

HOUSE BILL No. 5715

May 3, 1990, Introduced by Reps. Bryant, Weeks, Martin, Dunaskiss, Bandstra, Pridnia, Kulchitsky, Emmons, Munsell, Hillegonds, Van Singel, Giese, Gnodtke, Strand, Allen, Runco, Camp, Middaugh, Stacey, Willis Bullard, London, Law, Miller, Maynard, Muxlow, Sparks, Knight, Gilmer, Van Regenmorter, Walberg, Hoekman, Nye, Jaye, Randall, Hart, Trim, Power, Sikkema, Bankes, Bender, DeLange, Fitzgerald, Crandall and Dolan and referred to the Committee on Taxation.

A bill to create the office of the legislative taxpayer ombudsman and the taxpayer grievance council; and to prescribe the powers and duties of the ombudsman, the grievance council, the legislative council, and the department of treasury.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "taxpayer assistance act".

3 Sec. 2. As used in this act:

4 (a) "Administrative act" includes an action, omission, deci-
5 sion, recommendation, practice, or other procedure of the
6 department.

7 (b) "Department" means the department of treasury.

8 (c) "Grievance council" means the taxpayer grievance council
9 established under section 16.

1 (d) "Legislative council" means the legislative council
2 established under section 15 of article IV of the state
3 constitution of 1963.

4 (e) "Ombudsman" means the office of legislative taxpayer
5 ombudsman established under section 3.

6 (f) "Taxpayer" means a person against which the department
7 levies a tax administered under the state revenue administration
8 act, Act No. 122 of the Public Acts of 1941, being sections 205.1
9 to 205.31 of the Michigan Compiled Laws.

10 Sec. 3. (1) The office of the legislative taxpayer ombuds-
11 man is created within the legislative council.

12 (2) The principal executive officer of the office of the
13 legislative taxpayer ombudsman is the legislative taxpayer
14 ombudsman who shall be appointed by and serve at the pleasure of
15 the legislative council. The legislative council shall establish
16 procedures for approving the budget of, for expending funds of,
17 and for the employment of personnel for the ombudsman.

18 Sec. 4. (1) Upon receipt of a complaint or upon the
19 ombudsman's own initiative, the ombudsman may investigate an
20 administrative act that is alleged to be contrary to law, con-
21 trary to departmental policy, unaccompanied by an adequate state-
22 ment of reason, or based upon irrelevant, immaterial, or errone-
23 ous grounds.

24 (2) Subject to approval of the legislative council, the
25 ombudsman shall establish procedures for receiving and processing
26 complaints, conducting investigations, holding hearings, and
27 reporting the findings resulting from the investigations.

1 Sec. 5. (1) Upon request, the ombudsman shall be given
2 access to all information, records, and documents in the posses-
3 sion of the department that the ombudsman considers necessary in
4 an investigation. The department shall assist the ombudsman in
5 obtaining the necessary releases for a document that is specifi-
6 cally restricted or privileged for use by the ombudsman.

7 (2) The ombudsman may hold informal hearings and may request
8 that any person appear before the ombudsman, or at a hearing, and
9 give testimony or produce documentary or other evidence that the
10 ombudsman considers relevant to a matter under investigation.

11 Sec. 6. (1) The ombudsman shall advise a taxpayer to pursue
12 all administrative remedies or channels of complaint open to the
13 taxpayer. The ombudsman may request and shall receive from the
14 department progress reports concerning the administrative pro-
15 cessing of a complaint. Subsequent to administrative action on a
16 complaint, the ombudsman may conduct further investigations of a
17 complaint upon request of the taxpayer or upon the ombudsman's
18 own initiative.

19 (2) The ombudsman is not required to hold an investigation
20 on a complaint brought before the ombudsman. A taxpayer is not
21 entitled as a right to be heard by the ombudsman.

22 Sec. 7. If the ombudsman decides to investigate a com-
23 plaint, the ombudsman shall notify the taxpayer and the depart-
24 ment of that decision. If the ombudsman declines to investigate
25 a complaint or to continue an investigation, the ombudsman shall
26 notify the taxpayer and the department of the decision and of the
27 reasons for the ombudsman's action.

1 Sec. 8. Upon request of the ombudsman, the legislative
2 council may hold a hearing as authorized by section 104 of the
3 legislative council act, Act No. 268 of the Public Acts of 1986,
4 being section 4.1104 of the Michigan Compiled Laws. The legisla-
5 tive council may administer oaths, subpoena witnesses, and
6 examine the books and records of the department or of a person,
7 partnership, or corporation involved in a matter that is a proper
8 subject of investigation by the ombudsman under this act.

9 Sec. 9. (1) Correspondence between the ombudsman and a tax-
10 payer is confidential and shall be processed as privileged corre-
11 spondence in the same manner as a letter between a taxpayer and a
12 court, attorney, or public official.

13 (2) The ombudsman shall maintain secrecy with respect to all
14 matters and the identity of a taxpayer or other person from whom
15 information is acquired, except so far as disclosures may be nec-
16 essary to enable the ombudsman to perform the duties of the
17 office and to support a recommendation resulting from an
18 investigation.

19 Sec. 10. The ombudsman shall prepare a report of the find-
20 ings of an investigation and make recommendations to the legisla-
21 tive council if the ombudsman finds any of the following:

22 (a) A matter should be further considered by the
23 department.

24 (b) An administrative act should be modified or canceled.

25 (c) A statute or rule on which an administrative act is
26 based should be altered.

1 (d) Reasons should be given for an administrative act.

2 (e) Other action should be taken by the department.

3 Sec. 11. Before announcing a conclusion or recommendation
4 that expressly or by implication criticizes a person or the
5 department, the ombudsman shall consult with that person or the
6 department. When publishing an opinion adverse to the department
7 or a person, the ombudsman shall include in the publication a
8 statement of reasonable length made to the ombudsman by the
9 department or person in defense or mitigation of the action. The
10 ombudsman may request to be notified by the department, within a
11 specified time, of an action taken on a recommendation
12 presented. The ombudsman shall notify the taxpayer of the
13 actions taken by the ombudsman and by the department.

14 Sec. 12. If a taxpayer shows to the satisfaction of the
15 ombudsman that unreasonable harm will result from an enforcement
16 action by the department against the taxpayer, the ombudsman may
17 issue a taxpayer assistance order to stop the enforcement
18 action. The ombudsman shall specify in the order the extent and
19 duration of a taxpayer assistance order.

20 Sec. 13. The ombudsman shall submit to the legislative
21 council and the legislature an annual report on the conduct of
22 the office.

23 Sec. 14. (1) The department shall not in any way penalize a
24 taxpayer who files a complaint or cooperates with the ombudsman
25 in investigating a complaint.

26 (2) A person or the department shall not hinder the lawful
27 actions of the ombudsman or employees of the office and shall not

1 intentionally refuse to comply with lawful demands of the
2 office.

3 Sec. 15. The authority granted the ombudsman is in addition
4 to the authority granted under the provisions of any other act or
5 rule under which the remedy or right of appeal or objection is
6 provided for a person, or the authority allowed under any proce-
7 dure provided for the inquiry into or investigation of any
8 matter. The authority granted the ombudsman does not limit or
9 affect a remedy or right of appeal or objection and shall not be
10 considered part of an exclusionary process.

11 Sec. 16. (1) The taxpayer grievance council is established
12 in the office of the legislative taxpayer ombudsman. The griev-
13 ance council consists of 10 members, recommended by the ombudsman
14 and approved by the legislative council, from the following
15 categories:

16 (a) Three former employees of the department.

17 (b) Three retired private sector tax consultants.

18 (c) Four citizens of this state not employed in the public
19 sector.

20 (2) Except for the initial members, a grievance council
21 member shall serve a 4-year term. Of the initial members of the
22 grievance council, 2 shall be appointed for 1 year, 2 for 2
23 years, 3 for 3 years, and 3 for 4 years, as recommended by the
24 ombudsman and approved by the legislative council.

25 (3) A grievance council member shall serve without compensa-
26 tion, but shall be reimbursed for the actual and necessary

1 expenses incurred in the performance of grievance council
2 business.

3 Sec. 17. (1) The grievance council shall consider a com-
4 plaint that a taxpayer or the ombudsman submits to the grievance
5 council. The grievance council shall not consider a complaint
6 unless the dispute has otherwise been finally resolved.

7 (2) In considering a complaint, the grievance council may
8 examine the administrative and judicial record of the dispute.
9 Upon request, the grievance council shall be given access to all
10 information, records, and documents in the possession of the
11 department that the grievance council considers necessary in con-
12 sidering a complaint. The department shall assist the grievance
13 council in obtaining the necessary releases for a document that
14 is specifically restricted or privileged for use by the grievance
15 council.

16 (3) The taxpayer, department, and ombudsman may make infor-
17 mal presentations to the grievance council including, but not
18 limited to, testimony and documentary or other evidence that the
19 grievance council considers relevant.

20 Sec. 18. (1) As a result of the consideration of a com-
21 plaint, the grievance council may identify legal or administra-
22 tive failings in the collection of a tax administered by the
23 department. The grievance council shall report those failings to
24 the ombudsman or the legislative council along with any statuto-
25 ry, administrative, or other changes that the grievance council
26 believes would correct the failings.

1 (2) If a taxpayer shows to the grievance council's
2 satisfaction that the taxpayer has incurred expenses as a result
3 of an unfair or unjustified tax collection action by the depart-
4 ment, which expenses have not been compensated, the grievance
5 council may award the taxpayer compensation not to exceed
6 \$50.00.