



# TAX EXECUTIVES INSTITUTE, INC.

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February 14, 2012

### Via Email

Garland Allen, Esq.  
Chair, American Bar Association Model State Administrative Tax Tribunal  
Act Task Force  
c/o Law Office of Garland Allen  
2722 Washington Avenue  
Santa Monica, California 90403

Re: **Support for the American Bar Association's Model State  
Administrative Tax Tribunal Act**

Dear Mr. Allen:

As International President of Tax Executives Institute, I write to express the Institute's strong support for the American Bar Association's Model State Administrative Tax Tribunal Act (the "Model Act") and encourage state legislators to enact tax tribunal statutes consistent with the Model Act. TEI applauds efforts to establish independent tax tribunals around the country, which help build confidence and respect between taxpayer and tax collector, and contribute to overall sound tax administration. The Model Act aids significantly in such efforts by providing a sound statutory framework for an independent tribunal.

Tax Executives Institute ("TEI") was founded in 1944 to serve the professional needs of in-house tax professionals. Today, the organization has 55 chapters in North America, Europe, and Asia. Our 7,000 members represent more than 3,000 of the largest companies in the world. As the preeminent association of business tax professionals worldwide, TEI has a significant interest in encouraging the uniform and equitable enforcement of the tax laws and reducing the cost and burden of administration and compliance to the benefit of taxpayers and government alike. The Institute is committed to maintaining a system that works — one that builds upon the principle of voluntary compliance and is consistent with sound tax policy. Along with federal, state, and local governments, TEI and its members have much at stake in crafting a tax system that is administrable and efficient.

In recent years, significant attention has been devoted to the need to establish uniform and balanced state tax administration procedures to promote efficient compliance and reduce uncertainty for taxpayers. 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.

Allowing the same state authority that seeks to impose or collect a tax to adjudicate a taxpayer's appeal creates an inherent conflict of interest that fosters the perception that the system is biased in favor of the revenue authorities. Nearly half of all states avoid these conflicts by providing an independent forum to adjudicate tax appeals. In addition to minimizing conflicts of interest, funneling such appeals to an independent tribunal staffed with seasoned tax professionals helps ensure consistent and well-reasoned case disposition.

TEI has long supported independent state tax tribunals, and its Policy Statement on Independent State Tax Tribunals (attached for your reference) describes the fundamental characteristics of a properly formulated state tax tribunal: (i) independent tribunal judges with significant experience in state tax law; (ii) publication of tribunal decisions to aid taxpayers in their application of the tax law; and (iii) no requirement to pay the disputed tax prior to a hearing before the tribunal. The Model Act is consistent with TEI's Policy Statement and provides a well-drafted legislative template for achieving these goals. Based on best practices from around the country, the Model Act contains model statutory language for the creation of state tax tribunals within the executive branch of a state government, staffed with highly qualified and independent judges, and that do not require pre-payment of disputed amounts.

Section 1 of the Model Act succinctly explains the benefits of establishing an independent state tax tribunal, as follows:

By establishing an independent tax tribunal within the executive branch of government, this act shall provide taxpayers with a means of resolving controversies that ensures both the *appearance and the reality of due process and fundamental fairness*. (Emphasis added.)

TEI strongly encourages states without an independent tax appeal function to adopt the Model Act, or legislation based closely on the Model Act, so that taxpayers and tax authorities may realize these benefits. TEI recognizes that states may deviate from the language of the Model Act as bills proceed through the legislative process and will continue to support state efforts to create independent tax tribunals to the extent they remain consistent with the Institute's Policy Statement.

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If you have any questions about the Institute's views on this matter, please do not hesitate to contact Daniel B. De Jong of TEI's legal staff at 202.638.5601 (ddejong@tei.org).

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



Carita R. Twinem  
*International President*

Enclosure



# TAX EXECUTIVES INSTITUTE, INC.

## Policy Statement on Independent State Tax Tribunals

Tax Executives Institute encourages all states to establish independent tax tribunals presided over by individuals possessing a strong knowledge of the tax law. Decisions of these tribunals should be made public to assist taxpayers in their efforts to comply with the tax laws. There should be no “pay to play” requirement; *i.e.*, access to these tribunals should not require prepayment of the amount in dispute.

Despite their best efforts, taxpayers and state tax auditors do not always resolve every issue that arises 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, however, provide no independent review other than by appeal to a court of general jurisdiction – and sometimes only after posting a bond or paying the full amount of 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 cannot help but foster the perception that the deck is stacked against taxpayers. That perception is exacerbated since 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.

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.

The 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 and the development of a robust record essential for any subsequent appeals.

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 no surprise that disputes will 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 not surprisingly, statutory and regulatory guidance cannot keep pace, leaving 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.

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 state courts — or even abandon meritorious claims because of the costs involved in litigating the issue. What’s more, 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.

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.