

SENATE BILL REPORT

SB 5866

As Reported by Senate Committee On:
Law & Justice, March 22, 2017

Title: An act relating to creating a tax court for the state of Washington.

Brief Description: Creating a tax court for the state of Washington.

Sponsors: Senators Brown, Hobbs, Braun, Mullet, Frockt and Warnick.

Brief History:

Committee Activity: Law & Justice: 3/16/17, 3/22/17 [DPS-WM, DNP].

Brief Summary of Substitute Bill

- Creates a tax court in the judicial branch to hear appeals of excise taxes, property taxes, estate taxes, and adverse ruling from a tax authority or the superior court.
- Eliminates the existing Board of Tax Appeals in the executive branch.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 5866 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Padden, Chair; O'Ban, Vice Chair; Angel, Frockt and Wilson.

Minority Report: Do not pass.

Signed by Senators Pedersen, Ranking Minority Member; Darneille.

Staff: Aldo Melchiori (786-7439)

Background: Model Tax Tribunal Act. The American Bar Association adopted its Model State Administrative Tax Tribunal Act (Model Act) in 2006 as a recommended model for states. The Model Act's purpose is to increase public confidence that the state tax system is fair. When taxpayers disagree with their state or local tax assessments, the Model Act provides a quasi-judicial hearing of record before an independent agency before the taxpayer pays the disputed tax. The independent agency's decision makers must have tax expertise and be administratively separate from the taxing authority. Sixteen states do not have a tax

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tribunal; 34 states do. Only six states place their tax tribunal in the judicial branch. Like 27 other states, Washington's Board of Tax Appeals resides in the executive branch.

Board of Tax Appeals. Washington established its State Board of Tax Appeals (Board) in 1967 as an independent agency to hear property and excise tax appeals. The Governor appoints the Board's members. Board members qualify for appointment based on their training and experience in state and local tax matters. At the time of appointment, no more than two of the three board members may be members of the same political party. The Board hears appeals from County Boards of Equalization and from the state Department of Revenue (DOR).

Washington's Tax Appeal Process. A taxpayer challenges a tax assessment by filing an appeal to the taxing authority. For excise tax appeals, a taxpayer files a petition with DOR. If the taxpayer does not agree with DOR's final decision, the taxpayer may file an appeal with the Board or file an appeal directly in Thurston County Superior Court. For a property tax appeal, a taxpayer may file a petition with the County Board of Equalization challenging the property's valuation. County Boards of Equalization are independent bodies formed to hear property tax cases between the taxpayer and county assessor. If a taxpayer does not agree with a decision from a County Board of Equalization, they may file a petition with the Board.

Appeals to Superior Court. Taxpayers who disagree with a decision from either DOR or the Board may file an appeal in the superior court. Property tax cases may be filed in the superior court for the county where the property is located. Excise tax cases may only be filed in Thurston County Superior Court. A taxpayer must pay all taxes, penalties, and interest in full before going to court, unless DOR agrees to suspend collection until the court reaches its decision. Superior court decisions may be appealed to the Court of Appeals.

Summary of Bill (First Substitute): The newly created statewide Tax Court hears appeals of excise taxes, property taxes, estate taxes, and adverse rulings from a tax authority or adverse rulings from the superior court. It is located in the judicial branch and replaces the Board of Tax Appeals. The Board of Tax Appeals duties are transferred to the Tax Court effective July 1, 2019. Taxpayers may still choose to file an appeal in superior court.

The Tax Court consists of two departments: the Main Department and the Commissioner Department. The Main Department hears appeals in cases with complex issues, issues of substantial public importance or issues beyond a commissioner's proficiency. Decisions of the Main Department are subject to review by the Washington Supreme Court in the same manner as decisions of the Court of Appeals. The Commissioner Department hears all other appeals, and includes an option for parties to mediate. Decisions of the Commissioner Department may be appealed to the Main Department.

The Tax Court hears appeals without a jury and de novo. All proceedings before it are original and independent.

Taxpayers start an appeal by filing a notice within 30 days of from the date of issuance of the decision being appealed. The Main Department must issue decisions within six months, and may extend the six month period for up to three additional months with good cause.

In the following circumstances, taxpayers must pay the disputed amount as a prerequisite to having their appeal heard by the Tax Court:

- the taxpayer owes more than \$100,000—if the taxpayer chooses to first receive a final determination through the DOR's administrative process, they are no longer required to make the payment;
- if the appeal involves unpaid trust fund taxes;
- if the appeal involves an assessment of taxes upon which the DOR imposes an evasion penalty; or
- tax avoidance transactions or arrangements.

The Main Department must issue a written decision no more than six months after the hearing ends or after a party submits the last brief. Main Department decisions must include findings of fact and conclusions of law, and are published decisions. A party may seek discretionary review of a Main Department decision from the state Supreme Court. Commissioners Department decisions do not create a precedent, but the decisions must be available online.

The Tax Court consists of one judge selected from each district of the Court of Appeals, three judges total, and commissioners as appointment by the Tax Court. Judges are elected for six year terms. They must be admitted to the practice of law in Washington and have at least five years experience as an attorney practicing in Washington state and local tax law. Commissioners must be Washington residents and have at least three years work experience relevant to their responsibilities as a commissioner.

EFFECT OF CHANGES MADE BY LAW & JUSTICE COMMITTEE (First Substitute):

- Requires taxpayers to pay the disputed amount as a prerequisite to having their appeal heard by the tax court if the taxpayer owes more than \$100,000 instead of \$500,000.
- Authorizes that if the taxpayer chooses to first receive a final determination through the DOR's administrative process, they are no longer required to make the payment.
- Makes technical corrections to clarify the transfer duties from the Washington State Board of Tax Appeals to the new tax court.
- Clarifies that the effective date is contingent upon voters as well as legislative approval of the constitutional amendment.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Except for Sections 228 and 229, this bill takes effect on January 1, 2018; and Section 228 (transfer of the Board to the tax division of the Court of Appeals) and Section 229 (repeal of multiple RCWs) take effect on July 1, 2019.

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: This is an attempt to simplify this complex area of law. We need to let these cases skip the bureaucracy and go to courts with expertise in these matters. It is important to have a body independent from the executive branch that makes these decisions. It is unfair to have an agency review its own decisions. Requiring the payment of the tax and penalties prior to appeal (pay to play) places an undue burden on appellants who must also pay for their litigation costs. This is an unfair process. Washington is rated near the bottom of states in relation to tax appeal administration. This will reduce the caseload in the Superior Court and the Court of Appeals. Most taxpayers just want a fair hearing before an independent body. This will eliminate unnecessary levels of appeal. It will result in more prompt decisions. Washington tried to implement this in the 1960's, but the effort was unsuccessful. Commissioners could handle the smaller cases quickly and efficiently. Pay to play can bankrupt small businesses. There is no pay to play in the federal tax system. The \$500,000 threshold was proposed by the Department of Revenue.

OTHER: Less than 10 percent of the cases at the Department of Revenue require special expertise because of their complexity. You must determine whether 90 percent of the cases that do not require specialized expertise should be dragged into this bill. This is an expensive way to address 10 percent of the caseload. Currently, if the parties think that the case requires it, the parties can take their case straight to the Superior Court. The \$500,000 threshold would take 88 percent of the cases straight to the tax court.

Persons Testifying: PRO: Senator Brown, Prime Sponsor; Patrick Connor, NFIB; Eric Lohnes, AWB; Michelle DaLappe, Garvey Shubert Barer; Mike Bernard, Counsel, Microsoft; Bill Severson, Severson Law; Norm Burns, Garvey Shubert Barer.

OTHER: Kate Adams, Executive Director, Board of Tax Appeals.

Persons Signed In To Testify But Not Testifying: No one.