

FLORIDA DEPARTMENT OF REVENUE



Taxpayer Rights Advocate

Annual Report

For the Fiscal Year

July 1, 2018 through June 30, 2019

Taxpayer Rights Advocate’s Annual Report FY18-19

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Section 1: Taxpayer Rights and the Taxpayer Rights Advocate

The Taxpayer Rights Advocate is a statutory position administratively placed within the Department of Revenue's Executive Direction and Support Services Program. In this report, the Florida Department of Revenue is denoted by the abbreviation DOR. The abbreviation TRA denotes the Office of the Taxpayer Rights Advocate. Under 2018 legislation, TRA is appointed by and reports to the Chief Inspector General and may be removed from office only by the Chief Inspector General. For administrative purposes only, TRA is under the general supervision of the DOR Executive Director. A copy of the 2018 statutes applicable to TRA operations is in Section 5 of this report.

Constitutional and Statutory Requirements for Taxpayer Rights

Article I, Section 25, of the Florida Constitution, provides for taxpayer rights in the State of Florida, and is presented below in its entirety.

"Taxpayers' Bill of Rights.—By general law the legislature shall prescribe and adopt a Taxpayers' Bill of Rights that, in clear and concise language, sets forth taxpayers' rights and responsibilities and government's responsibilities to deal fairly with taxpayers under the laws of this state. This section shall be effective July 1, 1993."

"History.—Proposed by Taxation and Budget Reform Commission, Revision No. 2, 1992, filed with the Secretary of State May 7, 1992; adopted 1992."

The 1992 Florida Legislature passed legislation creating the Taxpayer's Bill of Rights. These rights are set forth in section 213.015, F.S. (2018), a copy of which is in Section 5 of this report. The Taxpayer's Bill of Rights specifies that Florida taxpayers have the right to request assistance from a DOR Taxpayer Rights Advocate, who is responsible for facilitating the resolution of taxpayer complaints and problems not resolved through the normal administrative channels within DOR. The role of TRA is addressed further in sections 20.21(3) and 213.018, F.S., and is discussed below.

TRA Role Provided in Florida Statutes

Under section 20.21(3), F.S., TRA's responsibilities include: 1) facilitating the resolution of taxpayer complaints and problems which have not been resolved through normal administrative channels within DOR; 2) issuing a stay action on behalf of a taxpayer who has suffered or is about to suffer irreparable loss as a result of action by DOR; and 3) producing an annual report. The requirement for TRA to produce an annual report was enacted in 2018. This report is the second under the new legislation.

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Section 213.018, F.S., clarifies that TRA's duty to facilitate the resolution of taxpayer complaints is to assure that taxpayer rights are safeguarded and protected during the tax determination and collection processes.

Section 213.018(2)(a), F.S., clarifies that a stay order, also referred to as a taxpayer assistance order, may be issued only as an extraordinary measure and cannot be used to contest the merits of a tax liability or as a substitute for informal protest procedures or normal administrative or judicial proceedings. Generally, it is not necessary for TRA to issue a stay order, because DOR generally cooperates in allowing TRA time to review taxpayer issues and facilitate resolution.

TRA Limited Scope of Authority

Taxpayers or taxpayer representatives contact TRA regarding their unresolved issues relating to DOR's general tax process. TRA does not administer DOR's general tax process, which is administered by other DOR organizational units. While TRA works with other DOR organizational units, TRA is not authorized to act as a substitute for any of them.

TRA is not authorized to represent a taxpayer, but TRA can and does serve as an advocate for the rights of taxpayers under Florida law. In facilitating the resolution of taxpayer issues, TRA is bound by the same legal criteria as the organizational units that administer the general tax laws. TRA has no authority to create or impose rights or responsibilities not provided in law. TRA cannot serve as a substitute for the normal administrative or judicial proceedings for the review of tax determinations. See section 213.018(2)(a), F.S., in Section 5 of this report.

Unlike the general tax process, which is administered at the state level by DOR, the property tax process is administered in each county by local officials. Accordingly, TRA does not handle taxpayer contacts regarding local property tax matters. When TRA receives such a contact, TRA refers it to DOR's Property Tax Oversight Program (PTO) for handling.

Overview of TRA Operations and Resources

TRA tax-related operations include receiving, evaluating, researching, and responding to customer contacts regarding tax-related matters and performing other tax-related tasks within DOR. TRA's general tax operations are described in Section 2 of this report.

TRA's tax-related operations are oriented around: 1) tax types, other facts, and applicable law; 2) DOR's general tax processes and procedures; and 3) the Florida Taxpayer's Bill of Rights in section 213.015, F.S. The complete text of the Taxpayer's Bill of Rights is in Section 5 of this report.

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Other TRA tax-related operations include but are not limited to: 1) informing Florida taxpayers of their rights and TRA's role primarily through speaking engagements; 2) working with DOR management and staff to improve knowledge, processes, publications, and customer service; and 3) producing an annual report with recommendations for improving taxpayer services.

TRA works with management and staff in other DOR organizational units including the General Tax Administration Program (GTA), the Office of General Counsel (OGC), the Technical Assistance and Dispute Resolution office (TADR), the Property Tax Oversight Program (PTO), the Information Systems Program (ISP), the Office of Workforce Management, the Inspector General's office and the Executive Director's office. In these working relationships, TRA provides and receives information and assistance.

The subjects of these interactions may include but are not limited to: responses to customer contacts, taxpayer surveys, audits, discovery, collections, operational research and trends, the hiring process, customer service, website improvements, technology development, tax-related research, process improvements, rulemaking, statistical sampling, data review and analysis, legislative review, litigation, education and training, and technical advisories.

TRA relies upon the DOR Executive Director to provide needed resources. In addition to the Taxpayer Rights Advocate position, TRA has two Tax Law Specialist positions. Also, TRA receives part time support with advanced technical subjects from an Intra-Departmental Projects Administrator within DOR.

Prior to FY 2018-2019, the computer system available for TRA to maintain information about tax-related contacts was dated and not capable of handling the detailed information desired for TRA's first annual report produced under 2018 legislation. After enactment of this legislation, TRA worked within a short time frame with the DOR Information Services Program to develop a better computer system for FY 2018-2019. However, due to the short timeframe available for designing, developing, and implementing this new system, it is not perfect. The development of an improved system for coding, storing, and maintaining needed information will be ongoing.

TRA's objectives for the upcoming fiscal year are to continue: 1) assisting Florida taxpayers with resolving state tax matters not resolved through the normal channels; 2) identifying and recommending improvements in DOR's administration of state taxes; and 3) identifying and taking steps to improve taxpayer services.

Improvements in Taxpayer Services

Steps TRA has taken to improve taxpayer services include the following.

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- Recommendations for Legislation to Improve Taxpayer Services: In the previous annual report (FY 17-18), TRA recommended legislation to improve taxpayer services.
- Recommendations for Administrative Actions to Improve Taxpayer Services: In the previous annual report (FY 17-18), TRA recommended administrative actions to improve taxpayer services.
- Annual Employee Training and Acknowledgement of the Taxpayer Bill of Rights: Under this initiative, each DOR employee involved in the general tax process must now complete training on the Taxpayer's Bill of Rights and acknowledge that the employee understands the content and will comply. This training was enhanced to include a requirement that employees complete a quiz to pass the training.
- Improved Internet Presence of TRA: DOR's main webpage was improved to include quick links to the Taxpayer's Bill of Rights and to information about TRA. This improved public access to information on taxpayer rights and TRA services.
- Development of a Better Information System: This fast-track project was initiated in response to 2018 legislation requiring TRA to perform more detailed analyses of tax-related contacts and provide recommendations for improving tax administration. As noted previously, this project will be ongoing in the foreseeable future.

Steps TRA is planning to take to improve taxpayer services include the following.

- Recommendations for Legislation to Improve Taxpayer Services: TRA plans to continue recommending legislation to improve taxpayer services.
- Recommendations for Administrative Actions to Improve Taxpayer Services: TRA plans to continue recommending administrative actions to improve taxpayer services.
- Improve Agency Responsiveness to TRA's Recommendations and Initiatives: TRA plans to work with DOR management to help improve agency responsiveness to TRA's initiatives and recommendations regarding enhancements to taxpayer services and the consistent application of taxpayer rights.
- Ensuring that Audited Taxpayers Receive a Copy of the Taxpayer's Bill of Rights: TRA will continue to recommend that each audited taxpayer be provided with a copy of the Taxpayer's Bill of Rights both at the beginning of the audit and at the time a Notice of Proposed Assessment is issued when the audit is completed.

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- Continue to Review the Results of GTA's Post-Audit Surveys: TRA will continue to review these surveys results for any indication of opportunities to improve taxpayer services during the audit process.
- Enhanced Training on the Taxpayer Bill of Rights for DOR Employees: TRA will recommend that this training be enhanced to include examples of applying the bill of rights and that the training quiz be expanded.
- Implementation of Training for Taxpayers on the Taxpayer Bill of Rights: TRA will recommend that DOR expand its online training for taxpayers to include training for taxpayers on the Taxpayer's Bill of Rights.
- Development of an Improved Information System: This project will be ongoing in the foreseeable future to enable TRA to develop and apply better coding systems to facilitate more detailed analyses of tax-related contacts.

Section 2: TRA Tax-Related Operations

This section describes TRA's tax-related operations, which are oriented around: 1) tax types, other facts, and applicable law, 2) DOR's general tax processes and procedures, and 3) the Florida Taxpayer's Bill of Rights set forth in section 213.015, F.S. The complete text of the Taxpayer's Bill of Rights is in Section 5 of this report. Florida law provides for taxpayer rights, and these rights must be observed and protected.

Overview of the DOR General Tax Process

DOR is responsible for administering Florida's state tax laws in a fair, consistent, and efficient manner. Promoting voluntary compliance is an important part of DOR's mission to ensure that all taxpayers pay their applicable taxes. To promote voluntary compliance, DOR provides a taxpayer education webpage that explains how taxpayers can access DOR's educational publications, online tutorials, and webinars. DOR implemented the webinars in partnership with SCORE (Service Corps of Retired Executives), a nonprofit association of volunteer business counselors.

DOR also has an obligation to monitor compliance and take necessary action to encourage compliance with tax laws. DOR's tax administration duties include conducting audits and performing discovery and collection activities. In DOR's administration of tax laws, the rights of taxpayers must be observed and protected. During the audit process, DOR reportedly provides audited taxpayers with information on taxpayer rights, but TRA recommends that DOR establish a requirement that each audited taxpayer be provided a copy of the Taxpayer's Bill of Rights at the beginning and end of each audit.

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DOR's general tax process is administered primarily by a DOR organizational unit known as the General Tax Administration Program (GTA). Another DOR organizational unit, known as Technical Assistance and Dispute Resolution (TADR), also has a key role in DOR's general tax process by: 1) providing technical assistance services to taxpayers, taxpayer representatives, and GTA, and 2) providing dispute resolution services when taxpayers dispute tax assessment or refund determinations made by GTA. Additionally, DOR's Office of General Counsel (OGC) provides legal review of general tax issues.

TRA is independent of GTA and TADR and, under Florida law, TRA cannot serve as a substitute for GTA and TADR. Likewise, TRA cannot serve as a substitute for the normal administrative or judicial proceedings for the review of tax determinations. See section 213.018(2)(a), F.S.

TRA routinely interacts with GTA, TADR, and OGC regarding the general tax process. TRA uses GTA computer systems to verify information or conduct research.

DOR partners in the general tax process include, but are not limited to, the following.

- Taxpayers
- Businesses and employers
- Local governments
- Third party debt collectors
- National tax associations
- Tax Section of the Florida Bar
- Professional accounting organizations such as FICPA and AICPA
- Florida Department of Agriculture and Consumer Services
- Florida Department of Economic Opportunity
- U.S. Department of Labor
- Internal Revenue Service
- U.S. Customs Service

DOR administers over 30 taxes and fees, including the sales and use tax, reemployment assistance tax, documentary stamp tax, corporate income tax, motor fuel tax, communication services tax, and insurance premium tax, among others.

Types of Tax-Related Contacts Handled by TRA

In this report, TRA generally defines the term "contact" as communication originating from outside DOR on tax-related matters and that are received directly by TRA or referred to TRA. TRA tax-related contacts are divided into the following five categories.

- **Requests:** These are requests for assistance on subjects such as tax forms, taxability of a situation generally, appeal rights, taxpayer rights, etc.

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- **Inquiries:** These are contacts regarding the specific details of a taxpayer’s account such as appeal rights and deadlines, notices, payments, etc.
- **Complaints:** These are contacts where taxpayers or representatives express dissatisfaction with DOR or an employee regarding an audit, notice, assessment, collection activity, penalty, interest, customer service, etc.; complaints include post-audit review cases where the taxpayer contacts TRA directly for assistance.
- **Post-Audit Reviews:** These are contacts where a taxpayer account is in the collections process, the appeals period has expired, and the taxpayer has contacted DOR collections staff and collections staff has referred the taxpayer to TRA and provided to TRA documentation regarding the taxpayer’s issues; TRA reviews the documentation to prepare for any direct contact from the taxpayer given the time-sensitive nature of the collections process.
- **Other Contacts:** These are contacts that do not fall within any of the other contact categories and include compliments. Compliments are defined as an expression of appreciation for assistance provided by any member of DOR.

As shown below, Table 1 and Figure 1 contain an analysis of the tax-related contacts handled by TRA in FY 18-19. The “Other Contacts” category included three compliments.

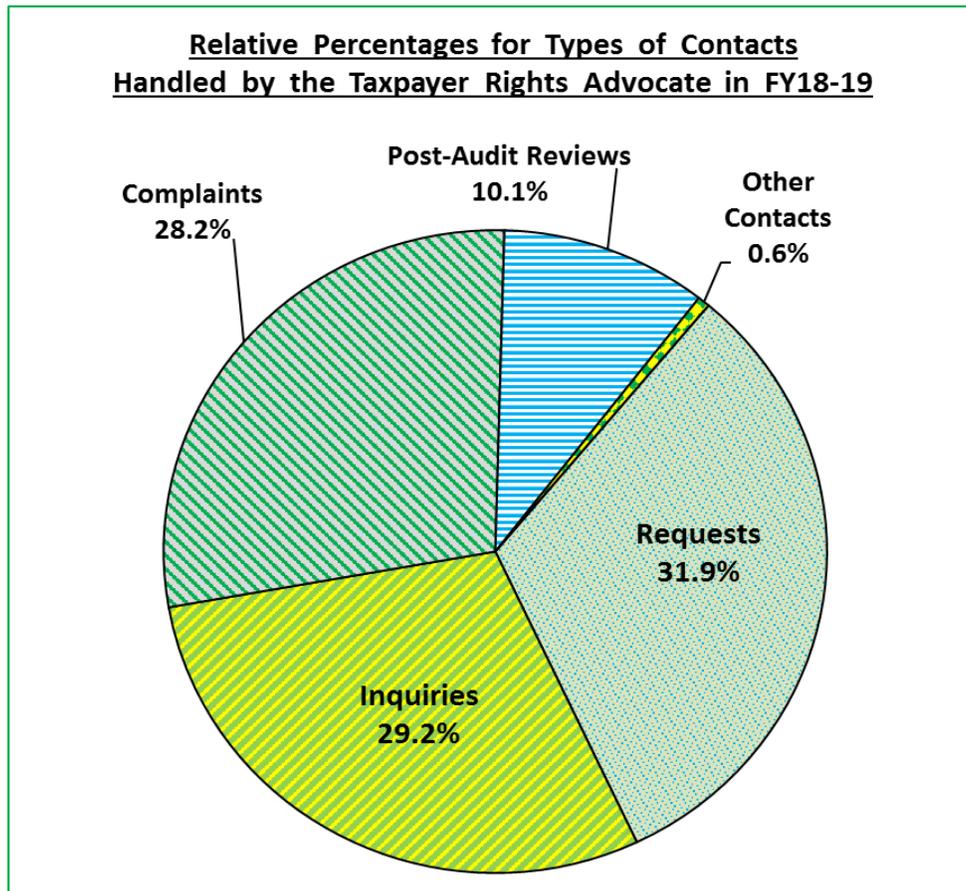
TABLE 1

Types of Contacts Handled by the Taxpayer Rights Advocate in FY18-19		
Contact Type	Number of Contacts	Percent of Total Contacts
Requests	218	31.9%
Inquiries	200	29.2%
Complaints	193	28.2%
Post-Audit Reviews	69	10.1%
Other Contacts	4	0.6%
Totals =	684	100.0%

Note: Most or all state tax-related contacts, regardless of whether the contact meets the strict definition of a complaint, can provide useful information on ways to improve tax administration and taxpayer services and, thus, is useful for addressing statutory requirements.

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FIGURE 1



Overview of TRA Procedures for Handling Tax-Related Contacts

In handling taxpayer contacts, TRA generally needs to ask questions and conduct research to identify pertinent facts of the case such as the tax type, DOR activity involved, and taxpayer circumstances. This information enables TRA to identify the issue and taxpayer rights involved and find a reasonable solution consistent with facts and law. In many cases, handling tax-related contacts involves extensive research and communication to identify or verify the relevant facts and applicable law.

Additionally, handling tax-related contacts often requires TRA to research statutes, rules, and agency procedures to identify reasonable solutions. It is necessary to identify the standards applicable to the facts of the tax matter that is the subject of the contact. These standards include substantive law and the Taxpayer's Bill of Rights set forth in section 213.015, F.S. In handling tax-related contacts, TRA is bound by the same standards as GTA in administering the general tax process. Generally, tax-related contacts received by TRA involve complex issues.

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TRA Tax-Related Contacts Analyzed by Tax Type

Four DOR-administered tax types are the most common for tax-related contacts handled by TRA. These four tax types are the sales and use tax, reemployment assistance tax, documentary stamp tax, and corporate income tax. These four, along with a category for other tax-related contacts, are summarized below.

- **Sales and Use Tax:** This contact type involves the taxes provided in Chapter 212, F.S. It includes the state sales tax, the use tax, and the discretionary sales surtax. The sales tax is applied to transactions such as: retail sales of taxable items; rentals, leases, or other licenses to use real property; and rentals of short-term living accommodations such as hotel rooms. The use tax is due on the use or consumption of taxable goods or services when sales tax was not paid at the time of purchase. In most counties, there is a discretionary sales surtax that applies to most transactions subject to the sales or use tax. The discretionary sales surtax is a local-option, county-imposed tax that is collected along with sales tax; it is then sent to DOR and DOR distributes the tax to counties for use in funding authorized local projects.
- **Reemployment Assistance Tax:** This contact type involves the reemployment assistance tax provided in Chapter 443, F.S. This is a tax on wages paid by Florida employers to provide partial, temporary income to workers who lose their jobs through no fault of their own and who are able and available to work.
- **Documentary Stamp Tax:** This contact type involves the tax provided in sections 201.02, 201.07, and 201.08, F.S. This is an excise tax on documents such as deeds, bonds, notes and other written obligations to pay money, and mortgages, liens, and other evidences of indebtedness.
- **Corporate Income Tax:** This contact type involves the tax provided in Chapter 220, F.S. Generally, all corporations, associations, or entities doing business, earning income, or existing in Florida are required to file a Florida Corporate Income/Franchise Tax Return.
- **Other Tax-Related Contacts:** This category may include contacts about other tax types such as motor fuel tax, communication services tax, insurance premium tax, or other taxes or fees administered by DOR.

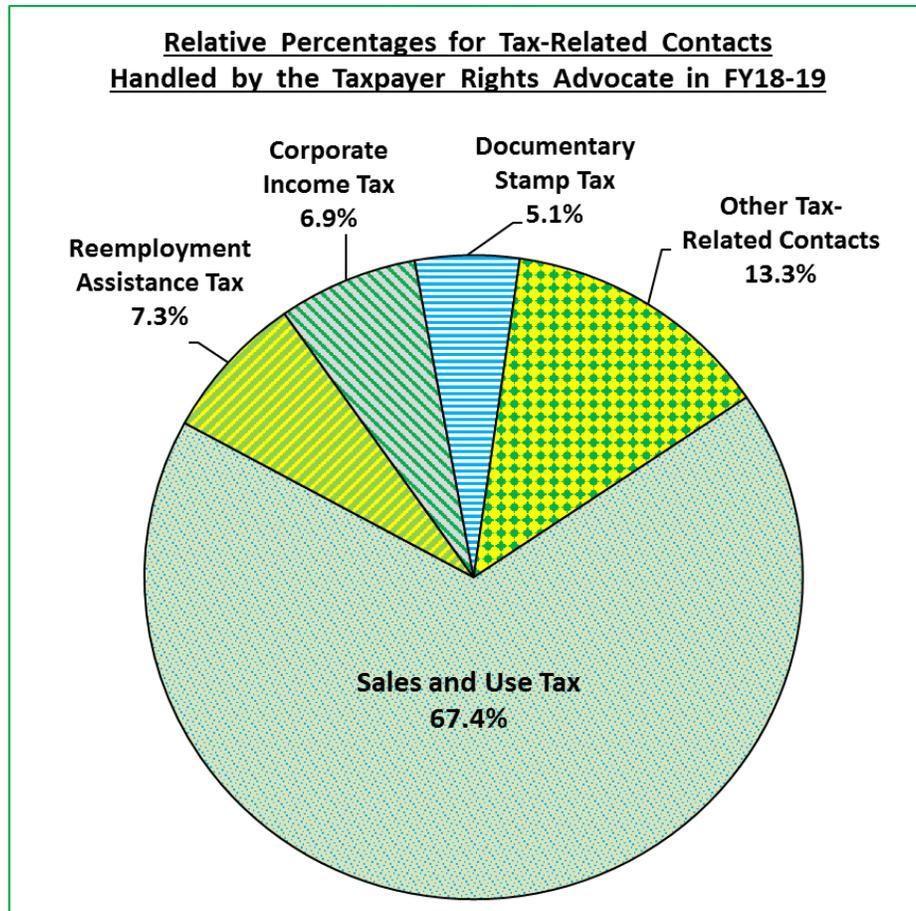
Table 2 and Figure 2 below contain an analysis by tax type of the tax-related contacts handled by TRA in FY 18-19. The "Other Tax-Related Contacts" category includes a variety of other tax types administered by DOR, as well as 14 property tax contacts which TRA refers to DOR's Property Tax Oversight Program (PTO) for handling.

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TABLE 2

Tax-Related Contacts Handled by the Taxpayer Rights Advocate in FY18-19		
Tax Type	Number of Contacts	Percent of Total Contacts
Sales and Use Tax	461	67.4%
Reemployment Assistance Tax	50	7.3%
Corporate Income Tax	47	6.9%
Documentary Stamp Tax	35	5.1%
Other Tax-Related Contacts	91	13.3%
Totals =	684	100.0%

FIGURE 2



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Contacts in the Sales and Use Tax category comprise about two-thirds of all tax-related contacts handled by TRA. This high percentage is expected given the magnitude of this tax type and the large number of taxpayer accounts involved.

TRA Tax-Related Complaints Analyzed by Tax Type

As explained above, complaints are a type of contact where taxpayers or taxpayer representatives express dissatisfaction with DOR or an employee regarding an audit, notice, assessment, collection activity, penalty, interest, customer service, etc.

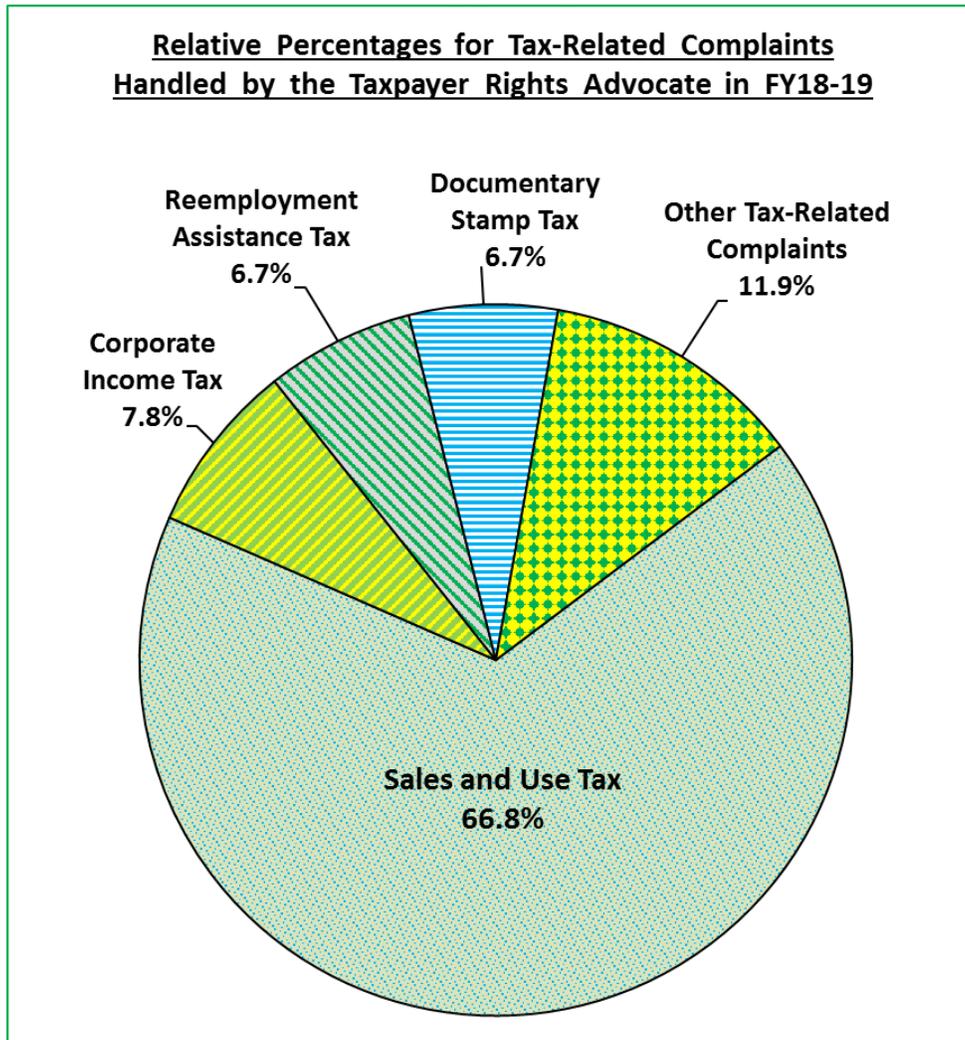
Table 3 and Figure 3 below contain an analysis by tax type of the tax-related complaints handled by TRA in FY 18-19. The "Other Tax-Related Complaints" category includes a variety of other tax types administered by DOR, as well as five property tax complaints which TRA refers to DOR's Property Tax Oversight Program (PTO) for handling.

TABLE 3

Tax-Related Complaints Handled by the Taxpayer Rights Advocate in FY18-19		
Tax Type	Number of Complaints	Percent of Total Complaints
Sales and Use Tax	129	66.8%
Corporate Income Tax	15	7.8%
Reemployment Assistance Tax	13	6.7%
Documentary Stamp Tax	13	6.7%
Other Tax-Related Complaints	23	11.9%
Totals =	193	100.0%

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FIGURE 3



Section 3: Legislative and Administrative Matters

TRA Recommendations for Legislative Action

In 2018, the Legislature enacted a requirement for TRA to recommend legislative action as appropriate to resolve problems encountered by taxpayers. A common problem is a lack of taxpayer knowledge regarding taxpayer rights in the taxation process. There is also a need to improve DOR employees' knowledge and implementation of taxpayer rights. The opening paragraph in section 213.015, F.S., commonly known as the Florida Taxpayer's Bill of Rights, states in part: "*The rights afforded taxpayers to ensure that their privacy and property are safeguarded and protected during tax assessment and collection are available only insofar as they are implemented in other parts of the Florida Statutes or rules of the Department of Revenue.*"

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However, in the Taxpayer's Bill of Rights, subsections (1), (5), (17), (19), and (21) lack any references to other statutes that implement the substantive content of these five subsections. TRA believes this statutory deficiency should be addressed to help ensure that taxpayers are afforded their rights fairly and consistently in the taxation process. The statutes should contain affirmative, specific duties for the agency to perform to ensure that all taxpayers are afforded their rights under Florida law. Accordingly, TRA recommends legislation to implement, where appropriate in other parts of Florida Statutes, the following five subsections from the Taxpayer's Bill of Rights.

(1) The right to available information and prompt, accurate responses to questions and requests for tax assistance.

(5) The right to obtain simple, nontechnical statements which explain the reason for audit selection and the procedures, remedies, and rights available during audit, appeals, and collection proceedings, including, but not limited to, the rights pursuant to this Taxpayer's Bill of Rights and the right to be provided with a narrative description which explains the basis of audit changes, proposed assessments, assessments, and denials of refunds; identifies any amount of tax, interest, or penalty due; and states the consequences of the taxpayer's failure to comply with the notice.

(17) The right to have the department actively investigate and, where appropriate, implement automated or electronic business methods that enable the department to more efficiently and effectively administer the revenue sources of this state at less cost and effort for taxpayers.

(19) The right to participate in free educational activities that help the taxpayer successfully comply with the revenue laws of this state.

(21) The right to fair and consistent application of the tax laws of this state by the Department of Revenue.

The impact of this recommended legislation will be to improve the implementation of the Florida Taxpayer's Bill of Rights. Notably, four of these five subsections are among the top eight subsections involved in tax-related contacts handled by TRA in FY 18-19, as highlighted in yellow in Table 4 below.

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TABLE 4

Taxpayer Bill of Rights Statutes Relating to Contacts Handled by the Taxpayer Rights Advocate in FY18-19		
Brief Summaries of Statutes in the Taxpayer Bill of Rights	Number of Contacts	Percent of Total Contacts
213.015(1) : Right to available information and prompt, accurate responses to questions and requests for tax assistance	357	52.2%
213.015(8) : Right to appeal, through formal or informal proceedings, any adverse decisions relating to determinations in the audit or collections processes, etc.	209	30.6%
213.015(10) : Right, under certain conditions, to procedures for retirement of tax obligations by installment payment agreements, etc.	56	8.2%
213.015(6) : Right to be informed of certain impending collection actions and to receive 30 days' notice to pay the liability or seek further review	14	2.0%
213.015(3) : Right to be represented by qualified persons; to have procedural safeguards; be treated professionally by DOR staff; have audit activities conducted at reasonable time and place; etc.	14	2.0%
213.015(17) : Right for DOR to implement appropriate automated or electronic business methods for efficiency and effectiveness (such as E-filing) at less cost and effort for taxpayers	10	1.5%
213.015(5) : Right to simple, nontechnical statements explaining reason for audit selection and the procedures, remedies, and rights available during audit, appeals, and collection proceedings, etc.	8	1.2%
213.015(21) : Right to fair and consistent application of state tax laws by DOR	5	0.7%
Other	11	1.6%
Totals =	684	100.0%

Summarized below are two additional legislative recommendations that TRA believes would improve fairness for taxpayers. These two recommendations are based on TRA's experience that these types of taxpayers are often unaware of the tax liability and that DOR can have difficulty with identifying and notifying these types of taxpayers.

- Regarding the Excise Tax on Documents (Documentary Stamp Tax): For situations involving existing mortgages, TRA recommends legislation to preclude the calculation or imposition of any penalty or interest for the period beginning on the date of a

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taxable transaction and ending after DOR has properly notified the taxpayer that the tax is due.

- Regarding the Sales and Use Tax: TRA recommends legislation to preclude the calculation or imposition of any penalty or interest on non-business taxpayers for the period beginning on the date of a taxable transaction and ending after DOR has properly notified the Florida consumer that the tax is due.

DOR Legislative Concepts Supported by TRA

TRA supports the following six DOR legislative concepts for 2020 because these concepts would increase fairness, reduce the burden on taxpayers, and/or provide clarity. On December 9, 2019, DOR provided to TRA the text presented below for these DOR concepts. TRA has no position regarding any other DOR legislative concepts.

Refund Claims During Protest (Section 213.21, Florida Statutes)

Current Situation: Section 213.21, F.S., provides that the time limit for the Department to make a tax assessment is frozen during an audit protest, thus protecting the state's interest. However, specific statutory language is not provided to freeze the time limit for a taxpayer to file a refund claim for an overpayment of taxes. This may result in a taxpayer losing the ability to file a refund claim for overpaid taxes when the overpayment occurred beyond the statute of limitations for filing refund claims.

Proposed Change: Provide specific statutory authority to freeze the time limit for a taxpayer to file a refund claim during an audit protest. This will extend the time a taxpayer may file a refund claim for an overpayment of taxes during a protest.

Increase Time Periods for Nonresident Purchase Documentation (Section 212.05, Florida Statutes)

Current Situation: Section 212.05, F.S., provides that tax does not apply to the sale of a boat or aircraft to a nonresident purchaser if various supporting documentation is provided to the Department within specific timeframes. The Department has found that some nonresident purchasers find it difficult to comply with the statutory timeframes and would benefit from additional time to provide documentation.

Proposed Change: Revise the statutory timeframes to allow increased time for taxpayers to provide the required documentation to the Department.

Dyed Diesel Fuel Penalty Revision (Section 206.8741, Florida Statutes)

Current Situation: Florida law allows consumers to purchase diesel fuel free from state and local taxes if used for certain exempt purposes. Tax free diesel fuel is marked with a red dye and invoices, shipping papers, bills of lading, pumps, etc., associated with the sale are required to include the statement, "Dyed Diesel Fuel, Nontaxable Use Only, Penalty for Taxable Use." Failure to include the statement requires a mandatory

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penalty of \$10 for every gallon or \$1000, whichever is greater. Multi-million-dollar penalties have been assessed, even when all tax has been paid, for failure to include the statement, "Dyed Diesel Fuel, Nontaxable Use Only, Penalty for Taxable Use" due to the \$10 per gallon requirement.

Proposed Change: Revise the penalty to \$2500 each month failure to include the notice occurs.

Reemployment Tax E-file Revisions (Section 443.163, Florida Statutes)

Current Situation: Currently employers are required to remit reemployment tax payments and file wage reports by electronic means if they meet certain thresholds. Specific penalties are provided if employers fail to file and/or pay electronically. Additionally, obtaining a penalty waiver requires a written request. Corrections to wage reports can now be submitted electronically but employers who file and pay electronically are not required to use the electronic method.

Proposed Change: Various electronic provisions should be revised to: make electronic filing penalties consistent with other reemployment tax penalties; remove the requirement for a written penalty waiver request; remove the electronic requirement and penalty for agents; and, require employers to file corrections electronically if they are currently required to file and pay electronically.

Electronic Notification (Create a new section in Chapter 213, Florida Statutes)

Current Situation: The Department provides taxpayers official notice of actions such as billings, audits, and assessments by United States Postal Service mail delivery. Electronic notification is not used, even in cases where the Department has communicated with the taxpayer for an extended time through electronic means or where the taxpayer requests electronic delivery. The Department has also received complaints from taxpayers claiming that they have not received notices provided by postal delivery.

Proposed Change: Upon affirmative consent of the taxpayer, authorize the Department to send taxpayers official notice of actions by electronic means.

Communication Services Tax – Local Rate Notification (Section 202.21, Florida Statutes)

Current Situation: Section 202.21, F.S., provides that communications services tax (CST) rate changes are effective January 1st. The Department is required to provide notice of CST rate changes to CST dealers at least 90 days before the effective date of the rate change. Each year the Department sends a tax information publication (TIP) by October 1st to meet this requirement. However, a portion of the total CST rate is comprised of discretionary sales surtax (DSS) which may be changed by the electorate during the November elections. When voters approve DSS changes in November, the Department must send a second, revised TIP, usually in late November, that contains the final CST rates for the upcoming year due to the DSS changes. It can be confusing

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for CST dealers to receive two tax information publications with different rates within a short time period.

Proposed Change: Revise the statutory notice requirement of 90 days before the effective date of the tax rate to 30 days, thus allowing the TIP to reflect one final CST rates for the upcoming year.

Administrative Issues and TRA Recommended Actions

Described below are administrative issues encountered by taxpayers, along with TRA's recommended administrative solutions. These issues and recommendation were first presented in TRA's annual report for FY 17-18. A copy of DOR's responses to each of these ten issues and recommendations is in the Addendum of this report. At the end of each of these ten items below, there is a TRA update for FY 18-19.

1. Administrative Issue (FY17-18): Taxpayers often lack knowledge of the taxation process and lack knowledge of the consequences of not meeting deadlines, not responding to notices, and otherwise not taking responsive actions during the taxation process. TRA often receives contacts from taxpayers who inquire about collection activities taken by DOR against the taxpayer, such as filing tax warrants or freezing bank accounts.

TRA Recommendation (FY17-18): DOR should continue efforts to educate taxpayers on the taxation process and ensure that each notice sent to taxpayers explains these consequences. Also, DOR notices sent to taxpayers should provide contact information for a DOR representative who is knowledgeable about the tax type and notice type sent to the taxpayer and the potential consequences the taxpayer could face for not responding or for noncompliance in the taxation process.

TRA Update for FY18-19: TRA recognizes that GTA has a high volume of work activity and that efficiency is a consideration. TRA again recommends improvement on this issue.

2. Administrative Issue (FY17-18): Taxpayers are often not aware of the provisions of the Taxpayer's Bill of Rights, including the right to procedures for the retirement of tax obligations by installment payment agreements which may be available under certain conditions. TRA often receives calls from audited taxpayers with questions about the audit including the question of why the taxpayer is being audited.

TRA Recommendation (FY17-18): DOR should provide education and training for taxpayers on the Taxpayer's Bill of Rights, and should require that a copy of the Taxpayer's Bill of Rights is provided and explained to each audited taxpayer both at the beginning and end of each audit. Taxpayers should also receive an explanation of why they are being audited.

Taxpayer Rights Advocate's Annual Report FY18-19

TRA Update for FY18-19: TRA again recommends improvements on this issue.

3. Administrative Issue (FY17-18): Many taxpayers are not aware of DOR's authority, under certain factual situations and where consistent with law, to compromise and settle tax, interest, penalties, or fees. This authority has been delegated in writing to certain positions within DOR, but this authority does not appear to be exercised as delegated.

TRA Recommendation (FY17-18): Where consistent with facts and as allowed by law, DOR should exercise its delegated authority to compromise and settle these matters.

TRA Update for FY18-19: In the Addendum of this report is a complete copy of the DOR Executive Director's Delegation of Authority to Settle or Comprise Tax, Penalty, Interest, and Fees. This Delegation of Authority is dated January 29, 2019. TRA again recommends improvements on this issue.

4. Administrative Issue (FY17-18): During the collections process after an audit, if the taxpayer provides a statement of facts alleging that DOR is in error, collections staff may, but are not required to, perform a discretionary evaluation to ensure DOR is only seeking to collect taxes that are owed. TRA often receives contacts regarding these reviews from taxpayers in the collections process. The objectivity of some of these reviews needs improvement and some of the written reviews need more descriptive information.

TRA Recommendation (FY17-18): DOR should ensure that these discretionary reviews are conducted in an impartial, objective manner by persons with training and skill in evaluating the relevance and sufficiency of evidence and making written findings thereon that provide succinct explanations and reasons for the determination.

TRA Update for FY18-19: This issue continues. The post-audit review process occurs when a taxpayer account is in the collections process, the appeals period has expired, and the taxpayer has contacted DOR collections staff who refer the matter to collections or audit staff for review of the taxpayer's information. If collections staff sends the taxpayer's information to TRA, TRA reviews the documentation to prepare for any direct contact from the taxpayer given the time-sensitive nature of the collections process. During FY 18-19 and without any notice or explanation, GTA changed the process for these reviews. Apparently, some of these reviews are now done by local office managers and staff. TRA recommends that these reviews be done by persons independent of the audit and collections processes. These reviews should be viewed as a quality assurance step to minimize the possibility of collections error. TRA again recommends improvements on this issue.

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5. Administrative Issue (FY17-18): In tax-related contacts, sometimes a taxpayer will state to TRA that he or she did not receive notice or correspondence from DOR on a matter. In researching the matter, TRA will learn that DOR records show that DOR sent the document to the taxpayer but the system is unable to generate an original copy of the document sent to the taxpayer and TRA is unable to send to the taxpayer a copy of the original. Other times, taxpayers will state that they sent certain documents to DOR, but these documents will not be available in accessible electronic format.

TRA Recommendation (FY17-18): DOR should develop a system that maintains, in accessible electronic format, all original documents sent to or received from taxpayers.

TRA Update for FY18-19: TRA recognizes that GTA has a high volume of work activity and that efficiency is a consideration. GTA has taken steps to address this issue through better technology, but this solution will take some to implement. TRA supports GTA efforts to make improvements on this issue.

6. Administrative Issue (FY17-18): This problem is specific to the documentary stamp tax. Many taxpayers are not aware that certain documents involving real property transfers are subject to the excise tax on documents. Because of the operation of this tax and the associated time lags involved, it may be a few years (usually one to three) before the taxpayer learns the Department has audited the transfer instrument and made a tax assessment. In some cases, the taxpayer becomes aware of the tax liability when the taxpayer learns that a DOR tax lien appears on the taxpayer's credit report. These types of taxpayers are among the most upset customers served by TRA.

TRA Recommendation (FY17-18): DOR should expand efforts to provide information and education for Clerk of Court staff, lenders, and those involved in real estate closings including agents and attorneys. If not already done, DOR should develop an outreach plan to provide information and education to make these persons and taxpayers aware of the conditions under which this tax would be due.

TRA Update for FY18-19: TRA again recommends improvements on this issue.

7. Administrative Issue (FY17-18): This problem is specific to the documentary stamp tax. Often documentary stamp taxpayers do not receive notices and collections letters about a documentary stamp tax liability. This is because DOR sends notices and correspondence to the last known address of the taxpayer which may be the address of the transferred property. A common scenario is that the taxpayer no longer lives at the property and, thus, does not receive the DOR notices and correspondence. Sometimes the taxpayer becomes aware of the tax liability when

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the taxpayer learns that a DOR tax lien appears on the taxpayer's credit report. The taxpayer can have difficulty obtaining a copy of DOR's tax warrant against the taxpayer because DOR does not maintain a publicly accessible database of its tax warrants.

TRA Recommendation (FY17-18): DOR should develop a plan to better identify contact information for these types of taxpayers so that the taxpayer can receive notices and correspondence regarding the tax liability. Also, DOR should make available a public database of its tax warrants with sufficient information to enable taxpayers to find and obtain a copy of the tax warrant.

TRA Update for FY18-19: TRA again recommends improvements on this issue.

8. Administrative Issue (FY17-18): This problem is specific to the reemployment assistance tax. Taxpayers subject to the reemployment assistance tax are often not aware of a key filing requirement and, as result, are assessed penalties when they do not comply with this requirement. At the top of Form RT-6, just under the form title, the following statement appears: "*Employers are required to file quarterly tax/wage reports regardless of employment activity or whether any taxes are due.*" (underlining added for emphasis). This important notice appears in a font that is small, light, and very difficult to notice.

TRA Recommendation (FY17-18): DOR should ensure that its taxpayer education efforts for the reemployment assistance tax address this filing requirement and the consequences of not filing this form. Also, TRA recommends that Form RT-6 be amended to increase the legibility of the statement notifying taxpayers of their duty to file this form "*regardless of employment activity or whether any taxes are due.*" Also, a linked web address should be provided on this form to take taxpayers to a calendar of due dates for filing.

TRA Update for FY18-19: TRA recognizes that GTA has made improvements on this issue and will continue to monitor any taxpayer contacts on this issue.

9. Administrative Issue (FY17-18): This problem is specific to the reemployment assistance tax. The rate for the reemployment assistance tax may change from year-to-year. Taxpayers are sometimes not aware of this year-to-year change and, as a result, use an incorrect rate in calculating their tax for a particular year.

TRA Recommendation (FY17-18): A linked web address should be provided on Form RT-6 to take taxpayers to a web page to find the correct tax rate.

TRA Update for FY18-19: TRA recognizes that GTA has made improvements on this issue and will continue to monitor any taxpayer contacts on this issue.

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10. Administrative Issue (FY17-18): This problem is specific to the corporate income tax. Corporations that are classified by the IRS as subchapter S corporations are not required to file the Florida corporate income tax. DOR conducts a data match with the Florida Department of State, Division of Corporations, to identify corporations that are registered with the Division of Corporations but are not registered with DOR. These unregistered corporations will receive a penalty notice from DOR for failure to file the Florida corporate income tax. Upon proof that the corporation is a subchapter S corporation, DOR updates its database and removes the penalty.

TRA Recommendation (FY17-18): DOR should work with the Department of State, Division of Corporations, to find ways of proactively identifying subchapter S corporations, thereby reducing the DOR work effort and reducing this unnecessary burden of taxpayers having to prove that they are legitimate subchapter S corporations.

TRA Update for FY18-19: TRA recognizes that GTA has made improvements on this issue and will continue to monitor any taxpayer contacts on this issue.

Section 4: TRA Analysis of GTA Post-Audit Survey Results

GTA's audits of taxpayer accounts are part of the fair and consistent administration of Florida's state tax laws. These audits are conducted to encourage compliance with Florida tax laws, educate taxpayers about those laws, and promote voluntary compliance. However, it is fair to say that few taxpayers are pleased to receive an audit notice from DOR and some taxpayer dissatisfaction with the audits is expected.

GTA annually conducts post-audit surveys to obtain information on the satisfaction levels of audited taxpayers who voluntarily elect to complete a post-audit survey. GTA's post-audit survey is done for the following three state taxes: Corporate Income Tax (CIT); Sales and Use Tax (SUT); and Reemployment Assistance Tax (RT or RAT).

TRA Post-Audit Surveys in Previous Years

In the three fiscal years preceding the 2018-2019 fiscal year, TRA also conducted a post-audit survey of audited taxpayers for the CIT, SUT, and RT. TRA conducted its survey independently of GTA. TRA's post-audit survey was based on random samples of audited accounts that TRA periodically drew from the population of audited accounts for each of these three tax types.

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In most cases, the taxpayer satisfaction levels indicated in TRA's survey responses were substantially similar to those from GTA's post-audit surveys. Given that TRA's survey results and GTA's survey results have been notably consistent, TRA did not conduct a post-audit survey in fiscal year 2018-2019.

TRA Analysis of GTA's Post-Audit Survey Results

To assist TRA, GTA provides a copy of its quarterly survey reports to TRA. The GTA surveys contain a question for survey respondents to indicate that the respondent would like to be contacted by TRA to provide post-audit feedback directly to TRA. In FY 2018-2019, only one of the GTA survey respondents requested contact from TRA.

For FY 18-19, GTA had a total of 121 RAT audit survey responses. These 121 responses produced an average satisfaction indication for the year of 98.1 percent. This is a high level of satisfaction for post-audit survey respondents.

For FY 18-19, GTA had a total of seven CIT audit survey responses. These seven responses produced an average satisfaction indication for the year of 90.5 percent. Of the seven CIT respondents, one appeared to be mostly, but not completely, dissatisfied. The other six CIT survey respondents appeared to be completely satisfied. The small number of CIT survey respondents limits the usefulness of the survey results.

The results of GTA's post-audit surveys for the SUT for FY 17-18 and FY 18-19 are shown in Table 5 below. The number of surveys returned for the two years were 138 and 99, respectively. Comparing the SUT survey results for the two years indicates an increase in respondent satisfaction in FY 18-19. GTA's post-audit survey results do not provide any indication of a systemic issue in the audit process.

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Table 5

GTA Survey Results by Survey Item for the SUT for FY 17-18 and FY 18-19			
Item ID	Survey Items	FY 17-18 Audit Satisfaction Indications	FY 18-19 Audit Satisfaction Indications
a.	Promptness of the auditor in keeping appointments	93.5%	93.9%
b.	Lack of disruptions to your business by the auditor	93.5%	93.9%
c.	Appropriate length of time to conduct the audit	88.4%	90.9%
d.	Professionalism of the auditor	92.0%	96.0%
e.	Auditor's knowledge of the audit/tax issues	91.3%	94.9%
f.	Education you received about Florida's tax laws from the auditor	91.8%	96.0%
g.	Auditor's explanation of any proposed adjustments	90.4%	96.0%
h.	Auditor's explanation of your appeal rights, including procedures and the time available for you to exercise such rights	93.3%	97.0%
i.	Your overall audit experience	87.6%	90.9%
	Average =	91.3%	94.4%

Section 5: Statutes Pertaining Directly to TRA

This section contains the text of sections 20.21(3), 213.018, and 213.015, F.S., all of which pertain directly to TRA.

Section 20.21(3), F.S., Regarding the Taxpayer Rights Advocate

20.21 Department of Revenue.— There is created a Department of Revenue.

Note: *Subsections (1), (2), (4), (5), and (6) do not pertain directly to the Taxpayer Rights Advocate and are omitted here.*

Taxpayer Rights Advocate's Annual Report FY18-19

(3) The position of taxpayers' rights advocate is created within the Department of Revenue. The taxpayers' rights advocate shall be appointed by the Chief Inspector General but is under the general supervision of the executive director for administrative purposes. The taxpayers' rights advocate must report to the Chief Inspector General and may be removed from office only by the Chief Inspector General. The responsibilities of the taxpayers' rights advocate include, but are not limited to, the following:

(a) Facilitating the resolution of taxpayer complaints and problems which have not been resolved through normal administrative channels within the department, including any taxpayer complaints regarding unsatisfactory treatment of taxpayers by employees of the department.

(b) Issuing a stay action on behalf of a taxpayer who has suffered or is about to suffer irreparable loss as a result of action by the department.

(c) On or before January 1 of each year, the taxpayers' rights advocate shall furnish to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Chief Inspector General a report that must include the following:

1. The objectives of the taxpayers' rights advocate for the upcoming fiscal year.
2. The number of complaints filed in the previous fiscal year.
3. A summary of resolutions or outstanding issues from the previous fiscal year report.
4. A summary of the most common problems encountered by taxpayers, including a description of the nature of the problems, and the number of complaints for each such problem.
5. The initiatives the taxpayers' rights advocate has taken or is planning to take to improve taxpayer services and the department's responsiveness.
6. Recommendations for administrative or legislative action as appropriate to resolve problems encountered by taxpayers.
7. Other information as the taxpayers' rights advocate may deem advisable.

The report must contain a complete and substantive analysis in addition to statistical information.

Section 213.018, F.S., Regarding the Taxpayer Rights Advocate

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The text of section 213.018, F.S. (2018), is presented below in its entirety.

213.018 Taxpayer problem resolution program; taxpayer assistance orders.— A taxpayer problem resolution program shall be available to taxpayers to facilitate the prompt review and resolution of taxpayer complaints and problems which have not been addressed or remedied through normal administrative proceedings or operational procedures and to assure that taxpayer rights are safeguarded and protected during tax determination and collection processes.

(1) The Chief Inspector General shall appoint a taxpayers' rights advocate, and the executive director of the Department of Revenue shall designate adequate staff to administer the taxpayer problem resolution program.

(2) The taxpayers' rights advocate may, with or without a formal written request from the taxpayer, issue a taxpayer assistance order that suspends or stays actions or proposed actions by the department when a taxpayer suffers or is about to suffer a significant hardship as a result of a tax determination, collection, or enforcement process.

(a) Relief or remedy may be granted by a taxpayer assistance order only as an extraordinary measure. The process shall not be used to contest the merits of a tax liability or as a substitute for informal protest procedures or normal administrative or judicial proceedings for the review of a tax assessment or collection action or denial of refund.

(b) The running of the period of limitations on assessment shall be tolled from the date of a taxpayer's request for a taxpayer assistance order until either the date the request is denied or the date specified in the taxpayer assistance order, whichever is applicable.

Section 213.015, F.S., Regarding the Taxpayer's Bill of Rights

The text of section 213.015, F.S. (2018), is presented below in its entirety.

213.015 Taxpayer rights.— There is created a Florida Taxpayer's Bill of Rights to guarantee that the rights, privacy, and property of Florida taxpayers are adequately safeguarded and protected during tax assessment, collection, and enforcement processes administered under the revenue laws of this state. The Taxpayer's Bill of Rights compiles, in one document, brief but comprehensive statements which explain, in simple, nontechnical terms, the rights and obligations of the Department of Revenue and taxpayers. Section 192.0105 provides additional rights afforded to payors of property taxes and assessments. The rights afforded taxpayers to ensure that their privacy and property are safeguarded and protected during tax assessment and collection are available only insofar as they are implemented in other parts of the

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Florida Statutes or rules of the Department of Revenue. The rights so guaranteed Florida taxpayers in the Florida Statutes and the departmental rules are:

- (1) The right to available information and prompt, accurate responses to questions and requests for tax assistance.
- (2) The right to request assistance from a taxpayers' rights advocate of the department, who shall be responsible for facilitating the resolution of taxpayer complaints and problems not resolved through the normal administrative channels within the department, including any taxpayer complaints regarding unsatisfactory treatment by department employees. The taxpayers' rights advocate may issue a stay order if a taxpayer has suffered or is about to suffer irreparable loss as a result of an action by the department (see ss. 20.21(3) and 213.018).
- (3) The right to be represented or advised by counsel or other qualified representatives at any time in administrative interactions with the department, the right to procedural safeguards with respect to recording of interviews during tax determination or collection processes conducted by the department, the right to be treated in a professional manner by department personnel, and the right to have audits, inspections of records, and interviews conducted at a reasonable time and place except in criminal and internal investigations (see ss. 198.06, 199.218, 201.11(1), 203.02, 206.14, 211.125(3), 211.33(3), 212.0305(3), 212.12(5)(a), (6)(a), and (13), 212.13(5), 213.05, 213.21(1)(a) and (c), and 213.34).
- (4) The right to freedom from penalty attributable to any taxes administered by the Department of Revenue; freedom from payment of uncollected sales, use, motor or diesel fuel, or other transaction-based excise taxes administered by the Department of Revenue; and to abatement of interest attributable to any taxes administered by the Department of Revenue, when the taxpayer reasonably relies upon binding written advice furnished to the taxpayer by the department through authorized representatives in response to the taxpayer's specific written request which provided adequate and accurate information (see ss. 120.565 and 213.22).
- (5) The right to obtain simple, nontechnical statements which explain the reason for audit selection and the procedures, remedies, and rights available during audit, appeals, and collection proceedings, including, but not limited to, the rights pursuant to this Taxpayer's Bill of Rights and the right to be provided with a narrative description which explains the basis of audit changes, proposed assessments, assessments, and denials of refunds; identifies any amount of tax, interest, or penalty due; and states the consequences of the taxpayer's failure to comply with the notice.
- (6) The right to be informed of impending collection actions which require sale or seizure of property or freezing of assets, except jeopardy assessments, and the right to at least 30 days' notice in which to pay the liability or seek further review (see ss.

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198.20, 199.262, 201.16, 206.075, 206.24, 211.125(5), 212.03(5), 212.0305(3)(j), 212.04(7), 212.14(1), 213.73(3), 213.731, and 220.739).

(7) The right to have all other collection actions attempted before a jeopardy assessment unless delay will endanger collection and, after a jeopardy assessment, the right to have an immediate review of the jeopardy assessment (see ss. 212.15, 213.73(3), 213.732, and 220.719(2)).

(8) The right to seek review, through formal or informal proceedings, of any adverse decisions relating to determinations in the audit or collections processes and the right to seek a reasonable administrative stay of enforcement actions while the taxpayer pursues other administrative remedies available under Florida law (see ss. 120.80(14)(b), 213.21(1), 220.717, and 220.719(2)).

(9) The right to have the taxpayer's tax information kept confidential unless otherwise specified by law (see s. 213.053).

(10) The right to procedures for retirement of tax obligations by installment payment agreements which recognize both the taxpayer's financial condition and the best interests of the state, provided that the taxpayer gives accurate, current information and meets all other tax obligations on schedule (see s. 213.21(4)).

(11) The right to procedures for requesting cancellation, release, or modification of liens filed by the department and for requesting that any lien which is filed in error be so noted on the lien cancellation filed by the department, in public notice, and in notice to any credit agency at the taxpayer's request (see ss. 198.22, 199.262, 212.15(4), 213.733, and 220.819).

(12) The right to procedures which assure that the individual employees of the department are not paid, evaluated, or promoted on the basis of the amount of assessments or collections from taxpayers (see s. 213.30(2)).

(13) The right to an action at law within the limitations of s. 768.28, relating to sovereign immunity, to recover damages against the state or the Department of Revenue for injury caused by the wrongful or negligent act or omission of a department officer or employee (see s. 768.28).

(14) The right of the taxpayer or the department, as the prevailing party in a judicial or administrative action brought or maintained without the support of justiciable issues of fact or law, to recover all costs of the administrative or judicial action, including reasonable attorney's fees, and of the department and taxpayer to settle such claims through negotiations (see ss. 57.105 and 57.111).

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- (15) The right to have the department begin and complete its audits in a timely and expeditious manner after notification of intent to audit (see s. 95.091).
- (16) The right to have the department actively identify and review multistate proposals that offer more efficient and effective methods for administering the revenue sources of this state (see s. 213.256).
- (17) The right to have the department actively investigate and, where appropriate, implement automated or electronic business methods that enable the department to more efficiently and effectively administer the revenue sources of this state at less cost and effort for taxpayers.
- (18) The right to waiver of interest that accrues as the result of errors or delays caused by a department employee (see s. 213.21(3)).
- (19) The right to participate in free educational activities that help the taxpayer successfully comply with the revenue laws of this state.
- (20) The right to pay a reasonable fine or percentage of tax, whichever is less, to reinstate an exemption from any tax which a taxpayer would have been entitled to receive but which was lost because the taxpayer failed to properly register as a tax dealer in this state or obtain the necessary certificates entitling the taxpayer to the exemption (see s. 212.07(9)).
- (21) The right to fair and consistent application of the tax laws of this state by the Department of Revenue.

Addendum

- **DOR Response to TRA Report for FY 2017-2018**
- **DOR Delegation of Authority to Settle or Compromise Tax, Penalty, Interest, or Fees**

**DOR Response to TRA Report for FY
2017-2018**



Florida Department of Revenue
Office of the Executive Director

Jim Zingale
Executive Director

5050 West Tennessee Street, Tallahassee, FL 32399

floridarevenue.com

October 16, 2019

Mr. Patrick Loebig
Taxpayers' Rights Advocate
Office of the Chief Inspector General
Executive Office of the Governor
Tallahassee, Florida 32399

Subject: Taxpayers' Rights Advocate Annual Report for Fiscal Year 2017-18

Dear Mr. Loebig,

Enclosed, please find the Department's formal response to the Taxpayers' Rights Advocate Annual Report for Fiscal Year 2017-18, pursuant to Section 20.21(3)(c), Florida Statutes.

Sincerely,

Jim Zingale

Enclosure



<p>1. Problem</p>	<p>Taxpayers often lack knowledge of the taxation process and lack knowledge of the consequences of not meeting deadlines, not responding to notices, and otherwise not taking responsive actions during the taxation process. The Taxpayer Rights Advocate often receives inquiries from taxpayers who inquire about collection activities taken by DOR against the taxpayer, such as filing tax warrants or freezing bank accounts.</p>
<p>Recommendation</p>	<p>DOR should continue efforts to educate taxpayers on the taxation process and ensure that each notice sent to taxpayers explains these consequences. Also, DOR notices sent to taxpayers should provide contact information for a DOR representative who is knowledgeable about the tax type and notice type sent to the taxpayer and the potential consequences the taxpayer could face for not responding or for noncompliance in the taxation process.</p>
<p>Response</p>	<p>The Department strives to continually improve education efforts to help taxpayers understand the taxation process and their tax responsibilities as Florida businesses. To help educate taxpayers and to encourage voluntary compliance, the consequences of noncompliance are stated in each notice of noncompliance issued by the Department.</p> <p>The Department sends over one million first notices, billings, and delinquencies to taxpayers every year. The contact information for the Department is designed to expedite handling and ultimate resolution of the taxpayer’s issues. For example, given the high volume of initial notices of noncompliance, the Department’s Taxpayer Services Contact Center is used to ensure prompt response and efficient resolution. If the case requires additional follow-up, contact information for a specific Department representative is provided.</p> <p>As part of the ongoing effort in improving taxpayer education, the Department will continue to focus on opportunities for improvement in refining its communication.</p>
<p>2. Problem</p>	<p>Taxpayers are often not aware of the provisions of the Taxpayer’s Bill of Rights, including the right to procedures for the retirement of tax obligations by installment payment agreements which may be available under certain conditions. The Taxpayer Rights Advocate often receives calls from audited taxpayers with questions about the audit including the question of why the taxpayer is being audited.</p>
<p>Recommendation</p>	<p>DOR should provide education and training for taxpayers on the Taxpayer’s Bill of Rights, and should require that a copy of the Taxpayer’s Bill of Rights is provided and explained to each audited taxpayer both at the beginning and end of each audit. Taxpayers should also receive an explanation of why they are being audited.</p>
<p>Response</p>	<p>For the past several years, the Department has placed focus on heightening awareness of the Taxpayer Bill of Rights both internally and externally. The</p>



	<p>Department developed and implemented an annual training for employees on the importance of the Taxpayer Bill of Rights. Additionally, it is included in the Department’s tax audit training.</p> <p>Regarding external awareness, the Taxpayer Bill of Rights is provided to taxpayers at the beginning and end of the audit process, as well as during collection and enforcement actions. Additionally, during the audit process, the taxpayers are educated on tax issues that relate to their specific business activities.</p> <p>From a global, external perspective, the Department’s website contains a Quick Link for the Taxpayer Bill of Rights on its home page, as well as a resource link on the General Tax Administration Program’s landing page entitled, “What to Expect from a Florida Tax Audit.” Information on this link that is available to the public includes:</p> <p>How Was I Selected for an Audit? What Types of Records Will I Need to Provide? What are My Rights During an Audit? Communicating and Meeting Deadlines Can I Request Technical Assistance During the Audit? What Happens When the Audit is Complete? Other Audit-Related Information</p> <p>The Department embraces the importance of taxpayers having access to the Taxpayer Bill of Rights and will continue to review additional opportunities to heighten awareness.</p>																
<p>3. Problem</p>	<p>DOR’s use of compromise authority – Many taxpayers are not aware of DOR’s authority, under certain factual situations and where consistent with law, to compromise and settle tax, interest, penalties, or fees. This authority has been delegated in writing to certain positions within DOR, but this authority does not appear to be exercised as delegated.</p>																
<p>Recommendation</p>	<p>Where consistent with facts and as allowed by law, DOR should exercise its delegated authority to compromise and settle these matters.</p>																
<p>Response</p>	<p>Florida law establishes the authority to compromise tax, interest, and penalty. The following table provides this compromise authority for positions within the General Tax Administration Program:</p> <table border="1" data-bbox="539 1684 1497 1858"> <thead> <tr> <th>Position</th> <th>Tax</th> <th>Interest</th> <th>Penalty</th> </tr> </thead> <tbody> <tr> <td>Program Director</td> <td>\$200,000</td> <td>\$125,000</td> <td>Any Amount</td> </tr> <tr> <td>Deputy Program Director</td> <td>\$200,000</td> <td>\$125,000</td> <td>Any Amount</td> </tr> <tr> <td>Revenue Program Administrators</td> <td>\$75,000</td> <td>\$62,500</td> <td>\$250,000</td> </tr> </tbody> </table>	Position	Tax	Interest	Penalty	Program Director	\$200,000	\$125,000	Any Amount	Deputy Program Director	\$200,000	\$125,000	Any Amount	Revenue Program Administrators	\$75,000	\$62,500	\$250,000
Position	Tax	Interest	Penalty														
Program Director	\$200,000	\$125,000	Any Amount														
Deputy Program Director	\$200,000	\$125,000	Any Amount														
Revenue Program Administrators	\$75,000	\$62,500	\$250,000														



	<table border="1" data-bbox="539 304 1495 514"> <tr> <td>Senior Tax Audit Administrators</td> <td>n/a</td> <td>\$62,500</td> <td>\$250,000</td> </tr> <tr> <td>Service Center Managers</td> <td>n/a</td> <td>\$62,500</td> <td>\$250,000</td> </tr> <tr> <td>Tax Audit Supervisors</td> <td>n/a</td> <td>\$1,250</td> <td>\$37,500</td> </tr> <tr> <td>Revenue Tax Audit Supervisors</td> <td>n/a</td> <td>\$1,250</td> <td>\$37,500</td> </tr> </table> <p data-bbox="495 548 1511 680">Tax and/or interest can only be compromised based on a finding of doubt as to liability or collectability. Penalty can be compromised based on a finding of reasonable cause. See s. 213.21(3)(a), F.S., and Rules 12-13.007 and 12-13.0075, F.A.C.</p> <p data-bbox="495 716 1484 848">The General Tax Administration Program adheres to the appropriate compromise authority based on the specific facts and circumstances of each case and will continue to work with the Taxpayer Rights Advocate Office on any instances of perceived inconsistent application.</p>	Senior Tax Audit Administrators	n/a	\$62,500	\$250,000	Service Center Managers	n/a	\$62,500	\$250,000	Tax Audit Supervisors	n/a	\$1,250	\$37,500	Revenue Tax Audit Supervisors	n/a	\$1,250	\$37,500
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Service Center Managers	n/a	\$62,500	\$250,000														
Tax Audit Supervisors	n/a	\$1,250	\$37,500														
Revenue Tax Audit Supervisors	n/a	\$1,250	\$37,500														
<p>4. Problem</p>	<p>Discretionary Reviews – During the collections process after an audit, if the taxpayer provides a Statement of Facts alleging that DOR is in error, collections staff may, but are not required to, perform a discretionary evaluation to ensure DOR is only seeking to collect taxes that are owed. The Taxpayer Rights Advocate often receives inquiries from taxpayers in the collections process regarding these reviews. The objectivity of some of these reviews needs improvement and some of the written reviews need more descriptive information.</p>																
<p>Recommendation</p>	<p>DOR should ensure that these discretionary reviews are conducted in an impartial, objective manner by persons with training and skill in evaluating the relevance and sufficiency of evidence and making written findings thereon that provide succinct explanations and reasons for the determination.</p>																
<p>Response</p>	<p>The term, “discretionary review” refers to taxpayers’ requests for further review of their cases after their protest rights have expired.</p> <p>There is no statutory requirement for a “discretionary review.” This type of review is purely discretionary and is generally performed when there is clear evidence that the Department made an error. The Technical Assistance and Dispute Resolution (TADR) Process is generally the point of intake for these requests. The Process coordinates with the General Tax Administration Program and the Office of the General Counsel (OGC) to review the statement of facts. Within the General Tax Administration Program, a neutral senior-level analyst performs a review of the specifics of the case which is again reviewed by the Program Office, TADR, and if necessary, the OGC.</p> <p>The Department will continue to work with the Taxpayer Rights Advocate Office on any instances of perceived Departmental error.</p>																



<p>5. Problem</p>	<p>Regenerating Notices; Imaging Correspondence – In handling taxpayer inquiries, sometimes a taxpayer will state to the Taxpayer Rights Advocate that he or she did not receive notice or correspondence from DOR on a matter. In researching the inquiry, the Taxpayer Rights Advocate will learn that DOR records show that DOR sent the document to the taxpayer, but the system is unable to generate an original copy of the document sent to the taxpayer and the Taxpayer Rights Advocate is unable to send to the taxpayer a copy of the original. Other times, taxpayers will state that they sent certain documents to DOR, but these documents will not be available in accessible electronic format.</p>
<p>Recommendation</p>	<p>DOR should develop a system that maintains, in accessible electronic format, all original documents sent to or received from taxpayers.</p>
<p>Response</p>	<p>The Department sends more than three million system-generated notices to taxpayers per year. Although notices can be reproduced, they will reflect the current date of reproduction.</p> <p>As part of the e-Services Taxpayer Portal project, the Department will analyze the types of notices and outbound correspondence to determine the feasibility and prioritization for programming resources to provide for self-service document access and retrieval. Additionally, the modernization of the Image Management System will receive the same analysis and determination.</p>
<p>6. Problem</p>	<p>Awareness of Doc Stamp Liability - This problem is specific to the documentary stamp tax. Many taxpayers are not aware that certain documents involving real property transfers are subject to the excise tax on documents. Because of the operation of this tax and the associated time lags involved, it may be a few years (usually one to three) before the taxpayer learns the Department has audited the transfer instrument and made a tax assessment. In some cases, the taxpayer becomes aware of the tax liability when the taxpayer learns that a DOR tax lien appears on the taxpayer’s credit report. These types of taxpayers are among the most upset customers served by TRA.</p>
<p>Recommendation</p>	<p>DOR should expand efforts to provide information and education for Clerk of Court staff, lenders, and those involved in real estate closings including agents and attorneys. If not already done, DOR should develop an outreach plan to provide information and education to make these persons and taxpayers aware of the conditions under which this tax would be due.</p>
<p>Response</p>	<p>The Department routinely coordinates with the 67 Clerks of Court and has made significant strides in its documentary stamp review process. Examples of improvements include:</p> <ul style="list-style-type: none"> • Improved data filters to assist in the identification of transactions where there is non-compliance (i.e. identify the types of deeds with the most common non-compliant issues).



	<ul style="list-style-type: none"> • Increased thresholds of the value of the property to focus on high dollar transactions • Third-party validation of address and contact information to ensure proper noticing to the taxpayer • Reduction of caseload inventory to ensure the handling of more current transactions <p>Additionally, with the recent deployment of its Taxpayer Education and Outreach Process, the Department is reviewing documentary stamps materials as part of a revitalized training with the Clerks of the Court.</p>
<p>7. Problem</p>	<p>Doc stamp notices; old addresses – This problem is specific to the documentary stamp tax. Often documentary stamp taxpayers do not receive notices and collections letters about a documentary stamp tax liability. This is because DOR sends notices and correspondence to the last known address of the taxpayer which may be the address of the transferred property. A common scenario is that the taxpayer no longer lives at the property and, thus, does not receive the DOR notices and correspondence. Sometimes the taxpayer becomes aware of the tax liability when the taxpayer learns that a DOR tax lien appears on the taxpayer’s credit report. The taxpayer can have difficulty obtaining a copy of DOR’s tax warrant against the taxpayer because DOR does not maintain a publicly accessible database of its tax warrants.</p>
<p>Recommendation</p>	<p>DOR should develop a plan to better identify contact information for these types of taxpayers so that the taxpayer can receive notices and correspondence regarding the tax liability. Also, DOR should make available a public database of its tax warrants with sufficient information to enable taxpayers to find and obtain a copy of the tax warrant.</p>
<p>Response</p>	<p>The Department has made recent strides to better identify taxpayer contact information by employing a third party postal verification solution to refine address information.</p> <p>The Department will continue to work with the Taxpayer Rights Advocate Office on any instances of incorrect addresses.</p> <p>Regarding a public database, currently, warrants, liens and judgement lien certificates are filed with the court and many court records are available online. Replicating the information on the Department’s website would be duplicative and costly due to the resources needed to create and maintain the database. Additionally, it is not clear if s. 213.053(20), F.S., permits the Department to choose to disclose only certain taxpayers (i.e., documentary stamp tax).</p>
<p>8. Problem</p>	<p>Reemployment tax filing requirement – This problem is specific to the reemployment assistance tax. Taxpayers subject to the reemployment assistance tax are often not aware of a key filing requirement and, as result, are assessed penalties when they do not comply with this requirement. At the</p>



	<p>top of Form RT-6, just under the form title, the following statement appears: <i>“Employers are required to file quarterly tax/wage reports <u>regardless of employment activity or whether any taxes are due.</u>”</i> (underlining added for emphasis). This important notice appears in a font that is small, light, and very difficult to notice.</p>
<p>Recommendation</p>	<p>DOR should ensure that its taxpayer education efforts for the reemployment assistance tax address this filing requirement and the consequences of not filing this form.</p> <p>Also, the Taxpayer Rights Advocate recommends that Form RT-6 be amended to increase the legibility of the statement notifying taxpayers of their duty to file this form <i>“regardless of employment activity or whether any taxes are due.”</i> Also, a linked web address should be provided on this form to take taxpayers to a calendar of due dates for filing.</p>
<p>Response</p>	<p>The Department has undergone extensive taxpayer education efforts to address filing requirements and consequences including, but not limited to the following:</p> <ul style="list-style-type: none"> • Sending reminder emails to all e-filing taxpayers and others who subscribe, which include the due dates and filing requirements. • Conducting quarterly conference calls with tax preparer associations. Topics include: <ul style="list-style-type: none"> ○ Statutory or rule changes that would affect them which recently included a rule change to allow penalty waiver requests to be made telephonically. ○ Policy/procedure changes. Examples include the Department’s alignment of SSN guidelines with the Social Security Administration’s guidelines, imposing a penalty on invalid SSNs ○ Briefing on recent newsworthy activities such as the mailing of tax rate notices and various statistics regarding the new minimum rate. • Increasing the font size of the sentence referenced on the Employers Quarterly Report (Form RT-6), “Employers are required to file quarterly tax/wage reports regardless of employment activity or whether any taxes are due”. • Providing a web address for the newly added “General Timelines for Employers” web page, which advises employers of important dates (to be completed during annual form revision process).
<p>9. Problem</p>	<p>Reemployment tax rates – This problem is specific to the reemployment assistance tax. The rate for the reemployment assistance tax may change</p>



	<p>from year-to-year. Taxpayers are sometimes not aware of this year-to-year change and, as a result, use an incorrect rate in calculating their tax for a particular year.</p>
Recommendation	<p>A linked web address should be provided on Form RT-6 to take taxpayers to a web page to find the correct tax rate.</p>
Response	<p>The Department provides multiple avenues by which an employer may access his or her reemployment tax rate.</p> <ul style="list-style-type: none"> • Initially communicated through the Taxpayer’s Annual Tax Rate Notices in December, the month prior to the effective date of the rate. • Prepopulated on electronically filed returns • Prepopulated on printed, hardcopy tax returns • Available through the Department’s online file and pay website • Available by calling Taxpayer Services (850-488-6800) self-service option offered 24 hours a day, 7 days a week. <p>As a recent addition, during the annual form revision process, the Department will reference as a reminder the web address for the Reemployment Tax File and Pay website where employer tax rates can be accessed.</p>
10. Problem	<p>S-corporation income tax liability – This problem is specific to the corporate income tax. Corporations that are classified by the IRS as subchapter S corporations are not required to file the Florida corporate income tax. DOR conducts a data match with the Florida Department of State, Division of Corporations, to identify corporations that are registered with the Division of Corporations but are not registered with DOR. These unregistered corporations will receive a penalty notice from DOR for failure to file the Florida corporate income tax. Upon proof that the corporation is a subchapter S corporation, DOR updates its database and removes the penalty.</p>
Recommendation	<p>DOR should work with the Department of State, Division of Corporations, to find ways of proactively identifying subchapter S corporations, thereby reducing the DOR work effort and reducing this unnecessary burden of taxpayers having to prove that they are legitimate subchapter S corporations.</p>
Response	<p>Generally, a corporation does not know it is a Sub-S corporation when it files with the Department of State. Additionally, the Florida Secretary of State does not collect information on whether a for-profit corporation is a Sub S corporation for federal income tax purposes.</p> <p>However, the Department does embrace this issue, and with the implementation of the Corporate Income Tax additional information database in September 2019, corporations will now have the ability to indicate their Subchapter S status. This will result in updated account information in the</p>



Department of Revenue Response

Taxpayer Rights Advocate Annual Report for Fiscal Year 2017-2018

October 14, 2019

	Department's account management records, eliminating a Sub-S corporation's corporate income tax obligation and subsequent billings.
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**DOR Delegation of Authority to Settle
or Compromise Tax, Penalty, Interest,
or Fees**



Florida Department of Revenue
Office of the Executive Director

Jim Zingale
Executive Director

5050 West Tennessee Street, Tallahassee, FL 32399

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DA-40

**DELEGATION OF AUTHORITY
TO SETTLE OR COMPROMISE
TAX, PENALTY, INTEREST, AND FEES**

I hereby delegate to the positions identified in Appendix A, the authority to settle or compromise a taxpayer's liability for any tax, penalty, interest or fee assessed under any of the chapters specified in subsection 72.011(1), Florida Statutes. This delegation is made in accordance with subsections 213.21(2) and (3), Florida Statutes, and Rule 12-13.004, Florida Administrative Code.

The authority granted herein shall not be re-delegated.

This delegation is duly executed pursuant to the authority granted in Rule 12-3.007, Florida Administrative Code, and remains in effect until specifically rescinded in writing.

Dated this 29th day of January, 2019, in Tallahassee, Leon County, Florida.



Jim Zingale
Executive Director
Florida Department of Revenue

APPENDIX A
DELEGATION OF AUTHORITY TO SETTLE OR COMPROMISE
TAX, PENALTY, INTEREST, AND FEES

I. All Cases Except Those in Litigation

Executive Office

Position	Tax	Interest	Penalty
Deputy Executive Director	\$500,000	Any Amount	Any Amount

Office of the General Counsel

Position	Tax	Interest	Penalty
General Counsel	\$500,000	Any Amount	Any Amount
Deputy General Counsel	\$500,000	Any Amount	Any Amount

II. Cases in Litigation

Executive Office

Position	Tax	Interest	Penalty
Deputy Executive Director	Any Amount	Any Amount	Any Amount

Office of the General Counsel

Position	Tax	Interest	Penalty
General Counsel	Any Amount	Any Amount	Any Amount
Deputy General Counsel	Any Amount	Any Amount	Any Amount
Chief Assistant General Counsel	\$200,000	\$150,000	\$250,000
Executive Senior Attorney	\$100,000	\$75,000	\$125,000
Assistant General Counsel	\$100,000	\$75,000	\$125,000

III. Cases in Protest

Office of the General Counsel

Position	Tax	Interest	Penalty
Chief Assistant General Counsel	\$200,000	\$125,000	Any Amount
Executive Senior Attorney	\$100,000	\$75,000	\$250,000
Assistant General Counsel	\$100,000	\$75,000	\$250,000

Office of Technical Assistance and Dispute Resolution

Position	Tax	Interest	Penalty
Director	\$200,000	\$125,000	Any Amount
Deputy Director	\$200,000	\$125,000	Any Amount
Revenue Program Administrators	\$75,000	\$62,500	\$250,000

General Tax Administration

Position	Tax	Interest	Penalty
Program Director	\$200,000	\$125,000	Any Amount
Deputy Program Director	\$200,000	\$125,000	Any Amount
Revenue Program Administrators	\$75,000	\$62,500	\$250,000
Senior Tax Audit Administrators	0	\$62,500	\$250,000
Service Center Managers	0	\$62,500	\$250,000
Tax Audit Supervisors	0	\$1,250	\$75,000
Revenue Tax Audit Supervisors	0	\$1,250	\$37,500
Tax Specialists	0	0	\$12,500
Revenue Specialists	0	0	\$3,750

General Tax Administration – Taxpayer Services Process

Position	Tax	Interest	Penalty
Process Manager	\$75,000	\$62,500	\$250,000
Revenue Program Administrators	\$2,500	\$2,500	\$75,000
Revenue Administrators	\$2,500	\$2,500	\$75,000
Tax Specialist Administrators	\$2,500	\$2,500	\$75,000
Revenue Managers	\$1,250	\$1,250	\$12,500

IV. Cases in Collection

Office of the General Counsel

Position	Tax	Interest	Penalty
Chief Assistant General Counsel	\$200,000	\$100,000	Any Amount
Assistant General Counsel	\$50,000	\$50,000	\$75,000

General Tax Administration

Position	Tax	Interest	Penalty
Program Director	\$200,000	\$125,000	Any Amount
Deputy Program Director	\$200,000	\$125,000	Any Amount
Revenue Program Administrators	\$62,500	\$62,500	\$250,000
Service Center Managers	\$5,000	\$5,000	\$100,000
Revenue Administrator	\$2,500	\$2,500	\$75,000
Tax Specialists	\$1,250	\$1,250	\$12,500
Revenue Specialists	0	0	\$3,750

General Tax Administration – Taxpayer Services Process

Position	Tax	Interest	Penalty
Process Manager	\$62,500	\$62,500	\$250,000
Revenue Program Administrators	\$2,500	\$2,500	\$75,000

Revenue Administrators	\$2,500	\$2,500	\$75,000
Tax Specialist Administrators	\$2,500	\$2,500	\$75,000
Revenue Managers	\$1,250	\$1,250	\$12,500
Tax Law Specialists	\$1,250	\$1,250	\$12,500
Senior Tax Specialists	\$1,250	\$1,250	\$12,500
Tax Specialists	0	0	\$12,500
Revenue Specialists	0	0	\$3,750

V. Cases in Criminal Investigations -- Investigations Support Unit

General Tax Administration

Position	Tax	Interest	Penalty
Revenue Program Administrator	\$62,500	\$62,500	\$250,000
Senior Tax Specialist	\$62,500	\$62,500	\$250,000
Tax Specialist	\$62,500	\$62,500	\$250,000

VI. Cases in Audit

General Tax Administration

Position	Tax	Interest	Penalty
Program Director	\$200,000	\$125,000	Any Amount
Deputy Program Director	\$200,000	\$125,000	Any Amount
Revenue Program Administrators	\$62,500	\$62,500	\$250,000
Senior Tax Audit Administrators	\$62,500	\$62,500	\$250,000
Service Center Manager (Out of state)	\$1,250	\$1,250	\$75,000
Tax Audit Supervisors	0	0	\$37,500
Revenue Tax Audit Supervisors	0	0	\$37,500

VII. Refunds

General Tax Administration

Position	Tax	Interest	Penalty
Program Director	0	0	Any Amount
Deputy Program Director	0	0	Any Amount

General Tax Administration -- Refund Process

Position	Tax	Interest	Penalty
Program Administrator	0	0	\$250,000
Revenue Program Administrators	0	0	\$100,000
Tax Audit Supervisors	0	0	\$37,500
Revenue Tax Audit Supervisors	0	0	\$37,500