties if applicable. Once an assessment is delivered, the taxpayer has 60 days to either pay or file a petition for reassessment. Complete instructions for filing a petition are included with the assessment.

Final Determinations and Appeals

A petition for reassessment is the first step in the appeal of an assessment with which the taxpayer disagrees. All petitions for reassessment receive an administrative review by the Department. When this review is complete, a final determination is issued by the Tax Commissioner, who is the Department's director.

The taxpayer has the right to appeal a final determination to the Board of Tax Appeals (BTA). An appeal must be made within 60 days and must be mailed to both the BTA and the Tax Commissioner. The BTA will provide a quasi-judicial hearing, review the facts and interpret the law. The BTA is independent of the Department and may affirm, modify or reverse the decision of the Tax Commissioner.

Complete instructions for filing an appeal are included with final determinations and final assessments.

Unpaid Assessments

The Department is not a collection agency and cannot offer payment plans. Any unpaid assessment will be certified to the Ohio Attorney General for collection. These collection procedures are spelled out in R.C. 131.02. To receive assistance with a certified assessment, call the Ohio Attorney General's office toll free at (888) 301-8885 for individual taxes or (888) 246-0488 for business taxes.

Refunds

Sometimes taxpayers overpay their tax liability. Examples are duplicate payments or failing to claim estimated payments or a credit carryforward balance when filing the return. R.C. 5703.77 became effective in September 2014 and requires the Department to periodically review its system accounts for credit balances, notify the taxpayer of any overpaid amount that is legally owed to the taxpayer, and issue a refund. Instead of issuing a refund, the Department may apply the credit balance against the taxpayer's liability in the next reporting period. Before issuing a refund, the Department shall withhold from that refund the amount of any tax debt certified to the attorney general and any other tax or fee owed to the Department.

Taxpayers not identified through the process described above may believe they have overreported their tax liability and are therefore owed a refund. In this case, the taxpayer must file an amended return or submit a refund application accompanied by the supporting documentation which will be reviewed by the Department.

Opinion of the Tax Commissioner

Taxpayers may request a binding opinion from the Tax Commissioner as to whether or how certain sources of income, transactions or activities should be taxed. Such requests must clearly identify all parties involved and fully describe the specific facts or circumstances relevant to the situation. If issued, a formal opinion of the Tax Commissioner protects the taxpayer who reasonably relies on it from liability for any taxes, penalty or interest that would otherwise be due until circumstances, rules, or the law changes, or the opinion is withdrawn. See R.C. 5703.53 for details.

Problem Resolution Officer

A Problem Resolution Officer is available to receive and review inquiries and complaints concerning matters that have been pending before the Department for an unreasonable length of time or matters to which a taxpayer has been unable to obtain a satisfactory response after several attempts to communicate with the employee or the employee's immediate supervisor.

Action for Damages

Under certain limited circumstances, a taxpayer may bring an action for damages in the Ohio Court of Claims. Such claims must meet a high standard - specifically, that a Department action or omission concerning an audit or an assessment showed "frivolous disregard" for a statute or rule. This means the Department's action or inaction must either be clearly unsupported under the law or serve to harass or maliciously injure the taxpayer. For more information, see R.C. 5703.54.

For More Information

For more information about the Taxpayers' Bill of Rights contact:

Problem Resolution Officer
Ohio Department of Taxation
P.O. Box 530
Columbus, Ohio 43216-0530
or call (614) 466-0832