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January 5, 2016

Senator John Braun  
407 Legislative Building  
PO Box 40420  
Olympia, WA 98504

Representative Laurie Jinkins  
311 John L. O'Brien Building  
PO Box 40600  
Olympia, WA 98504

## RE: Washington Tax Court Proposals

Dear Senator Braun and Representative Jinkins:

As president of Tax Executives Institute ("TEI"), I write to express TEI's support of legislation establishing an independent tribunal to hear appeals of tax assessments and other matters administered by the Washington Department of Revenue and taxes levied by or on behalf of counties. It is essential for such a tribunal to be established separate from the executive branch and not simply by reforming Washington's Board of Tax Appeals. This letter outlines the critical elements that should be incorporated into legislation establishing an independent state tax tribunal in Washington.

## About Tax Executives Institute

TEI was founded in 1944 to serve the professional needs of in-house tax professionals. Today, the organization has 56 chapters in North and South America, Europe, and Asia, including Washington State. Our approximately 7,000 members represent 2,800 of the largest companies in the world, many of which either are resident or do business in Washington.

As the preeminent association of business tax professionals worldwide, TEI has a significant interest in encouraging the uniform and equitable enforcement of tax laws, and reducing the cost and burden of tax administration and compliance to the benefit of taxpayers and government. TEI is committed to maintaining a system that works — one that builds upon the principle of voluntary compliance, is consistent with sound tax policy, is easy to administer, and is efficient.

## **General Comments on Independent State Tax Tribunals**

Despite best efforts, taxpayers and state tax auditors do not always resolve every issue arising during a tax audit. In the majority of states, taxpayers can appeal these issues to an independent forum without prepaying the disputed liability. Other states, such as Washington, however, provide no independent review before posting a bond or paying the disputed assessment.

Allowing the same state authority that seeks to impose or collect a tax to also adjudicate a taxpayer's appeal is inherently unfair and creates a conflict of interest that fosters the perception that the deck is stacked against taxpayers. That perception is exacerbated because departments of revenue are in the position of judging the regulations and rules they have promulgated. Further, audit assessments are generally presumed to be correct, placing the burden on taxpayers to prove the assessments are in error. This burden shifting magnifies the importance of creating an impartial forum for adjudicating tax disputes.

### *Independence*

The most important attribute of a tax tribunal is its independence. An impartial process for resolving tax disputes is a hallmark of both equitable tax administration and a competitive business environment. This perception of fairness also contributes to better relationships between taxpayers and tax administrators, as taxpayers would know that disagreements with state auditors will not necessarily need to be brought into the general state court system. Similarly, state tax administrators would be unlikely to make arbitrary assessments knowing they could be reviewed in an impartial forum.

### *Expertise*

Judges who sit on the tax tribunal should not only be independent; they should have significant experience in state tax law. Introducing an independent adjudicative procedure staffed by professionals with technical knowledge of the state's complicated tax laws before reaching the general state court system ensures both thoughtful and well-analyzed decisions, contributes to the development of a robust record essential for subsequent appeals.

### *Published Decisions*

Further, decisions of these tax tribunals should be made public to assist other taxpayers in interpreting provisions of the tax law that would otherwise remain unclear. Given the complexity of the tax law, it is not surprising that disputes arise between businesses and taxing authorities about how the tax law applies to business operations or transactions. The economy — in which technologies, products, and services are created, adapted, and expanded — is evolving at incredible speed, and statutory and regulatory guidance cannot keep pace. This

leaves taxpayers and tax administrators without clear rules on how these new items will be treated. Published decisions will provide much needed guidance in areas without clear rules.

### *Elimination of Pay-to-Play Requirements*

Another essential feature of fair tax adjudication is access to an independent tribunal without requiring the taxpayer to post a bond or pay the full amount the taxing authority contends is due. "Pay to play" discourages taxpayers from using an independent appeals process. Faced with a prepayment requirement, taxpayers often seek to have their disputes heard by administrative tribunals or abandon meritorious claims because it is cost-prohibitive to litigate the issue. Imposing a prepayment requirement at any stage of the administrative process encourages unrealistic, even arbitrary, assessments by departments of revenue and deprives taxpayers of their property without an impartial review of the law. Requiring taxpayers to post a bond makes matters worse by forcing payments of bond fees to surety companies that cannot be recovered even if a taxpayer succeeds in challenging the underlying assessment.

In sum, balanced state tax administration procedures are necessary to promote compliance and reduce uncertainty for both taxpayers and departments of revenue. Governing procedures should be even-handed (both between similarly situated taxpayers and between taxpayers and the taxing authority) to vindicate basic principles of fairness and to maintain the integrity of the self-assessment tax system. As an association of tax professionals, TEI is proud of its record of supporting even-handed improvements to tax administration. The establishment of an independent tax appeals function, staffed by qualified professionals, that does not require prepayment of disputed amounts is progress toward reaching that goal.

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TEI's comments were prepared under the aegis of TEI's State and Local Tax Committee, whose chair is Jamie Fenwick. Pilar Mata, Tax Counsel for TEI, coordinated the preparation of TEI's comments. If you have questions about TEI's comments, please contact Pilar Mata at +1 202 464 8346 or [pmata@tei.org](mailto:pmata@tei.org).

Respectfully submitted,  
**Tax Executives Institute, Inc.**



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International President