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June 16, 2017

Senator John Braun, Chair
Members of the Senate Ways & Means Committee

Representative Laurie Jinkins
Members of the House Judiciary Committee
Washington State Legislature

RE: Senate Bill 5866 – Independent Tax Court

Dear Senator Braun, Representative Jinkins, Members of the Ways & Means Committee, Members of the House Judiciary Committee, and Members of the Washington State Legislature:

On behalf of Tax Executives Institute (“TEI”), we write to comment on Senate Bill 5866, 2nd Substitute (“SB 5866”), which would establish a tax court in the judicial branch of the State of Washington to hear appeals of excise taxes, property taxes, estate taxes, and adverse rulings from a tax authority or the superior court. Senate Bill 5866 contains many of the provisions that TEI deems essential to establish an independent, fair, and efficient forum for resolving state and local tax disputes and offers a significant improvement over the State’s current Board of Tax Appeals. TEI thus urges the Legislature to pass the proposed legislation.

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.

Comments on SB 5866 and Independent State Tax Tribunals

Allowing the same state authority that seeks to impose or collect a tax to also adjudicate a taxpayer's appeal of disputed tax assessments 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. SB 5866 seeks to rectify these concerns in Washington.

Independence

The most important attribute of a tax tribunal is its independence. SB 5866 satisfies this requirement by establishing a tax court separate from the Washington State Department of Revenue. An impartial process for resolving tax disputes is a hallmark of both equitable tax administration and a competitive business environment. This perception of fairness will contribute to better relationships between taxpayers and tax administrators, as taxpayers will know that disagreements with state auditors will not necessarily need to be brought into the general state court system. Similarly, state tax administrators will be unlikely to make arbitrary assessments knowing they can 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. SB 5866 also satisfies this requirement by requiring its judges and commissioners to have a minimum number of years of practice and experience relevant to the position. By providing an independent adjudicative procedure, staffed by professionals with technical knowledge of the state's complicated tax laws, before reaching the general state court system, SB 5866 will ensure thoughtful and well-analyzed decisions and contribute to the development of a robust record essential for subsequent appeals.

Published Decisions

Further, decisions of 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.

SB 5866 establishes two departments, the main department and the commissioner department. The main department may hear appeals that involve complex issues, issues of substantial importance, or issues that require expertise beyond a commissioner's proficiency. The main department is required to issue written decisions that include a statement of fact and conclusions of law; such decisions will be precedential and published. The commissioner department offers an informal alternative that does not require third party representation for parties seeking review. The commissioner department's decisions will not be precedential or published; however, they must be readily available for online research. By establishing the two departments and ensuring that the decisions of both departments are accessible to all parties, SB 5866 strikes a balance that will provide much needed guidance in areas without clear rules while offering taxpayers a low-cost alternative.

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 the majority of states, taxpayers can appeal issues to an independent forum without prepaying the disputed liability. Other states, such as Washington, however, do not provide an independent review before posting a bond or paying the disputed assessment. SB 5866 partially rectifies this problem, as taxpayers must pay taxes, penalties, and interest or post a bond as a prerequisite for the tax court hearing an appeal in many instances. TEI thus urges the legislature to reconsider the imposition of this requirement.

* * *

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, is progress toward reaching that goal.



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.

Respectfully submitted,
Tax Executives Institute

A handwritten signature in cursive script that reads "Janice L. Lucchesi".

Janice Lucchesi
International President