

# State Tax Appeals Reform

## Background:

In Washington, a taxpayer must present its challenge to an administrative law judge employed by the same taxing authority that issued the assessment or denied the refund in the first instance. Regardless of the administrative law judge's fairness, the judge's status as an employee and agent of the tax collector creates an unavoidable perception of bias. Additionally, as a precondition to challenging the state's determination of a tax liability before an independent decision-maker, a taxpayer must pay 100% of an asserted liability for tax, interest and penalty or post a bond, which can be an expensive and onerous requirement. The Model State Administrative Tax Court Act was established by the American Bar Association to serve as a possible framework for state tax dispute resolution change.

## Problem:

Washington state businesses have become increasingly concerned and frustrated with the existing avenues available for appeals of tax decisions made by the Department of Revenue (Department). Taxpayers that desire to contest the Department's determination of a refund claim or tax liability face obstacles that undermine the public's perception of the fairness of tax decisions. The imposition of these substantial costs upon the taxpayer's right to contest state determinations before an independent decision-maker places a significant burden on taxpayers and can discourage legitimate challenges to state tax determinations. Furthermore, it has a chilling effect upon a taxpayer's right to judicial review, especially upon small and mid-sized businesses that often find it impossible to produce the substantial funds necessary to pay the tax to get to court.

## Solution:

The Association of Washington Business (AWB) believes that taxpayers deserve to have tax disputes heard by an independent and qualified body in a fair and inexpensive process, without being required to pre-pay the tax or post a bond.

1. Taxpayers should have the right to a hearing of the Department's tax decisions before an independent tax tribunal.
2. Taxpayers should not be required to pre-pay an assessment or post a bond as a precondition to a hearing by the tax tribunal.
3. Taxpayers should not be required to exhaust their Department remedies as a precondition to a hearing of the Department's tax decisions by the tax tribunal.
4. One member of the tax tribunal should be a member of the Bar and all members of the tax tribunal should be members of the Bar or of similar associations that certify the competency and skill of their members (such as the Washington Society of CPAs or the Institute of Professionals in Taxation) and should have a high level of knowledge and experience in Washington tax law.
5. Hearings before the tax tribunal should be informal and efficient. Taxpayers with smaller dollar matters should be entitled to review under a streamlined small claims procedure.
6. Taxpayers should be entitled to choose their representative in any hearing before the tax tribunal.
7. Decisions of the tax tribunal should be published and should be followed by the Department.
8. The Department's practice of non-acquiescing to tax tribunal decisions should be prohibited.
9. Amend the Administrative Procedures Act (APA) to enhance objectivity and independence in contested case decision-making.