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February 19, 2013

### Via Email

Representative Paul J. DeMarco  
Room 516-F, State House  
11 South Union Street  
Montgomery, Alabama 36130

Re: **Support for HB 264 – Establishment of Alabama Tax Appeals Commission**

Dear Representative DeMarco:

As president of Tax Executives Institute, I write to express the Institute's strong support for HB 264, which would establish an Alabama Tax Appeals Commission to hear appeals of tax assessments and other matters administered by the Department of Revenue and certain taxes levied by or on behalf of counties and municipalities. TEI applauds the efforts to establish an independent tax tribunal in Alabama, which we agree will help build confidence and respect between taxpayer and tax collector, and contribute to overall sound tax administration.

Tax Executives Institute 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, many of which either are resident or do business in Alabama. 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 make compliance efficient and reduce uncertainty for taxpayers. Governing procedures should be even-handed (as both between similarly situated taxpayers and between taxpayers and the taxing authority) to vindicate basic

principles of fairness and equity and maintain the integrity of the self-assessment tax system. Nearly two decades ago, Alabama enacted the Alabama Taxpayers' Bill of Rights and Uniform Revenue Procedures Act of 1992, which was modeled on similar federal provisions.

Building on the foundation established by the Alabama Taxpayers' Bill of Rights, HB 264 would establish the Alabama Tax Appeals Commission as an independent tribunal within the executive branch having jurisdiction to hear tax appeals from the Department of Revenue, as well as from counties and municipalities. The Commission would be a prepayment forum. Thus, taxpayers would not be required to pay the disputed tax or post a bond as a prerequisite to review. These features represent best practices that should be promptly adopted.

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 appeals of tax cases to an independent tribunal staffed with seasoned tax professionals helps ensure consistent and well-reasoned dispositions of cases.

Section 1 of HB 264 succinctly explains the benefits of the proposed Alabama Tax Appeals Commission, 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 supports the passage of HB 264 so that taxpayers may realize these benefits in Alabama. The enclosed policy statement provides additional information regarding TEI's support for legislation establishing independent state tax tribunals.

If you have any questions about the Institute's views or desire additional information regarding the comments contained in this letter, please do not hesitate to contact Howard Grindle, Chair of TEI's State and Local Tax Committee, at 703.901.8424, or Daniel B. De Jong of TEI's legal staff at 202.638.5601 ([ddejong@tei.org](mailto:ddejong@tei.org)).

Respectfully submitted,  
**Tax Executives Institute**



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.