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H. B. No. **1904**

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Introduced by HONORABLE BELLAFLOR J. ANGARA-CASTILLO

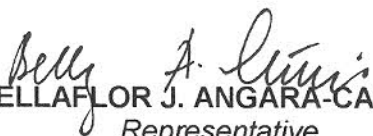
EXPLANATORY NOTE

In 1990, the Organisation for Economic Co-operation and Development's (OECD) Committee of Fiscal Affairs Working Party Number 8 published a document entitled *Taxpayer's rights and obligations – A survey of the legal situation in OECD Countries*. The survey found that, while most countries at that time did not have an explicit Taxpayer's charter, the following basic taxpayer rights were present in all systems: 1) the right to be informed, assisted and heard; 2) the right of appeal; 3) the right to pay no more than the correct amount of tax; 4) the right to certainty; 5) the right to privacy; and 6) the right to confidentiality and secrecy¹. Since then, several countries have expounded these basic rights into a taxpayers' charter. Australia, Belgium, Canada, France, Germany, Netherlands, Ireland, United Kingdom and the United States are among the advanced economies that have already provided for a taxpayer's bill of rights. In Asia, Japan, Korea, China, Malaysia, Singapore, Thailand and Indonesia have also enacted and passed the taxpayer's rights into law².

Over the years, many taxpayers have cried foul against dishonest and corrupt practices of some officers and employees of the Bureau of Internal Revenue (BIR) and the Bureau of Customs (BOC). Corruption and harassment have put unwarranted and unfair burden to the taxpaying public. Aside from legislating taxpayer's rights, we are also creating a National Taxpayer Advocate Office that would take the cudgel in promoting, ensuring and protecting taxpayer's rights. Among the functions of the proposed National Taxpayer Advocate Office include: to assist taxpayers in resolving problems with the BIR and the BOC; to identify areas in which taxpayers have problems in dealings with the BIR and the BOC; to propose changes, to the extent possible, in the administrative practices of the BIR and the BOC to mitigate problems identified; and, to issue Taxpayer Assistance Order to avoid, reduce or minimize the difficulty that a taxpayer may experience in settling their tax liabilities.

Through this measure, both the taxpayer and tax officials will have more clarity on how to do their business professionally, efficiently and transparently. This does not intend to put BIR or BOC employees and officials in bad light, but more so to highlight the need to protect and safeguard the rights of taxpayers who are entrusting a significant share of their hard-earned money to the hands of the government. In return, it is our hope that all taxpayers will be more truthful in the timely filing and payment of correct tax dues.

In view of the foregoing, the passage of this bill is earnestly sought.


BELLAFLOR J. ANGARA-CASTILLO
Representative
Lone District, Province of Aurora

¹ https://www.oecd.org/tax/administration/Taxpayers'_Rights_and_Obligations-Practice_Note.pdf

² Tax Administration 2015: Comparative Information on OECD and Other Advanced and Emerging Economies, OECD 2015.

H. B. No. **1904**

Introduced by HONORABLE BELLAFLOR J. ANGARA-CASTILLO

AN ACT
CREATING THE OFFICE OF THE NATIONAL TAXPAYER ADVOCATE
TO SAFEGUARD THE RIGHTS OF THE TAXPAYERS AND FOR OTHER PURPOSES

Be it enacted by the Senate and the House of Representatives of the Philippines in Congress assembled:

SECTION 1. Title. This Act shall be known as ***“The National Taxpayers Advocate Act of 2016.”***

SEC. 2. Declaration of Principles. It is hereby declared the policy of the State to promote honesty, integrity, transparency, responsibility and accountability in the management of public property and public affairs. Towards this end, the State shall establish and promote effective and efficient public service practices aimed at the prevention of graft and corruption in the revenue collecting agencies of the government, which shall encompass a program for the adoption of simplified procedures that will reduce/eliminate the opportunity of abuse of discretion and expedite transactions in the government, by creating the Office of the Taxpayer Advocate to safeguard the rights of the taxpayers.

SEC. 3. Creation of the Office of the National Taxpayers Advocate. In order to properly implement the law in protecting and promoting the rights of the Filipino taxpayers, there is hereby created an Office of the National Taxpayers Advocate. The Office of the National Taxpayers Advocate shall be attached to the Office of the President for administrative purposes only.

SEC. 4. Appointment of the National Taxpayer Advocate. The Office of the National Taxpayer Advocate shall be under the supervision and direction of an official to be known as the National Taxpayer Advocate. The National Taxpayer Advocate shall be appointed by the President of the Philippines and shall have the rank of Undersecretary.

The National Taxpayer Advocate shall be a Filipino citizen, at least forty (40) years old, of recognized probity, integrity, and independence, of good moral character, with at least ten (10) years of practice in the field of law, taxation and custom service, and must not have been convicted of any crime involving moral turpitude

An individual may be appointed as the National Taxpayer Advocate only if such individual was not an officer or employee of the Bureau of Internal Revenue (BIR), the Bureau of Customs (BOC), or the Department of Finance (DOF) two (2) years prior to such appointment. The National Taxpayer Advocate cannot serve as officer, employee or consultant of, or be appointed to or act in whatever capacity in, the BIR, BOC or DOF or as local treasurer, within three (3) years following his/her tenure as a National Taxpayer Advocate. For purposes of this Act, a local treasurer includes a municipal, city or provincial treasurer.

SEC. 5. Powers and Functions of Office of the National Taxpayers Advocate. It shall be the function of the Office of the National Taxpayers Advocate to —

- a. Assist taxpayers in resolving problems with the BIR and the BOC;
- b. Identify areas in which taxpayers have problems in dealings with the BIR and the BOC;
- c. Propose changes, to the extent possible, in the administrative practices of the BIR and the BOC to mitigate problems identified under the preceding paragraph;

- d. Identify potential legislative changes which may be appropriate to mitigate such problems;
- e. Issue taxpayer assistance orders upon application filed by a taxpayer with the Office of the Taxpayer Advocate. The latter may issue a Taxpayer Assistance Order when: (i) it is determined that the taxpayer is suffering or about to suffer a significant hardship as a result of the manner in which the internal revenue laws are being administered by the BIR, the BOC or the local treasurer; or (ii) the taxpayer meets such other requirements as are set forth in the implementing rules and regulations (IRR) of the Act.
For purposes of this paragraph, a significant hardship shall include (i) an immediate threat of adverse action; (ii) any action that will violate the right to privacy of a taxpayer; (iii) a delay of more than thirty (30) days in resolving taxpayer account problems; (iv) the taxpayer will incur significant and unnecessary cost, including fees for professional representation, if relief is not granted; or (v) irreparable injury to, or a long-term adverse impact on, the taxpayer if relief is not granted. Nothing herein shall prevent the National Taxpayer Advocate from taking any action in the absence of an application mentioned herein;
- f. In cases where any tax authority employee is not following the laws, rules and regulations or any applicable published administrative guidance, the National Taxpayer Advocate shall construe the factors taken into account in determining whether to issue a Taxpayer Assistance Order in the manner most favorable to the taxpayer;
- g. Any Taxpayer Assistance Order issued by the National Taxpayer Advocate under this section may be modified or rescinded only by the National Taxpayer Advocate, only if a valid written explanation was submitted by the Commissioner of Revenue or the Commissioner of Customs, as the case may be, and that the reasons for the modification or rescission are specifically stated by the National Taxpayer Advocate in the modification or rescission order; and
- h. The duration of on the period of limitation of assessment and collection of taxes with respect to any action for which a Taxpayer Assistance Order has been issued shall be suspended for the period beginning on the date of the taxpayer's application under subsection (e) and ending on the date of the National Taxpayer Advocate's decision with respect to such application or to any period that may be specified by the National Taxpayer Advocate in the Taxpayer Assistance Order issued pursuant to such application.

SEC. 6. *Organization and Staffing Pattern.* The Office of the Taxpayer Advocate shall be headed by a National Taxpayer Advocate. The National Taxpayer Advocate shall provide for the structural organization and staff of its offices and shall have the power and authority to designate and appoint officers and employees of the Office, in accordance with civil services laws, rules and regulations.

All positions in the Taxpayer Advocate Office shall be governed by compensation and position qualification system and qualification standards approved by the Taxpayers Advocate based on comprehensive job analysis and audit of actual duties and responsibilities. The National Taxpayer Advocate shall appoint and fix the remuneration of the emoluments of its personnel in accordance with existing laws on compensation and position classification.

SEC. 7. *Submission of Reports by the Office of the National Taxpayers Advocate.* The Office of the Taxpayer Advocate shall, within sixty (60) days upon the close of each calendar year, submit a report to the Chairperson of the Committee on Ways and Means of the Senate of the Philippines and House of Representatives on its activities during the year. Such report shall contain full and substantive analysis and recommendation, in addition to statistical information, and shall —

- a. identify the initiatives the Office of the Taxpayer Advocate has taken on improving taxpayer services and the BIR's and the BOC's responsiveness;
- b. contain recommendations received from individuals with the Office of Taxpayer Advocate;
- c. contain a summary of the most serious problems encountered by taxpayers, including a description of the nature of such problems and the recommended resolutions;
- d. contain an inventory of the items described in subsections (a), (b), and (c) for which action has been taken and the result of such action;

- e. contain an inventory of the items described in subsections (a), (b), and (c) for which action remains to be completed and the period during which each item has remained on such inventory;
- f. contain an inventory of the items described in subsections (a), (b), and (c) for which no action has been taken, the period during which each item has remained on such inventory, the reasons for the inaction, and identify any BIR and BOC official who is responsible for such inaction;
- g. identify any Taxpayer Assistance Office orders/recommendations which was not honored by the BIR and the BOC in a timely manner;
- h. contain recommendations for such administrative and legislative action as may be appropriate to resolve problems encountered by taxpayers;
- i. identify areas of the tax law that impose significant compliance burdens on taxpayers, the BIR and the BOC, including specific recommendations for remedying these problems;
- j. identify the most litigated issues for each category of taxpayers, including recommendations for mitigating such disputes; and
- k. include such other information as the National Taxpayer Advocate may deem advisable.

Each report required under this subparagraph shall be provided directly to the respective Committee on Ways and Means of the Senate of the Philippines and the House of Representatives without any prior review or comment from the respective Commissioner of the BIR or the BOC or any other officer or employee of the said Bureaus. On the other hand, the National Taxpayer Advocate shall furnish copies of their report to the Secretary of the Department of Finance, and to the respective Commissioners of the BIR and the BOC.

The Commissioners of the BIR and the BOC shall establish procedures requiring a formal response to all recommendations submitted to them by the National Taxpayer Advocate within three (3) months from the date of submission.

SEC. 8. Other Responsibilities of the National Taxpayer Advocate. The Filipino National Taxpayer Advocate shall —

- a. monitor the coverage and geographic allocation of local offices of taxpayer advocates;
- b. develop guidance to be distributed to all BIR and BOC officers and employees outlining the criteria for referral of taxpayer inquiries to local offices of taxpayer advocates;
- c. ensure that the local telephone number for each local office of the taxpayer advocate is published and available to taxpayers served by the office; and
- d. develop career paths for local taxpayer advocates choosing to make a career in the Office of the Taxpayer Advocate.

SEC. 9. Personnel Actions of the National Taxpayer Advocate. The National Taxpayer Advocate shall have the responsibility and authority to:

- a. establish, operate, and maintain a local taxpayer advocate office in the different administrative regions of the country as the need arises which shall be headed by a Regional Director to be appointed by the National Taxpayer Advocate; and
- b. evaluate and take personnel actions, including dismissal, with respect to any employee of any local taxpayer advocate office as provided in subsection (a).

The regional offices shall have, within their respective administrative regions, the following functions:

- a) Implement laws, policies, plans, programs, projects, rules and regulations of the Office;
- b) Provide efficient and effective service to the people;
- c) Coordinate with regional offices of other departments, offices, and agencies;
- d) Coordinate with the LGUs; and
- e) Perform such other functions as may be provided by law or assigned by the National Taxpayer Advocate.

SEC. 10. Taxpayer's Rights. In addition to the rights and remedies of the taxpayers as provided for in Republic Act (RA) No. 8424 or the National Internal Revenue Code (NIRC) of

1 1997, as amended, RA No. 10863 or the Customs Modernization and Tariff Act, and RA No.
2 1125, as amended, creating the Court of Tax Appeals and all other rules and regulations,
3 circulars and issuances thereof, the taxpayers are hereto granted the following: a) taxpayers'
4 basic rights; b) taxpayers' rights in civil cases; and c) taxpayers' rights in criminal tax cases.
5

6 **SEC. 11. *Taxpayers' Basic Rights.*** The following are the taxpayers' basic rights:
7

- 8 a. The right to available information and prompt and accurate responses to questions and
9 requests for tax assistance. In this regard, all revenue employees and officers shall
10 undergo regular evaluation on a variety of job standards including customer relations.
11 This standard requires employees and or officials to ensure that they fully explain to
12 taxpayers their rights under the law;
13
- 14 b. The right to be informed of any pending assessment, investigation and obtain clear and
15 non-technical statements which explain the reason for audit/assessment, selection, and
16 the procedures, remedies, and rights available during audit, appeals and collection
17 proceedings. These rights include, but are not limited to, the rights pursuant to this
18 Taxpayer's Bill of Rights and the right to be provided with a narrative description which
19 explains the basis of audit changes, proposed assessments, assessments and denials
20 of refunds; identifies any amount of tax, interest, or penalty due; and states the
21 consequences of the taxpayer's failure to comply with the notice;
22
- 23 c. The right to have a speedy and impartial disposition of the case, whether it be against
24 him/her or against the officials and staff of the Bureau of Internal Revenue (BIR), the
25 Bureau of Customs (BOC) and other government agency or municipality, including
26 government owned and controlled corporations (GOCCs) or government financial
27 institutions (GFIs), tasked with the enforcement of revenue or banking and financial
28 laws, whether of local or national application;
29
- 30 d. The right to have the case tried in secrecy and devoid of any publicity, whether via radio,
31 television, newspaper or any alternative media, while said proceeding is pending;
32
- 33 e. The right to request assistance from a Taxpayers' Rights Advocate, who shall be
34 responsible for facilitating the resolution of taxpayer complaints and problems not
35 resolved through the normal administrative channels within the BIR or the BOC,
36 including any taxpayer complaints regarding unsatisfactory treatment by the BIR or the
37 BOC employees and/or officials. The Taxpayers' Rights Advocate may issue a stay
38 order if a taxpayer has suffered or is about to suffer irreparable loss as a result of an
39 action by the said Bureaus;
40
- 41 f. The right to have the taxpayer's tax information kept confidential unless otherwise
42 specified by law;
43
- 44 g. The right to participate in free education activities that help the taxpayer successfully
45 comply with the revenue laws of the state;
46
- 47 h. The right to fair and consistent application of the tax laws of the state by the BIR and the
48 BOC;
49
- 50 i. The right to have the BIR begins and completes its audits in a timely and expeditious
51 manner after notification of intent to audit (letter of authority);
52
- 53 j. The right to request for installment payment of tax liabilities under any compromise
54 settlement or any assessed tax liabilities pursuant to Taxpayer Assistance Order;
55
- 56 k. The right to recover attorney's fees and litigation costs for tax assessments made
57 without substantial justification, and for claims for tax refunds which are not acted upon
58 for an unreasonable length of time at the administrative level, or denied at the
59 administrative level but subsequently allowed by the Court of Tax Appeals (CTA) if it
60 appears that such denial was unjustified. The award of attorney's fees and costs of
61 litigation shall be included in the order upholding the taxpayer's claim;
62

- 1 l. The right to have interests and penalties abated in case of any unjustifiable error or
2 delay caused by the tax authorities or their agents, including ministerial act such as loss
3 of records, personnel transfers, extended illness or leaves of absence, and personnel
4 training; and
5
- 6 m. The right to have the assistance of counsel in criminal proceedings should the taxpayer
7 request for it.
8

9 **SEC. 12. Taxpayers' Rights in Civil Cases.** The following are the taxpayers' rights in civil
10 cases:
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- 12 a. The right to have the opportunity to have the case against him/her amicably settled, as
13 the case may warrant: Provided, that in every stage of the proceeding, whether in the
14 administrative or judicial level, the parties shall always be given the chance to exhaust
15 all and every remedy available for the speedy settlement of the case: Provided,
16 however, That nothing in this law shall deprive the court of competent jurisdiction of its
17 judicial prerogatives;
18
- 19 b. The right to be informed of impending collection actions which require sale or seizure of
20 property or freezing of assets, except jeopardy assessments, and the right to at least
21 thirty (30) days notice in which to pay the liability or seek further review;
22
- 23 c. The right to have all other collection actions attempted before a jeopardy assessment,
24 unless delay will endanger collection and, after a jeopardy assessment, the right to have
25 an immediate review of the jeopardy assessment. As used herein, jeopardy assessment
26 is a tax assessment made by an authorized revenue officer (RO) without the benefit of a
27 complete or partial audit, in light of the RO's belief that the assessment and collection of
28 a deficiency tax will be jeopardized by delay caused by the taxpayer's failure to: (1)
29 comply with audit and investigation requirements to present his books of accounts
30 and/or pertinent records; or (2) substantiate all or any of the deductions, exemptions or
31 credits claimed in his return;
32
- 33 d. The right to seek review, through formal or informal proceedings, of any adverse
34 decisions relating to determinations in the audit or collection processes and the right to
35 seek a reasonable administrative stay enforcement action while the taxpayer pursues
36 other administrative remedies available under the law;
37
- 38 e. The right to procedures for retirement of tax obligations by installment payment
39 agreements which recognize both the taxpayer's financial condition and the best
40 interests of the State, provided that the taxpayer gives accurate and current information
41 and meets all other tax obligations on schedule;
42
- 43 f. The right to procedures for requesting cancellation, release, or modification of liens filed
44 by the BIR and the BOC and for requesting that any lien which is filed in error be so
45 noted on the lien cancellation filed by the BIR and the BOC, in public notice to any credit
46 agency at the taxpayer's request;
47
- 48 g. The right of the taxpayer in a judicial or administrative action brought or maintained
49 without the support of justiciable issues of fact or law, to recover all costs of the
50 administrative or judicial action, including reasonable attorney's fees; and
51
- 52 h. The right to waiver of interest that accrues as the result of errors or delays caused by a
53 BIR/BOC employee; provided that the provisions of Rule 63 of the Rules of Civil
54 Procedures shall likewise be applicable to the aggrieved taxpayer.
55

56 **SEC. 13. Taxpayers' Rights in Criminal Tax Cases.** The following are the taxpayers' rights in
57 criminal tax cases:
58

- 59 a. The right to be knowledgeably and intelligently informed of the charges as contained in
60 any properly and timely prepared audit report, assessment notice, correspondence,
61 document, letter and the like, as implemented by rules and regulations, as the case may

be, coming from the concerned government agency tasked to enforce the revenue laws and banking and financial laws, in appropriate cases;

- b. The right to be given ample and adequate opportunity, as the situation may warrant, to present proof/proofs at his/her or anybody else's possession that would assist him/her in the pursuit of the case;
- c. The taxpayer shall have the right to seek the assistance of competent and willing counsel of his/her own choice, to help and assist him/her in the preparation or defense of the case;
- d. The right to be served with all the necessary documents and papers appurtenant thereto, relative to the charges against him/her, in a manner that would assist him/her to expeditiously present his/her side pursuant the charges against him/her;
- e. The taxpayer shall have the right to present witnesses in his/her favor: and
- f. The right to be represented or advised by counsel or other qualified representatives at any time in administrative interactions with the BIR and the BOC, the right to procedural safeguards with respect to recording of interviews during tax determination or collection processes conducted by the BIR and the BOC, the right to be treated in a professional manner by the BIR and the BOC 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.

SEC. 14. Penalties for the Violation of the Rights of Taxpayers. Any person who is found to have violated the Taxpayers Rights shall be punished with imprisonment of not less than six (6) years nor more than twelve (12) years and a fine of not less than One Hundred Thousand Pesos (P100,000.00) but not more than Five Hundred Thousand Pesos (P500,000.00).

SEC. 15. Remedies. Any violation of the provisions of this Act committed by any official or employee of the BIR and the BOC, other than the Commissioner of Internal Revenue and Commissioner of Customs, shall be filed with the office of the Commissioners of either BIR or BOC, as the case may warrant, with the assistance of the National Taxpayer Advocate. The Commissioner of Internal Revenue or the Commissioner of Customs shall decide the controversy expeditiously, which shall be within thirty (30) days but not more than sixty (60) days from the time the complaint or case is filed with their respective offices. The aggrieved party or anybody acting on his/her behalf may bring any adverse decision of the Commissioner of Internal Revenue or the Commissioner of Customs to the Secretary of Finance within thirty (30) days from receipt of such decision for review. Should the Commissioner of Internal Revenue or Commissioner of Customs fail to act on a complaint or case within the time herein prescribed, the aggrieved party or anybody acting on his/her behalf may file the complaint or case directly to the Secretary of Finance.

Complaints against the Commissioner of Internal Revenue or the Commissioner of Customs for violation of this Act shall be filed directly with the Secretary of Finance who shall decide the case within sixty (60) days from the date the complaint was filed. Decisions of the Secretary of Finance may be appealed before the Office of the President.

Any complaint or case filed pursuant to this Section shall be without prejudice to any other action that may be instituted against the employee or official of the BIR or the BOC under existing laws, rules and regulations.

Evidence against the taxpayers obtained in relation to this Act shall be inadmissible in any court or proceeding if found to have been obtained in violation of any of the above-enumerated taxpayer's rights.

The evidence in any court or proceeding obtained in relation to this Act shall be inadmissible in a court proceeding if found to have violated any of the enumerated taxpayer's bill of rights.

SEC. 16. Report of the Secretary of Department of Finance. On or before first day of June of each calendar year, the Secretary of the Department of Finance shall submit to both the

Chairperson of the Senate and House of Representatives Ways and Means Committee a report on: (a) all categories of incidents involving the misconduct of the officers and employees of the BIR and the BOC during the preceding calendar year; and (b) action on and disposition of any such instances.

SEC. 17. *Funding.* The amount necessary to carry out the purposes of this Act, including operation, maintenance, and capital outlay shall be sourced from the current General Appropriation Act (GAA) of 2017 of the Office of the President. Thereafter, the amount needed for the operation and maintenance of the Office of the Taxpayer Advocate Office shall be included in the annual GAA.

SEC. 18. *Implementing Rules and Regulations.* Within thirty (30) days after the effectivity of this Act, the following shall convene for the purpose of formulating the implementing rules and regulations for this Act:

- a. A representative of the Department of Finance;
- b. A representative from the Bureau of Internal Revenue;
- c. A representative from the Bureau of Customs;
- d. A representative from the Congressional Oversight Committee on Comprehensive Tax Reform Program;
- e. Representatives from the Committee on Ways and Means of both houses of Congress; and
- f. A representative each from a business association and the Philippine Institute of Certified Public Accountants (PICPA).

Said officials and representatives shall convene every day for the purpose of formulating the said rules until such time that the implementing rules and regulations have been formulated; *Provided*, that the failure to produce implementing rules and regulation within sixty (60) days from the effectivity of this Act shall not hinder the implementation of this Act.

SEC. 19. *Repealing Clause.* All laws, orders, decrees, rules and regulations, and other parts thereof inconsistent with the provisions of this Act are hereby repealed, amended or modified accordingly.

SEC. 20. *Separability Clause.* If any provision of this Act is declared invalid or unconstitutional, other provisions hereof which are not affected thereby shall remain in full force and effect.

SEC. 21. *Effectivity Clause.* This Act shall take effect fifteen (15) days after its publication in at least two (2) national newspapers of general circulation, whichever date comes earlier.

Approved,