

SENATE BILL REPORT

SB 6176

As of January 27, 2014

Title: An act relating to modifying the tax appeal process.

Brief Description: Modifying the tax appeal process.

Sponsors: Senator Braun.

Brief History:

Committee Activity: Trade & Economic Development: 1/21/14.

SENATE COMMITTEE ON TRADE & ECONOMIC DEVELOPMENT

Staff: Jeff Olsen (786-7428)

Background: Model Tax Tribunal Act. The American Bar Association adopted the Model State Administrative Tax Tribunal Act in 2006 as a recommended model for states to adopt. The purpose of the act is to increase public confidence in the fairness of the state tax system by providing a taxpayer that receives an assessment a hearing of record before an independent agency with tax expertise, before requiring the payment of the tax assessment.

Board of Tax Appeals. The Washington State Board of Tax Appeals (Board) was established in 1967 as an independent agency to hear tax appeals. Board members are appointed by the Governor, and qualify by having experience and training in the field of state and local taxation. At the time of appointment, no more than two board members may be members of the same political party.

Tax Appeal Process. Taxpayers seeking to challenge their tax assessment may file an appeal with the proper taxing authority. For excise tax appeals, a taxpayer may file a petition with the Department of Revenue (Department). If the taxpayer does not agree with the final decision from the Department, they may file an appeal with the Board. A taxpayer must pay all taxes, penalties, and interest in full before any action may be instituted in court. For property tax appeals, a taxpayer may file a petition with their county board of equalization challenging their property's valuation. County boards of equalization are independent bodies formed to hear property tax cases between the taxpayer and county assessor. The burden of proof in the hearing is on the taxpayer, who must provide clear, cogent, and convincing evidence that the value is not correct. If a taxpayer does not agree with a decision from a county board of equalization, they may file a petition with the Board.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Summary of Bill: The Tax Tribunal (Tribunal) is established as an independent agency within the executive branch with tax expertise to resolve disputes between taxpayers and tax authorities. The Tribunal must consist of at least one full-time judge that is appointed by the Governor with the advice and consent of the Senate for a six-year term. Each judge must receive an annual salary no less than that provided for a superior court judge, and must be a resident of Washington State. To qualify, a judge must have substantial knowledge of state tax law and experience making the record in a tax case suitable for judicial review. The Governor may appoint additional pro tempore members to the Board for up to six months. The Tribunal's principal office must be located in Olympia, Washington, but the Tribunal may hold hearings at any place in the state.

Except for denials of a claim for refund and property tax cases, taxpayers have the right to have their cases heard by the Tribunal prior to the payment of any of the amounts asserted as due by the tax administration agency. The Tribunal may hear and determine questions of law arising from excise tax appeals, property tax appeals, and other decisions made by the Department.

For taxes assessed by the Department, before the Department finalizes a determination they must provide the taxpayer the option to obtain review of the proposed determination by an independent, informal administrative appeals function. The independent administrative appeals function is designed to resolve the vast majority of tax controversies without litigation.

To commence a proceeding in the Tribunal, a taxpayer must file a petition along with a \$250 fee no later than 90 after a final notice from the tax authority. Small claims may be filed without a fee if the amount of the assessment contested does not exceed \$25,000. Provisions for discovery are provided, and proceedings before the Tribunal must be tried de novo and without a jury. To challenge a property valuation, a taxpayer must show that the valuation is incorrect by a preponderance of the evidence, rather than by clear, cogent, and convincing evidence. Tribunal decisions must be made in writing no later than six months after the completion of a hearing or the submission of the last brief filed. Decisions must be published and made available to the public, except for decisions made in the small claims division. A final decision of the Tribunal is entitled to judicial review in the appellate courts, except for decisions made in the small claims division.

The Board is transferred to the Tribunal effective July 1, 2015 and references to the Board are updated to reflect the newly created Tribunal.

Appropriation: None.

Fiscal Note: Available.

[OFM requested ten-year cost projection pursuant to I-960.]

Committee/Commission/Task Force Created: No.

Effective Date: The bill takes effect on January 1, 2015, except section 4 takes effect July 1, 2014.

Staff Summary of Public Testimony: PRO: The Committee had a work session on the tax appeal process in November to learn about how to improve the process in Washington. There must be a balanced relationship between the taxpayer and their government. The work session considered a broad array of options for reforming the tax appeal process. There are a number of deficiencies in the current tax appeal process. The current Board is not an effective forum for handling complex excise tax cases; it is designed to handle a large volume of property tax cases. Most excise tax cases go directly to superior court, which is not an efficient process. One remedy is to increase the Board members' pay and authority. Decisions of the Board should be directly appealable to the Court of Appeals. This approach takes a holistic approach to the reform process. Georgia and Illinois unanimously adopted these changes in their states to provide a model of fairness and expertise for their taxpayers. Four key elements of the bill include no prepayment required, establish a record, in an independent forum, that has tax experts deciding the case.

CON: Assessors are more directly impacted by property taxes. This is a complex issue that does have room for improvement, and there is support for the goals of improving the relationship between the taxpayer and government. It appears that the concern is with complex excise tax cases, and property tax cases are not necessarily the issue. Local governments need certainty, and this process creates uncertainty for property taxes. For property tax appeals, the change from a presumption of correctness for the assessor and clear, cogent, and convincing evidence to a preponderance of the evidence creates uncertainty. While establishing records is important, the paperwork required is much more complex than the current system.

OTHER: The appeal process for the Department is a dramatic shift from the current process that will have a significant fiscal impact. Tax policy would be shifted from the Department to the administrative law judges who make the decisions. The tax tribunal has complex processes that are weighted against the state.

Persons Testifying: PRO: Senator Braun, prime sponsor; Amber Carter, Assn. of WA Business.

CON: Monty Cobb, WA Assn. of County Officials; Brian Enslow, WA State Assn. of Counties.

OTHER: Kate Adams, Dept. of Revenue.