Massachusetts Taxpayers Foundation

October 24, 2013

The Honorable Kenneth J. Donnelly
Chair, Joint Committee on State
Administration and Regulatory Oversight
State House, Room 413D
Boston, MA 02133

The Honorable Peter V. Kocot
Chair, Joint Committee on State
Administration and Regulatory Oversight
State House, Room 22
Boston, MA 02133

Dear Chairmen:

The Taxpayers Foundation opposes House bills 7 and 2834, which would provide the state auditor access to confidential personal and corporate income tax returns. The proposed legislation, including the amended language, threatens to erode taxpayer privacy while giving the auditor broad authority to access sensitive and confidential information about virtually every taxpayer in the state.

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

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

The auditor's written testimony submitted to the Joint Committee on State Administration and Regulatory Oversight cites "to measure the effectiveness of tax credits in accomplishing their intended results" as one reason for gaining access to tax returns. This makes clear that the scope of tax expenditure audits would reach beyond the evaluation of program administration and extend the auditor's authority to include a subjective judgment on the economic value of a particular tax policy. Not only is this outside the auditor's purview, but DOR has demonstrated that it is capable of measuring "the effectiveness of tax credits in accomplishing their intended results" through such work as the annual report on the film tax credit.

Furthermore, as explained in the Foundation's 2012 report, *State Tax Expenditures: Less Than Meets the Eye*, what qualifies as a tax expenditure is highly subjective. Some of the state's tax expenditures reflect DOR's far-reaching interpretation of what constitutes a tax expenditure rather than a clear cut exception to the application of a tax.

In particular, many of the so-called corporate tax expenditures are in fact elements of state tax policy. For example, DOR considers the net operating loss carry-forward to be a tax expenditure. However, these carry-forwards are so integral to the tax code that they are excluded from the Joint Committee on Taxation's (JCT) federal tax expenditure budget because they "represent normal income tax law."[1]

While it is true that a small number of other state entities have access to personal tax returns, in these cases they are provided only to the agency or department responsible for administering the relevant programs. The information is used to assist law enforcement, confirm income levels, or verify eligibility for their programs, and not for the purposes of evaluating the practices and policies of other state entities.

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

The Foundation wholeheartedly believes transparency and accountability are necessary elements of an effective government, but it is also prudent to balance the rights and needs of its taxpayers. However well intentioned, extending broad access to personal and corporate tax returns to an office other than DOR chips away at the vital principle of taxpayer privacy.

Sincerely,

Michael J. Widmer

Michael J. Widmer
President

cc: Members of Joint Committee on State Administration and Regulatory Oversight

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