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Taxpayers' Rights: Comparative Analysis of the United States of America and the Latin American Institute of Tax Law (ILADT)

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by

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Abstract

This Article addresses the challenges, trends, and evolution of Taxpayers' Rights both in the Unites States and in Latin America, particularly by comparing the U.S. Taxpayers' Bill of Rights and the recently adopted Taxpayers' Rights Letter from the Latin American Institute of Tax Law (ILADT). Furthermore, although in Latin American this is a relatively more recent topic, nonetheless, in the United States it is not, and the Article also addresses the evolution of taxpayers' rights both from the point of view of the U.S. Constitution as well as iconic decisions from the U.S. Supreme Court.

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I. Introduction

The right of a State to impose taxes on its citizens as well as the duty of said citizens to contribute with public expenses have both been historically recognized and accepted by most societies around the world. It is also understood that, in this relationship, State and Taxpayer are not equal and the taxpayers can easily find themselves vulnerable to the power of the State. It is under these principles that constitutional rights and duties, as well as other pieces of legislation, have been established throughout countries all over the world with the intention of protecting taxpayers' rights as well as the relationship between the tax administration and the taxpayers.

In order for the relationship between taxpayer and the tax administration to work, there must be a sovereign State with the authority to collect as well as rights and obligations of each party involved. A State's sovereignty is the result of the socially accepted organization of a State and its duties toward its citizens and also the entitlement to collect said taxes. The taxpayers' obligations result from the responsibility that each citizen has to contribute to public spending.[1] It is precisely this

1. *See* Thomas Hobbes, Leviathan, or, the Matter, Form, and Power of a Commonwealth Ecclesiastical and Civil (1651).

that creates a formidable conflict between the common good and individual rights. In theory, the common good must be above the individual's and, therefore, the State has a right to "violate" an individual's rights if it serves the community, but at the same time, it is the State that must guarantee and protect the individual rights of its citizens in order to maintain the Rule of Law.[2]

The legitimacy of the tax system and the tax administration *per se* is always vital for the successful collection of taxes, even though it is not regarded as trustworthy more often than not—first of all because it is traditionally not perceived as being under the umbrella of the justice system, and secondly, because tax collection very often does not translate into public benefit. In addition, legitimacy issues arise out of the lack of guidelines and basic rights in the tax collection process, at the administrative as well as at the judicial level.[3]

Several principles that regulate actions and procedures for the State as well as the taxpayers have become the cornerstone of taxpaying systems. These are representation, legality, non-retroactivity, and tax fairness, among many others. Some of these principles date back to the 13th century and the Magna Carta (no taxation without representation), but it is not until the mid-20th century that the concept of the taxpayers' rights before the State starts to take shape. These principles have continued to gain strength and have been recognized as individuals rights, almost as much as any human rights. This is why more and more measures have been adopted worldwide to protect the rights of taxpayers, at first in the form of guidelines or recommendations, which have then been incorporated into each country's or region's legal framework.

After many years of advancements toward the rights of taxpayers, the United States of America finally adopted the Taxpayers' Bill of Rights (TBR) in 2015.[4] This document sets forth the fundamental rights in the taxpayer-tax administration relationship. Around the same time, the European Commission had been developing similar documents for the protection of taxpayers that were to be adopted by all countries

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2. *See* Liam Murphy & Thomas Nagel, The Myth of Ownership: Taxes and Justice (2002).

3. Alice G. Abreu & Richard K. Greenstein, *The U.S. Taxpayer Bill of Rights: Window Dressing or Expression of Justice*, J. Tax Admin, no. 2, 2018, at 25.

4. Pub. L. No. 114-113, Div. Q § 401, 129 Stat. 2242, 3117 (2015) (codified at I.R.C. § 7803(a)(3)).

within the European Union. In Latin America, the trend toward the adoption of taxpayers' rights was taking shape in the form of a Commission formed by the Latin American Institute of Tax Law (ILADT), which published a paper setting out the guidelines for taxpayers' rights with the idea that all Member Countries would adopt legislation following these guidelines. This is known as the Taxpayers' Rights Memorandum (Carta de los Derechos de los Contribuyentes—TRM) and was published in 2018.[5] So, within the last decade, all three regions have adopted legislation concerning taxpayer rights, each in its own shape and form. Throughout this Article, the legal and judicial development of the TBR will be examined and then compared to the dispositions set forth by the ILADT with the intention of analyzing the reach of each one in its corresponding region.

II. Taxpayers' Rights in the United States of America and the Latin American Institute of Tax Law (ILADT)

In June 2014, the United States passed the TBR which was subsequently incorporated into Internal Revenue Code section 7803(a)(3). This provision states the basic rights that taxpayers have in the face of the tax administration office. Simultaneously, in 2012 at the Latin American Tax Conference held in Spain, the ILADT appointed a commission for the drafting of a model Taxpayers' Rights Memorandum (TRM),[6] and after several drafts, the commission submitted a final text to the members of ILADT for approval, which was adopted in November 2018 at the XXX Latin American Tax Conference in Uruguay.[7] This final draft includes rights and duties set forth in the constitutions of Member States, also contained in the Universal Declaration of Human Rights, the Inter American Human Rights Convention, the European Taxpayers' Code, jurisprudence of Member States, among other sources, to incorporate as many rights as possible for protecting taxpayers' rights and their relationship with the tax administration.

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5. Carta de Derechos del Contribuyente para los Paises Miembros del Instituto Latinoamericano de Derecho Tributario (2018), http://www.iladt.org/frontend/docs/Carta_Derechos_Contribuyente_ILADT_aprobada_y_Presentacion.pdf.

6. *Id.* at 4.

7. *Id.* at 5.

The taxation system in the United States is based mostly on "voluntary disclosure," not because paying past due taxes is optional but because it is the taxpayers that, generally speaking, choose the information they provide to the IRS and based on that, calculate their tax liabilities. Coupled with an efficient supervision system, tax collection is highly efficient and has high levels of compliance.[8] Because the system runs on self-determination, calculation, and reporting, it is essential that taxpayers have faith in the tax administration, and clearly established rights, duties, and procedures help with the legitimacy of the system.

For that reason, the U.S. Congress adopted the TBR, which at first glance seems to be very generic but which has been the subject of extensive studies and analysis, debates, and procedures, with the intention of giving the IRS a more legitimate framework and building more confidence in the tax system. The TBR is not binding in the case of legal action against the administration, but it seeks to transform previously established obligations for the IRS into taxpayers' rights. It modifies the interpretation of what was already established as obligations into rights, which commands greater respect and procedural legitimacy by giving the taxpayer the power to demand these rights from the government, both from tax administration and the judicial system (tax courts).

Considering the TBR has a total of 10 provisions in the form of rights, while the TRM has 142, it seems almost impossible to believe that they both encompass basically the same principles. It is with the intention of demonstrating that both documents set forth the same legal rights for taxpayers that we shall examine each article in the TBR and relate it to the articles dealing with the same principles in the TRM. In a comparison between the TBR (USA) and the TRM (ILADT), most of the 142 provisions of the TRM can be framed within the 10 provisions of the TBR, making it an excessively complex and over-regulating document when compared with the U.S. counterpart. For the sake of simplicity, we shall examine the 10 rights of the TBR and briefly mention the counterparts of the TRM of the ILADT that basically cover the same rights only in a more extended, complex, and overly detailed manner.

8. Dianne C. Mehany et al., *The Practical Protection of Taxpayers' Fundamental Rights: IFA Branch Reports: United States of America*, 100B Cahiers de Droit Fiscal Int'l 841 (2015).

A. Right to Be Informed

> *Taxpayers have the right to know what they need to do to comply with the tax laws. They are entitled to clear explanations of the laws and IRS procedures in all tax forms, instructions, publications, notices, and correspondence. They have the right to be informed of IRS decisions about their tax accounts and to receive clear explanations of the outcomes.*[9]

The right to be informed goes hand in hand with due process and guaranteed rights of taxpayers in the face of the administration.[10] Even though it is not specifically stated here, this also encompasses the non-retroactivity of the law, as well as the taxpayers' intention and ignorance of the law as a valid excuse for non-compliance. The U.S. legal system is based on good faith and the presumption of innocence until proven guilty and can therefore be used as a legal defense in certain cases. The "Innocent Spouse Relief"[11] as well as the "Streamlined Foreign Offshore Procedures/Voluntary Disclosure Program"[12] are two examples of cases where the law allows for expedited and past due tax filing and/or procedures for citizens that do not reside within the United States in order to avoid responsibility and/or alleviate tax evasion charges under the claim of ignorance of the tax code or the applicable law. The U.S. Supreme Court has even accepted that taxpayers may disregard an IRS notice if it has not been properly delivered, as well as the right for proper and timely notifications.[13] In Latin America, ignorance of the law is not accepted as a defense for non-compliance with the law, which makes a

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9. *Taxpayer Bill of Rights*, IRS, https://www.irs.gov/taxpayer-bill-of-rights (last updated Oct. 6, 2020); *see also* I.R.C. § 7803(a)(3)(A).

10. U.S. Const. amends. V, XIV (setting forth due process and equal protection before the law).

11. *Innocent Spouse Relief*, IRS, https://www.irs.gov/businesses/small-businesses-self-employed/innocent-spouse-relief (last updated Sept. 19, 2020).

12. *Streamlined Filing Compliance Procedures*, IRS, https://www.irs.gov/individuals/international-taxpayers/streamlined-filing-compliance-procedures (last updated Sept. 30, 2020).

13. *See* United States v. Clarke, 573 U.S. 248 (2014).

significant difference when dealing with past due taxes and/or reporting and not knowing your duties and obligations.

As for the TRM, articles 6, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 70, 80, 83, 84, 108, 114, and 115 all deal with the right to be informed. These provisions basically set forth: (1) participation of the taxpayer throughout the process, both administrative or judicial; (2) knowing the status of the process, including having access to the file at all times; (3) knowing the identity of the parties and tax authorities handling the case; (4) right to be informed of all actions by the tax administration; and (5) right to be personally served, among other aspects.

B. Right to Quality Service

> *Taxpayers have the right to receive prompt, courteous, and professional assistance in their dealings with the IRS, to be spoken to in a way they can easily understand, to receive clear and easily understandable communications from the IRS, and to speak to a supervisor about inadequate service.*[14]

This right is based on the obligation that the State and tax administration have of providing proper service to taxpayers and preventing abuse of power. It provides the taxpayers not only a hierarchical set of resources and services that provide better service but also different levels of authority and legal actions to defend the taxpayers' rights. Nevertheless, beyond being a taxpayer right, this must be seen as a public policy and help provide the legitimacy that the administration needs and at the same time prevent abuses of power by the State and its employees, either at the administrative or judicial level. The right to quality service also, in a way, supports and guarantees due process. The tax administration must have access to adequate resources (economic and personnel) and provide the proper training for its employees in order to offer quality service.

As for the TRM, articles 11, 12, and 13 deal with the right to quality service. These provisions set forth the right (1) to complain and make suggestions; (2) to be treated with respect; and (3) to receive an impartial equitable treatment within a reasonable time, all in a very

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14. *Taxpayer Bill of Rights*, *supra* note 9; *see also* I.R.C. § 7803(a)(3)(B).

extensive way that could be well summarized under the right of quality service.

C. Right to Pay No More Than the Correct Amount of Tax

> *Taxpayers have the right to pay only the amount of tax legally due, including interest and penalties, and to have the IRS apply all tax payments properly.*[15]

Taxpayers have the right to determine the amount of taxes they must pay according to the law and regulations but also legal tools available to them throughout the same law and regulations, which includes exemptions, deductions, and other such mechanisms that reduce tax liabilities. Nobody is required to pay anything more than the minimum due according to the law. This includes the payment of taxes as well as possible reimbursements, refunds, and notification of any mistakes or miscalculations on behalf of the tax administration and the suspension of payment until such complaints have been heard and finalized.

In 1935, the U.S. Supreme Court affirmed the Second Circuit decision in the case of *Helvering v. Gregory*;[16] in that Second Circuit decision, Judge Hand famously wrote that "Any one may so arrange his affairs that his taxes shall be as low as possible; he is not bound to choose that pattern which will best pay the Treasury; there is not even a patriotic duty to increase one's taxes."[17] From this ruling stems the culture of allowance and almost national pride of tax planning and tax avoidance, which is legally permitted,[18] not so with tax evasion, which is prohibited and otherwise punishable.[19]

As for the TRM, articles 14, 15, 16, 17, 19, 20, 21, 22, 23, 54, and 55 all deal with the right to pay no more than the right amount of taxes. These provisions set forth: (1) tax equality and economic capacity; (2) fair tax calculations; (3) family and other deductions; (4) right to private property; (5) non-confiscation; (6) tax determination not on

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15. *Taxpayer Bill of Rights*, *supra* note 9; *see also* I.R.C. § 7803(a)(3)(C).

16. Gregory v. Helvering, 293 U.S. 465 (1935).

17. Helvering v. Gregory, 69 F.2d 809, 810 (2d Cir. 1934).

18. The use of tools to reduce the tax liability, even though it is legal, but contravening the intent of the law.

19. Illegally reducing the tax liability.

presumptive base and under current and true income; (7) protection of the withholding agent in case of payment by the taxpayer; and (8) compensation, reimbursements, and tax credits. Again, the TRM is setting the same right but going into so much detail that it derails from the intention of making it clear that taxpayers should not pay more than due.

D. Right to Challenge the IRS's Position and Be Heard

> *Taxpayers have the right to raise objections and provide additional documentation in response to formal IRS actions or proposed actions, to expect that the IRS will consider their timely objections and documentation promptly and fairly, and to receive a response if the IRS does not agree with their position.*[20]

A fundamental right is to challenge the authority of the IRS after receiving a "Notice of Deficiency"; the taxpayer has the opportunity to present evidence and if no agreement is reached with the tax administration, appeal before the U.S. Tax Court prior to paying the amount of taxes due according to the tax administration. The United States recognizes the right of citizens to appeal decisions made by the government (including the tax administration)[21] as well as damages caused by such decisions.[22]

As for the TRM, articles 51, 101, 102, 103, 104, 105, 106, 107, and 113 deal with the right to challenge. These provisions set forth all sorts of details about: (1) challenging the tax administration's position; (2) amicable resolution and within reasonable time; (3) alternative dispute resolution procedures; and (4) effective judicial protection. The provisions make it almost impossible for any taxpayer to keep or effectively understand what those rights entail, which ultimately is just the right to challenge the tax administration's position.

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20. *Taxpayer Bill of Rights*, *supra* note 9; *see also* I.R.C. § 7803(a)(3)(D).

21. *See* Flast v. Cohen, 392 U.S. 83 (1968).

22. *See* Massachusetts v. Mellon, 262 U.S. 447 (1923).

E. Right to Appeal an IRS Decision in an Independent Forum

> *Taxpayers are entitled to a fair and impartial administrative appeal of most IRS decisions, including many penalties, and have the right to receive a written response regarding the Office of Appeals' decision. Taxpayers generally have the right to take their cases to court.*[23]

The IRS must have independent and separate departments that can review a case so as to guarantee to the best of their ability an impartial analysis of the decisions previously reached in the case of discontent or disagreement between the IRS and the taxpayer. Publication 5 of the IRS states the proper procedure to appeal any IRS decision before the Tax Court.[24] This ability to appeal the decision of one branch of government to another was granted after 1803 when the U.S. Supreme Court, in one of its most significant and iconic decisions, declared the separation and independence of powers as the constitutional basis for the allowance of citizens to sue one branch of the government.[25]

Even though courts have the authority of revising IRS decisions, they cannot interpret an implicit decision on the application of the law. In 1984, the U.S. Supreme Court established what is known as the *Chevron* deference doctrine,[26] which established that an analysis must be carried out in order to determine whether the administrative decision was reasonable and within the framework of the applicable law. The doctrine says that even though there must always be a separation of powers, the judicial branch will have deference toward the administrative agency out of respect for that institution's powers granted by the law; in other words, it will not reverse any decision unless it is in direct opposition to its own regulations or rule of law. This doctrine has been extremely controversial since its publication because even though it emphasizes the separation of powers, it also limits the judicial branch's

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23. *Taxpayer Bill of Rights*, *supra* note 9; *see also* I.R.C. § 7803(a)(3)(E).

24. IRS Pub. No. 5, Your Appeal Rights and How to Prepare a Protest If You Don't Agree (2019), https://www.irs.gov/pub/irs-pdf/p5.pdf.

25. Marbury v. Madison, 5 U.S. (1 Cranch) 137 (1803).

26. Chevron, USA, Inc. v. Nat. Res. Def. Council, Inc., 467 U.S. 837 (1984).

ability to revise and correct mistakes made by the administration, which in turn, limits the "checks and balances" principle. This ruling has also strengthened the so-called "Administrative State" because it allows the executive branch to grant rights (normally reserved for the judicial branch) and create rights (normally reserved for the legislative branch) based on a broad interpretation that the administrative power may act and perform anything that is not strictly and expressly prohibited.

As for the TRM, articles 3, 25, 26, 27, 29, 30, 33, 35, 36, 39, 59, 60, 61, 74, 75, 78, 79, 110, 111, 112, 116, 117, 118, 119, 120, and 121, all basically deal with the right to appeal in an independent forum. These provisions reach the same conclusion but go into endless details about: (1) access to impartial and fair justice and the application of constitutional rights for the protection of taxpayers' rights; (2) presumption of innocence—innocent until proven otherwise; (3) appealing a decision; (4) independent and knowledgeable judges; (5) injunctive relief during litigation; (6) proportionate and fair decisions; (7) appealing in tax and higher courts; (8) application of statute of limitations; and (9) obtaining information about the process from the government. Once again, in the end, it feels like it only serves to obscure the purpose of letting taxpayers know their rights.

F. Right to Finality

> *Taxpayers have the right to know the maximum amount of time they have to challenge the IRS's position as well as the maximum amount of time the IRS has to audit a particular tax year or collect a tax debt. Taxpayers have the right to know when the IRS has finished an audit.*[27]

In accordance with taxpayers' rights, the IRS has 3 years after a tax return has been submitted to determine if there are any additional taxes due (with a few exceptions) and 10 years to collect them unless there has been a written agreement between the IRS and the taxpayer that extends the collection period, or there is a court sentencing on the matter. Regulations establish clear and defined periods for the IRS so that the taxpayers' rights are always protected and the taxpayer is never in a

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27. *Taxpayer Bill of Rights*, *supra* note 9; *see also* I.R.C. § 7803(a)(3)(F).

powerless position. In any case, any tax procedure must be terminated and finalized either through a notification that states the closing of the matter or through an agreement between the taxpayer and administration that solves all open matters and therefore concludes the issue.

Articles 4, 5, and 6 have been included in the TBR, but they were previously established in the IRS Manual[28] as well as in many previous IRS publications such as No. 556 involving appeals.[29] There is general confidence in the IRS's capability of collecting taxes partly because there are internal norms that guide its workers[30] and regulate how they should proceed, and these have been recognized as valid and binding by U.S. Supreme Court decisions.[31]

As for the TRM, articles 38, 56, 76, 77, 85, 86, 88, and 89 deal with the right to finality. These provisions set forth: (1) public process (no secrecy, due process), avoiding undue delays, and timely decisions; (2) obtaining a final and binding response; and (3) all government actions must end, providing closure and definitive effects.

G. Right to Privacy

> *Taxpayers have the right to expect that any IRS inquiry, examination, or enforcement action will comply with the law and be no more intrusive than necessary, and will respect all due process rights, including search and seizure protections and will provide, where applicable, a collection due process hearing.*[32]

H. Right to Confidentiality

> *Taxpayers have the right to expect that any information they provide to the IRS will not be disclosed unless*

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28. IRM pt. 8, www.irs.gov/irm/part8 (Appeals).

29. IRS Pub. No. 556, Examination of Returns, Appeal Rights, and Claims for Refund (2013), https://www.irs.gov/pub/irs-pdf/p556.pdf.

30. Leandra Lederman, *Taxpayer Rights in the Lurch: A Response to Professor Johnson*, 88 Tax Notes 1041 (Aug. 21, 2000).

31. *See* United States v. Caceres, 440 U.S. 741 (1979); Morton v. Ruiz, 415 U.S. 199 (1974).

32. *Taxpayer Bill of Rights*, *supra* note 9; *see also* I.R.C. § 7803(a)(3)(G).

> *authorized by the taxpayer or by law. Taxpayers have the right to expect appropriate action will be taken against employees, return preparers, and others who wrongfully use or disclose taxpayer return information.*[33]

The Right to Privacy and the Right to Confidentiality are different but clearly related to each other. The Right to Privacy is a universally recognized human right set forth in article 12 of the Universal Declaration of Human Rights.[34] It is tightly bound to the right of confidentiality of personal information that every person has to safeguard their own information, which leads to privacy and confidentiality.

The Constitution of the United States of America touches upon the right against unreasonable search and seizure,[35] the right against self-incrimination, and the right against deprivation of life, liberty, and property without due process in articles four, five, and the 14th Amendment, respectively. Under the rule of these laws, the IRS may not share any information about a taxpayer without that person's consent and authorization, may not use the information for anything other than tax purposes, and may not contact a third party in any attempt to acquire information on any taxpayer without previous notification. The violation of the right to privacy with regard to tax information on the part of legal or accounting advisors, or any other person with legitimate access to the information, is considered a criminal offense.[36]

There are two U.S. Supreme Court decisions that govern the application of these two rights. The first one dates back to 1900[37] and concludes that if the privacy of the information granted to the tax administration is not safely protected, then the willingness of the taxpayers to offer such information would be severely affected. The second, from 1927,[38] sets the basis under which the taxpayer has the right to not

33. *Taxpayer Bill of Rights*, *supra* note 9; *see also* I.R.C. § 7803(a)(3)(H).

34. U.N. Universal Declaration of Human Rights (1948), https://www.un.org/en/universal-declaration-human-rights/.

35. Mapp v. Ohio, 367 U.S. 643 (1961) (evidence obtained in violation of the IV and XIV Amendments of the U.S. Constitution is not admissible in court).

36. I.R.C. § 7213.

37. Boske v. Comingore, 177 U.S. 459 (1900).

38. United States v. Sullivan, 274 U.S. 259 (1927).

self-incriminate in any proceedings as to activities considered illegal at the time because accepting the validity of the tax would directly imply the offense or crime.[39]

The general confidence that taxpayers have in the administration's safekeeping of the information as well as the fact that it will be used strictly for tax purposes is as important in protecting the taxpayers' rights as it is in maximizing tax collection.[40] Legislators, judges, and academics have all recognized that, without these guarantees, taxpayers would limit the information provided to the tax administration, and taxpayers' rights and tax collection would both be compromised.[41]

In 1977,[42] the United States of America was already discussing that the

> the effectiveness of this country's tax system depends on the confidentiality of tax returns and related information. While no one has tried to measure how the knowledge that other Federal and State agencies can inspect tax returns affects an individual taxpayer, the Commission believes that widespread use of the information a taxpayer provides to the IRS for purposes wholly unrelated to ax administration cannot help but diminish the taxpayer's disposition to cooperate with the IRS voluntarily. This is not to say that the taxpayer will decline to cooperate, but that his incentive to do so may be weakened. Such a tendency in itself creates

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39. As of today, IRS Pub. No. 17, Your Federal Income Tax Return 94 (2019), https://www.irs.gov/pub/irs-pdf/p17.pdf, provides, "Income from illegal activities, such as money from dealing illegal drugs, must be included in your income" on the tax return.

40. Office of Tax Policy, U.S. Treas. Dep't, Report to the Congress on Scope and Use of Taxpayer Confidentiality and Disclosure Provisions: Volume I: Study of General Provisions (2000).

41. Allison Christians, *Taxpayer Rights in the United States* (Oct. 14, 2016), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2809750.

42. Personal Privacy in an Information Society: The Report of the Privacy Protection Study Commission (1977), https://www.ncjrs.gov/pdffiles1/Digitization/49602NCJRS.pdf.

> a potentially serious threat to the effectiveness of the Federal tax system.[43]

As for the TRM, articles 62, 63, 65, 66, 67, 68, and 124 deal with the right to privacy and confidentiality. These provisions set forth: (1) confidentiality of the information provided; (2) no fishing expeditions; (3) legitimacy of the body or agency requesting the information; (4) be informed of requests to third parties; (5) no use of information for non-tax purposes; and (6) privacy and secrecy of the information.

I. Right to Retain Representation

> *Taxpayers have the right to retain an authorized representative of their choice to represent them in their dealings with the IRS. Taxpayers have the right to seek assistance from a Low Income Taxpayer Clinic if they cannot afford representation.*[44]

One of the fundamental rights of due process of any individual, including of course taxpayers, is to have an appropriate representative look out for their rights and interests. Therefore, any taxpayer also has the right to name a legal counsel to represent them before the IRS or courts. If a taxpayer does not have the economic means to hire one, then they have access to the Low Income Taxpayer Clinic at a low or no cost. Even though this clinic is partially funded by the IRS, its employees and volunteers are completely independent.

Tax law mostly deals with cases related to the deprivation of life, liberty, and property in relation to the rights of privacy and confidentiality. One of the most controversial themes in the relationship between the taxpayers and the IRS and the taxpayers' rights is the attorney-client privilegie, and it is a fundamental aspect of the Right to Retain Representation, being a controversial issue with respect to the taxpayer-tax administration relationship.[45]

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43. *Id.* at 540.

44. *Taxpayer Bill of Rights*, *supra* note 9; *see also* I.R.C. § 7803(a)(3)(I).

45. Geoffrey C. Hazard, Jr., *An Historical Perspective on the Attorney-Client Privilege*, 66 Cal. L. Rev. 1061 (1978).

Ultimately, more than a right, having representation before the IRS has become a necessity due to the difficult and complex nature of the tax system and tax code, as well as the significant amounts of money involved in these disputes. It is also the reason why so many mistakes and cases of fraud have been discovered, leading to attempts by the Treasury and IRS to regulate tax preparers.[46] The IRS also offers a voluntary annual filing season program[47] because earlier, more stringent regulations were struck down.[48]

As for the TRM, articles 28 and 53 deal with the right to representation. These provisions set forth: (1) having legal counsel when dealing with the tax administration/tax courts and (2) attorney-client privilege as part of the due process. If representation in the United States has become a necessity, it is even more so in the case of Latin America where, in general terms, there are constant abuses of power, fishing expeditions, and lack of due process both in the administrative and judicial procedures. This would probably justify the need to set forth 142 rights to protect the taxpayers from the actions of the tax administration and the tax courts.

J. Right to a Fair and Just Tax System

> *Taxpayers have the right to expect the tax system to consider facts and circumstances that might affect their underlying liabilities, ability to pay, or ability to provide information timely. Taxpayers have the right to receive assistance from the Taxpayer Advocate Service if they are experiencing financial difficulty or if the IRS has not resolved their tax issues properly and timely through its normal channels.*[49]

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46. *See* Treas. Reg. § 1.6109–2(d) (requiring tax return preparers to have a preparer identification number); Nina Olson, *More Than a "Mere" Preparer:* Loving *and Return Preparation*, 139 TAX NOTES 767 (May 13, 2013).

47. *Annual Filing Season Program*, IRS, https://www.irs.gov/tax-professionals/annual-filing-season-program (last updated Sept. 23, 2020).

48. Loving v. IRS, 742 F.3d 1013 (D.C. Cir. 2014).

49. *Taxpayer Bill of Rights*, *supra* note 9; *see also* I.R.C. § 7803(a)(3)(J).

The right to a fair and just tax system may seem somewhat unattainable even though it is the basis for its survival.[50] Justice, as related to the tax system, is based on each taxpayer's economic capacity,[51] and the violation of certain individual rights such as privacy and due process, which may be justified, as long as this happens with the purpose of administering a fair and just tax system based on the economic capacity of the taxpayer.[52] Taxpayers have the right to a system that takes into consideration special circumstances that may affect tax responsibilities, capacities, and/or ability to provide timely information. They also have the right to receive aid in cases of economic hardship or cases where the tax administration has failed to resolve tax matters in a timely fashion.

This last right basically encompasses all of the previous ones since a just system includes the right to self-defense and representation, being informed, being heard, closing procedures, privacy and confidentiality, and receiving proper assistance and service from the tax administration and courts. Basically, this one leads to all other rights or vice versa. With respect to the economic capacity as a separate right within the tax system, it is a fundamental right directly related to non-confiscation, a cornerstone of constitutional rights not only in the United States but around the world as well.

As for the Latin American document, articles 69, 71, 72, 73, 81, 82, 87, 90, 91, 92, 93, 94, 95, 96, 97, 98, 100, 109, 122, 123, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, and 142 are the guidelines to a fair and just tax system. These provisions deal with: (1) protection of the homestead; (2) non-retroactivity of the tax laws; (3) all taxes must be established by law; (4) right to defense and receiving fair sentencing; (5) random auditing procedures, avoiding targeting and discrimination; (6) innocence until proven otherwise; (7) fair and reasonable sanctions; (8) providing evidence to demonstrate the taxpayers' arguments; (9) sentencing guidelines; (10) publicity of the tax administration's decision criteria; (11) non-double jeopardy; (12) personal liability, not criminal sanctions; (13) access to justice system, courts, and higher authorities; (14) questioning the tax administration evidence and determination; (15) equal treatment of different taxpayers in same situation; (16) access to double tax treaties in force, as well as permanent establishments; (17) use of tax credits,

50. *See* Christians, *supra* note 41.

51. Anthony C. Infanti, *Tax ~~Equity~~*, 55 Buff. L. Rev. 1191 (2008).

52. *See* Christians, *supra* note 41.

deductions, and exemptions; and (18) enforcement of agreements between the taxpayer and the tax administration.

With respect to the Taxpayers Bill of Rights, all these rights are strictly related to civil rights, originally established by the U.S. Constitutional Amendments XIV and XV protecting against discrimination by race, sex, and religion among others. In line with these principles, the IRS has incorporated as a governmental practice a zero tolerance policy against discrimination among its employees, publishing and posting in every IRS office across the nation a copy of the civil rights' policy. There are countless decisions from U.S. courts, including the Supreme Court, dealing with civil rights, including racial discrimination,[53] gender-based discrimination,[54] right to defense and due process,[55] among many others.

There are two provisions on the TRM (ILADT) that do not have a corresponding provision in the TBR (USA); the first one deals with depreciation and adjustment by inflation. In the United States, the depreciation of assets is allowed by law (e.g., Code sections 167, 168, and 197), but until relatively recently inflation adjustment of certain civil tax penalties, including for failure to file a return, was not allowed.[56] The IRS publishes annual Revenue Procedures providing the year's adjustments for specific Code provisions. [57]

The second is the prohibition of criminal prosecution for tax related matters. Although in the United States it is perfectly possible to be sentenced and serve prison time for tax fraud and evasion, particularly if committed voluntarily and knowingly; this is not the case in most countries in Latin America. The IRS does not prosecute tax fraud or evasion, but after an administrative determination, the IRS may refer the case to the Department of Justice for prosecution.

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53. *See, e.g.*, Brown v. Bd. of Educ., 347 U.S. 483, 495 (1954) (holding school segregation is "inherently unequal").

54. *See, e.g.*, Frontiero v. Richardson, 411 U.S. 677 (1973) (holding that differences in military benefits on the basis of the recipient's sex were unconstitutional).

55. *See, e.g.*, Miranda v. Arizona, 384 U.S. 436 (1966) (requiring statements alerting individuals in custody to the right against self-incrimination).

56. *See* Pub. L. No. 113-295, Div. B § 208, 128 Stat. 4010, 4072–74 (2014).

57. *See, e.g.*, Rev. Proc. 2018–57, 2018–49 I.R.B. 827 (inflation adjustments for 2019).

III. Conclusion

There is a worldwide tendency to move toward the protection of taxpayers' rights, since there has always been a certain inequality when it comes to the relationship between the taxpayers and the tax administration, resulting many times in abuse of power by the government. Although it was not part of the analysis, the European Union has also adopted a Taxpayers' Code,[58] which confirms that not only the United States and more recently Latin America, are working toward the protection of taxpayers' rights and creating more confidence and legitimacy for the tax system.

After analyzing the provisions of the TBR of the United States and the TRM of the ILADT, we can certainly conclude that both instruments are based on the same principles that seek to protect the rights of taxpayers from the power of the State. Although the TRM is a lot more extensive and complex, almost every provision can be framed within the TBR. Below is a chart that matches each of the ILADT's provisions to its broad equivalent in the U.S. instrument in order to illustrate the extension and complexity of the TRM:

Table 1

INTERNAL REVENUE SERVICE	ILADT
Right to Be Informed	Articles- 6, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 70, 80, 83, 84, 108, 114, 115
Right to Quality Service	11, 12, 13
The Right to Pay No More than the Correct Amount of Tax	14, 15, 16, 17, 19, 20, 21, 22, 23, 54, 55
Right to Challenge the IRS's Position and Be Heard	51, 101, 102, 103, 104, 105, 106, 107, 113
Right to Appeal IRS's Decision in an Independent Forum	3, 25, 26, 27, 29, 30, 33, 35, 36, 39, 59, 60, 61, 74, 75, 78, 79, 110, 111, 112, 116, 117, 118, 119, 120, 121

58. *See Guidelines for a Model for a European Taxpayers' Code*, Eur. Comm'n, https://ec.europa.eu/taxation_customs/business/tax-cooperation-control/guidelines-model-european-taxpayers-code_en (last visited Oct. 17, 2020).

Right to Finality	38, 56, 76, 77, 85, 86, 88, 89
Right to Privacy *and* Right to Confidentiality	62, 63, 65, 66, 67, 68, 124
Right to Retain Representation	28, 53
Right to a Fair and Just Tax System	69, 71, 72, 73, 81, 82, 87, 90, 91, 92, 93, 94, 95, 96, 97, 98, 100, 109, 122, 123, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142

Among the analyzed instruments, we find a clear reference for the protection of fundamental rights such as due process, both administrative and judicial, the right to be informed, confidentiality and privacy, not only with respect to the information furnished to the tax administration but also related to the use of such information, as well as concepts such as a fair and just tax system, allowing the taxpayers to challenge the tax administration without unfair repercussions and abuses of power by the government, as well as providing evidence to confront the tax administration's claims against the taxpayers, among many other rights.

Lastly, there are several provisions addressing the right to receive a quality service, being treated with respect by the tax administration, which is considered as a public policy of the State, respecting human and social values. As part of these policies, public employees must have the resources, tools, and education, as well as appropriate labor conditions, to perform their duties and provide a quality service, avoiding in general terms abuses of power by public employees and the tax administration, respecting not only taxpayers' rights but also civil rights upon which democracy and the state of law are based.

Even though they both seek to accomplish the same goal of establishing clear rights to taxpayers, it is clearly a daunting task for any taxpayer in Latin America to read, understand, and make use of the ILADT's tax provisions considering how extensive and complex the drafting commission have made the document. Justice and the taxpayers are better served by having a clear and more concise document such as the TBR to turn to when dealing with the tax administration. Nonetheless, the TRM by the ILADT is an extraordinary academic contribution for Latin America, although each country member has the obligation to eventually push these provisions into law and introduce these rights into their legal system as a legal and binding instrument. For now, the TRM is only a guideline for Latin American countries that must be adopted into their legal system, but in the United States, it took decades for taxpayers' rights to be recognized as such and incorporated into the IRC.