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CHAPTER 58.

SOUTH CAROLINA TAXPAYERS' BILL OF RIGHTS

**SECTION 12‑58‑10.** Short title.

This chapter may be cited as the "South Carolina Taxpayers' Bill of Rights".

HISTORY: 1995 Act No. 76, Section 6.

**SECTION 12‑58‑20.** Administration of chapter.

The South Carolina Department of Revenue shall administer this chapter.

HISTORY: 1995 Act No. 76, Section 6.

**SECTION 12‑58‑30.** Taxpayers' Rights Advocate established; duties.

The department shall establish the position of the Taxpayers' Rights Advocate. The advocate or his designee is responsible for facilitating resolution of taxpayer complaints and problems, including any taxpayer complaints regarding unsatisfactory treatment of taxpayers by department employees, and staying actions where taxpayers have suffered or will suffer irreparable loss as the result of those actions. Applicable statutes of limitation are suspended during the pendency of a stay.

HISTORY: 1995 Act No. 76, Section 6.

**SECTION 12‑58‑40.** Taxpayer education and information program.

The department shall develop and implement a taxpayer education and information program directed at, but not limited to, all of the following groups:

(1) taxpayers newly registered with the department;

(2) taxpayer or industry groups identified by the department;

(3) department employees.

HISTORY: 1995 Act No. 76, Section 6.

**SECTION 12‑58‑50.** Implementation of taxpayer education and information program to be carried out; annual report of recommendations by department.

(A) The taxpayer education and information program specified in Section 12‑58‑40 includes, but is not limited to:

(1) mailings to, or appropriate contact with, the taxpayer groups specified in Section 12‑58‑40(2) which explain in simplified terms the most common areas of noncompliance the taxpayers or industry groups are likely to encounter;

(2) a program of written communication with newly registered taxpayers explaining in simplified terms their duties and responsibilities and the most common areas of noncompliance encountered by participants in their business or industry;

(3) participation in small business seminars and similar programs organized by state and local agencies;

(4) revision of taxpayer education materials currently produced by the department which explain the most common areas of taxpayers' nonconformance in simplified terms;

(5) implementation of a continuing education program for audit personnel to include the application of new legislation to taxpayer activities and areas of recurrent taxpayer noncompliance or inconsistency of administration.

(B) The department shall annually publish a report of recommendations for improving taxpayer compliance and uniform administration including, but not limited to:

(1) changes in statute or department regulations;

(2) improvement of training of department personnel;

(3) improvement of taxpayer communication and education.

HISTORY: 1995 Act No. 76, Section 6.

**SECTION 12‑58‑60.** Explanatory statements of procedures, remedies, rights and obligations of department and taxpayers; when and how provided.

The department shall publish brief but comprehensive statements in simple and nontechnical language which explain procedures, remedies, and the rights and obligations of the department and taxpayers. As appropriate, statements must be provided to taxpayers with the initial notice of audit, the notice of proposed additional taxes, any subsequent notice of tax due, or other substantive notices. Additionally, the department shall include the statement in the tax booklets which are mailed annually to individuals and corporations.

HISTORY: 1995 Act No. 76, Section 6.

**SECTION 12‑58‑70.** Deficiency and tax due notices; contents.

All deficiency notices and all tax due notices are required to contain a description of the basis for and identification of amounts of tax due, interest, and penalty.

HISTORY: 1995 Act No. 76, Section 6.

**SECTION 12‑58‑80.** Evaluation of department employee's performance.

(A) The amount of revenue collected may not be used to evaluate any department employee's performance.

(B) The department shall develop and implement a program to evaluate employee's performance with respect to his contact with taxpayers. The development and implementation of the program must be coordinated with the Taxpayers' Rights Advocate.

HISTORY: 1995 Act No. 76, Section 6.

**SECTION 12‑58‑90.** Hearings; recording; taxpayer to be informed of rights.

(A) Hearings may be recorded only if prior notice is given to the taxpayer and the taxpayer is entitled to receive a copy of the recording.

(B) The taxpayer must be informed before any hearing that he has a right to have present at the hearing his attorney, accountant, or other designated agent.

HISTORY: 1995 Act No. 76, Section 6.

**SECTION 12‑58‑100.** Failure to make timely return or payment due to reasonable reliance on written advice from department.

(A) If the department finds that a person's failure to make a timely return or payment is due to the person's reasonable reliance on written advice from the department, the person is relieved of any penalty or interest, notwithstanding the provisions of Section 12‑54‑160.

(B) For the purposes of this section, a person's failure to make a timely return or payment is considered to be due to reasonable reliance on written advice from the department only if the department finds that all of the following conditions are satisfied:

(1) The person requested in writing that the department advise him whether a particular activity or transaction is subject to tax under the tax laws administered by the department, and the specific facts and circumstances of the activity or transaction were fully described in the request.

(2) The department responded in writing to the person regarding the written request for advice, stating whether or not the described activity or transaction is subject to tax, or stating the conditions under which the activity or transaction is subject to tax.

(3) In reasonable reliance on the department's written advice, the person did not remit the tax due.

(4) The liability for taxes applied to a particular activity or transaction which occurred before either of the following:

(a) the department rescinded or modified the advice so given by sending written notice to the person of the rescinded or modified advice;

(b) a change in statutory or constitutional law, a change in the department's regulations, or a final decision of a court, which rendered the department's earlier written advice no longer valid;

(c) any person seeking relief under this section shall file with the department all of the following:

(i) a copy of the person's written request to the department and a copy of the department's written advice;

(ii) a statement signed under penalty of perjury, setting forth the facts on which the claim is based;

(iii) any other information which the department may require.

(d) only the person making the written request may rely on the department's written advice to that person.

HISTORY: 1995 Act No. 76, Section 6.

**SECTION 12‑58‑110.** Investigation or surveillance limited to department's responsibilities.

(A) An officer or employee of the department acting in connection with any law administered by the department may not knowingly authorize, require, or conduct any investigation of, or surveillance over, any person for any purpose outside the department's responsibilities.

(B) Any person violating subsection (A) is subject to disciplinary action in accordance with the department's procedure, including dismissal from office or discharge from employment.

(C) This section does not apply with respect to any otherwise lawful investigation concerning organized crime activities.

(D) The provisions of this section are not intended to prohibit, restrict, or prevent the exchange of information where the person is being investigated for multiple violations.

(E) For the purposes of this section:

(1) "Investigation" means any oral or written inquiry directed to any person, organization, or governmental agency.

(2) "Surveillance" means the monitoring of persons, places, or events by means of electronic interception, overt or covert observations, or photography, and the use of informants.

HISTORY: 1995 Act No. 76, Section 6.

**SECTION 12‑58‑120.** Release of levy issued or on any property.

The department shall release any levy issued or on any property in the event of any of the following:

(1) the liability for which the levy was made is satisfied;

(2) the department determines that release facilitates the collection of the liability;

(3) an installment payment agreement has been executed with respect to the liability;

(4) the department has determined that the levy creates an economic hardship due to the taxpayer's financial condition;

(5) if the department determines the fair market value of the property exceeds the liability and partial release does not hinder collection of the tax and related costs owed to the department.

HISTORY: 1995 Act No. 76, Section 6.

**SECTION 12‑58‑130.** Claim for reimbursement of bank charges due to erroneous levy by department; when filed; conditions to be satisfied; notification of denial to be in writing.

(A) A taxpayer may file a claim with the department for reimbursement of bank charges incurred by the taxpayer as the direct result of an erroneous levy by the department. Bank charges include a financial institution's customary charge for complying with the levy instructions and reasonable charges for overdrafts that are a direct consequence of the erroneous levy. The charges are those paid by the taxpayer and not waived or reimbursed by the financial institution. Each claimant applying for reimbursement shall file a claim with the department in a form prescribed by the department. For the department to grant a claim, the department shall determine that both of the following two conditions have been satisfied:

(1) the erroneous levy was caused by department error;

(2) before the levy, the taxpayer responded to all contacts by the department and provided the department with any requested information or documentation sufficient to establish the taxpayer's position. The conditions stated in this item may be waived by the department for reasonable cause.

(B) Claims pursuant to this section must be filed within ninety days from the date of the levy. Within thirty days from the date the claim is received, the department shall respond to the claim. If the department denies the claim, the taxpayer must be notified in writing of the reasons for the denial of the claim.

HISTORY: 1995 Act No. 76, Section 6.

**SECTION 12‑58‑150.** Appeal procedure for modifying or releasing liens.

The department shall provide for an administrative appeal procedure for modifying or releasing liens. The department may promulgate regulations to facilitate an appeals procedure for liens.

HISTORY: 1995 Act No. 76, Section 6.

**SECTION 12‑58‑160.** Release of lien filed in error; notification of appropriate parties; prompt action to correct error.

(A) If the department determines that filing a lien was in error, it shall mail a release to the taxpayer and the entity recording the lien as soon as possible after this determination and the receipt of lien‑recording information and shall take necessary action to expunge the recording of the lien from the taxpayer's record. The release must contain a statement that the lien was filed in error. If the erroneous lien is obstructing a lawful transaction, the department shall immediately issue a release of lien to the taxpayer and the entity recording the lien.

(B) When the department releases a lien erroneously filed, notice of that fact must be mailed to the taxpayer and upon the request of the taxpayer, a copy of the release must be forwarded to the major credit reporting companies. Submission of data under this section does not constitute a violation of Section 30‑2‑50.

HISTORY: 1995 Act No. 76, Section 6; 2006 Act No. 386, Section 32, eff June 14, 2006.

**SECTION 12‑58‑170.** Repealed by 2005 Act No. 161, Section 15.B, eff June 9, 2005.

**SECTION 12‑58‑180.** Applicability of provisions to taxes administered by department.

The provisions of this chapter are applicable to taxes administered by the department.

HISTORY: 1995 Act No. 76, Section 6.

**SECTION 12‑58‑185.** Extensions of payment periods; grounds; restrictions.

(A) The department, in its discretion, may accept installment payments for amounts due it for a period not to exceed one year from the date the payment was due. Interest accrues during the installment period, pursuant to Section 12‑54‑25. In addition, the department may extend the time for payment beyond one year if it is shown to the satisfaction of the department that the payment of the amount due it upon the date originally fixed for the payment will result in undue hardship to the taxpayer.

(B) An extension may not be granted under this section for an amount due the department if the taxpayer acted negligently, disregarded rules or regulations intentionally, or committed fraud with intent to evade tax.

HISTORY: 1998 Act No. 386, Section 1; 2001 Act No. 89, Section 39, eff July 20, 2001; 2005 Act No. 145, Section 37, eff June 7, 2005.

**SECTION 12‑58‑190.** Delay or denial of refund because of audit for different tax period; disciplinary action.

(A) An officer or employee of the department may not deny a refund or delay the issuance of the department's order to the State Treasurer to pay a refund that has been determined to be due because the department is auditing or planning an audit of the taxpayer for a different tax or different tax period. This subsection does not prevent the issuance of an assessment, including a jeopardy assessment, pursuant to the Revenue Procedures Act.

(B) A person violating subsection (A) is subject to disciplinary action in accordance with the department's procedure, including dismissal from office or discharge from employment.

HISTORY: 2005 Act No. 161, Section 15.A, eff upon approval (became law without the Governor's signature on June 9, 2005).