

TEI Policy Statement on Independent State Tax Tribunals

February 1, 2012

On February 1, 2012, Tax Executives Institute released the following policy statement setting forth the Institute's position encouraging all states to establish pre-payment, independent tax tribunals presided over by individuals possessing a strong knowledge of the tax law. The policy statement was prepared under the aegis of TEI's State and Local Tax Committee, whose chair is Linda H. Dickens of Texas Instruments Incorporated. Contributing substantially to the development of TEI's comments was Howard Grindle of XO Communications. Daniel B. De Jong, TEI Tax Counsel, serves as legal staff liaison to the State and Local Tax Committee and coordinated the preparation of TEI's policy statement.

Summary

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-as-

essment 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 pre-payment of disputed amounts is progress toward reaching that goal.