



Massachusetts Taxpayers Foundation



September 25, 2015

The Honorable Michael J. Rodrigues
Chair, Joint Committee on Revenue
State House, Room 213B
Boston, MA 02133

The Honorable Jay R. Kaufman
Chair, Joint Committee on Revenue
State House, Room 34
Boston, MA 02133

Dear Chairmen:

The business community renews its opposition to the bills before the committee that would expand the duties and powers of the State Auditor (H6) and Inspector General (H12). These bills would provide each office with access to confidential personal and business income tax returns. The proposed legislation, including the language which attempts to ensure confidentiality, still threatens to erode taxpayer privacy while giving the auditor and/or inspector general broad authority to access sensitive and confidential information about virtually every taxpayer in the state.

State law provides the auditor access to myriad documents and records which allows that office to perform important audits of state departments and agencies, identify areas for improved service across state government, and expose fraud in state programs. However, state law also specifically excludes tax returns from such access, and for good reason.

Treating tax returns as confidential documents and protecting taxpayer privacy is paramount in the state's tax system. Expanding access to tax return information beyond the Department of Revenue (DOR), especially any data that directly or indirectly identifies a specific taxpayer, begins to erode a cornerstone of our tax system.

While there are 26 other exemptions regarding access to tax return information, that broad assessment obscures a key difference: most of the existing exemptions allow limited access to specific information contained in tax returns. For example, it allows agencies to check whether a recipient of public assistance has received interest payments from a bank, or the corrections department to access contact information under certain circumstances, and the disclosure of income to determine child support payments. By contrast, this legislation provides access to entire tax returns and a legion of confidential information.

To be clear, H6 would expand the auditor's powers not only by providing access to tax returns, but also by giving the explicit authority to review tax expenditures and state tax policy. The Legislature and the administration already have the authority to review tax expenditures, and often make such reviews statutory requirements. For example, the Legislature requires an annual report that provides details on 11 transferable and refundable state tax credits, while DOR has already demonstrated that it is capable of measuring the effectiveness of tax credits through such work as the annual report on the film tax credit. Furthermore, DOR has staff dedicated to ensuring compliance and proper implementation of tax policy.

Providing explicit authority regarding tax expenditures is also problematic because, as explained in the Massachusetts Taxpayers Foundation 2012 report, *State Tax Expenditures: Less Than Meets the Eye*, what qualifies as a tax expenditure is highly subjective. Some of the state's tax expenditures reflect DOR's far-reaching interpretation of what constitutes a tax expenditure rather than a clear-cut exception to the application of a tax. In particular, many of the so-called corporate tax expenditures are in fact elements of state tax policy. For example,

DOR considers the net operating loss carry-forward to be a tax expenditure. However, these carry-forwards are so integral to the tax code that they are excluded from the Joint Committee on Taxation's (JCT) federal tax expenditure budget because they "represent normal income tax law."¹

Much of the discussion surrounding this proposal has focused on how this legislation would expand access to corporate tax returns, but it is important to note that the legislation would also include access to personal income tax returns. Since nearly every personal income taxpayer in Massachusetts claims at least one so-called tax expenditure, this legislation would give the auditor and/or inspector general the right to access almost any tax return—personal or corporate. While the present officeholders may have no intention of accessing personal returns or applying this authority as broadly as permitted under the legislation, there is no way to account for how future officeholders would interpret this authority.

Our business organizations wholeheartedly believe transparency and accountability are necessary elements of an effective government, but we also believe it is prudent to balance the rights and needs of taxpayers. However well-intentioned this bill may be, extending broad access to personal and corporate tax returns to an office other than DOR chips away at the vital principle of taxpayer privacy.

Sincerely,



Eileen McAnney, President
Massachusetts Taxpayers Foundation



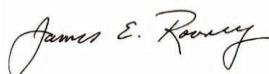
JD Chesloff, Executive Director
Massachusetts Business Roundtable



Bradley MacDougall, Vice President
Associated Industries of Massachusetts



Amy Pitter, President & CEO
Massachusetts Society of CPAs



James E. Rooney, President & CEO
Greater Boston Chamber of
Commerce

CC: Senator Benjamin B. Downing, Senator Ryan C. Fattman, Senator Eric P. Lesser, Senator James E. Timilty, Senator Daniel A. Wolf, Representative James Arciero, Representative Shawn Dooley, Representative James J. Dwyer, Representative Randy Hunt, Representative Denise Provost, Representative Alan Silva, Representative Thomas M. Stanley, Representative Walter F. Timilty, Representative Timothy J. Toomey, Jr.

¹ Joint Committee on Taxation, *Background Information on Tax Expenditure Analysis and Historical Survey of Tax Expenditure Estimates*, JCX-15-11 (Washington, D. C.: U.S. Government Printing Office, February 28, 2011), 8. In the JCT analysis, only deviations that are more favorable than the 20-year carry-forward period are counted as tax expenditures.