

SENATE BILL REPORT

SB 5449

As Reported by Senate Committee On:
Law & Justice, February 18, 2015

Title: An act relating to creating a tax division of the court of appeals.

Brief Description: Creating a tax division of the court of appeals.

Sponsors: Senators Braun, Rivers, Brown, Hobbs, Dammeier, Becker, Mullet, Sheldon, Warnick, Fain, Honeyford, Hewitt and Frockt.

Brief History:

Committee Activity: Law & Justice: 1/26/15, 2/18/15 [DPS-WM, DNP].

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 5449 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; Pearson and Roach.

Minority Report: Do not pass.

Signed by Senators Pedersen, Ranking Minority Member; Darneille and Kohl-Welles.

Staff: Melissa Burke-Cain (786-7755)

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 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

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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 tax payer 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 (Recommended Substitute): The newly created statewide Tax Appeal Division of the Court of Appeals (Tax Appeal Division) hears appeals of excise taxes, property taxes, estate taxes, and adverse rulings from a tax authority or adverse rulings from the superior court. The Tax Appeal Division consists of three judges, one from each of the three appellate divisions of the Court of Appeals. Tax Appeal Division judges must be attorneys admitted to practice in Washington, and must have at least five years' experience in state tax law. Tax Division judges are elected for six-year terms.

The Tax Appeal Division consists of a Commissioners Department and a Main Department. The Main Department must hear appeals in cases with complex issues, issues of substantial public importance, or issues beyond a commissioner's proficiency. The Commissioners Department hears all other appeals. The Main Department judges appoint the commissioners. Commissioners must have at least three years' experience in state or local tax law.

The Tax Appeal Division conducts its trials without a jury as the court of record for tax appeals. Taxpayers start an appeal by filing a notice of appeal to the Tax Division. For excise tax appeals, a taxpayer must file the notice within 90 days of the tax decision being appealed. For property tax appeals, a taxpayer must file the notice within 30 days after receipt of an adverse tax ruling. Appellants must pay a \$250 filing fee for the Main Department, and a \$50 filing fee for the Commissioners Department. The Tax Appeal Division must not condition the appeal on payment of the disputed taxes except for denied refund and property tax cases.

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 new tax appeal process applies to cases appealed on or after January 1, 2016. The Board of Tax Appeals is eliminated. Its duties are transferred to the Tax Appeal Division effective July 1, 2017.

Parties may elect a small claims hearing if the disputed tax is \$25,000 or less, and may represent themselves, but may not appeal the small claims decision. Parties may also participate in mediation if all parties agree. A judge who is not the trial judge acts as the mediator.

EFFECT OF CHANGES MADE BY LAW & JUSTICE COMMITTEE (Recommended Substitute): A small claims process is added in the Commissioners Department, for cases in which the disputed tax amount is \$25,000 or less, parties may appear without an attorney and may not appeal the small claims decision. A voluntary mediation process is added in the Commissioners Department. Judges of the Commissioners Department serve as mediators. Additional technical changes are made to correct cross-references.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: The bill contains several effective dates. Please refer to the bill.

Staff Summary of Public Testimony on Original Bill: PRO: This bill creates a better balance between tax collector and taxpayer. The public would view it as a more fair approach because a decision at the Court of Appeals by elected judges is independent of state agencies. Taxpayers don't think the current tax appeals system gives them a fair shake. It will be more cost effective to have the Court of Appeals as the place to go for tax appeals rather than multiple processes at state agencies. The bill will reduce costs in the current system, and eliminates unnecessary steps in tax appeals. These efficiencies will be a step forward. Small businesses do not think the current process is fair. The current system takes a long time, sometimes two to three years. The current system affects the available capital for businesses because the disputed tax must be paid in full first before the appeal and then attorneys costs are added to that. The taxpayer is left with a long period of uncertainty, and without use of the disputed funds while the appeal is pending. It is important for those who decide tax cases to have expertise and understanding of state tax laws which a specialized Tax Division at the Court of Appeals would have. The bill is modeled after the Oregon Tax Court which is highly regarded and working well for tax payers and businesses in Oregon.

CON: The proposed legislation is unnecessary, costly, and will not make tax appeals more efficient, especially appeals of property assessments which is currently 90 percent of the Board of Tax Appeals workload. A quasi-judicial administrative appeal has distinct advantages over a court appeal because it is more cost effective and speedy. If a broad spectrum of stakeholders believe the tax appeal system should be changed, the changes should be narrowly tailored to address specific problems. The bill doesn't do that. There are easier ways to fix problems in the system, for example, mediation and settlement efforts could be mandatory. Parallel appeal structures could be eliminated. Government could assist taxpayers during the appeal process when they represent themselves. Proponents say informal processes are important but the bill says little about settlement or mediation.

OTHER: The bill is a good policy concept, but implementing the proposal at the existing Court of Appeals presents challenges. For example, the qualifications requirement for election as a tax division judge may be difficult for the Secretary of State to apply. Washington's Court of Appeals here has never functioned as a trial court. The Oregon Tax Court uses its Court of Appeals as a trial court. Washington's Constitution is structured differently. In Washington the superior court is the court of general jurisdiction. The superior court has original jurisdiction over tax matters and appellate jurisdiction over agency decisions.

Persons Testifying: PRO: Senator Braun, prime sponsor; Amber Carter, Assn. of WA Business; Mike Bernard, Sherlock Tax Advisors; Bill Severson, tax attorney, William Severson PLLC; Brett Durbin, tax attorney, Riddell Williams; Arthur West, citizen.

CON: Stephen Saynisch, Board of Tax Appeals; Dennis Pulsipher, King County Dept. of Assessments; Monty Cobb, WA Assn. of County Officials.

OTHER: Honorable Marlin Appelwick, WA Court of Appeals.