

# SENATE BILL REPORT

## 2SSB 5449

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As Passed Senate, April 15, 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:** Senate Committee on Ways & Means (originally sponsored by 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].

Ways & Means: 3/25/15, 4/01/15 [DP2S, DNP, w/oRec].

Passed Senate: 4/15/15, 33-16.

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### 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)

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### SENATE COMMITTEE ON WAYS & MEANS

**Majority Report:** That Second Substitute Senate Bill No. 5449 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Hill, Chair; Braun, Vice Chair; Dammeier, Vice Chair; Honeyford, Vice Chair, Capital Budget Chair; Hargrove, Ranking Member; Keiser, Assistant Ranking Member on the Capital Budget; Ranker, Ranking Minority Member, Operating; Bailey, Becker, Billig, Brown, Hewitt, O'Ban, Padden, Parlette, Schoesler, Warnick and Kohl-Welles.

**Minority Report:** Do not pass.

Signed by Senator Hasegawa.

**Minority Report:** That it be referred without recommendation.

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*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.*

Signed by Senators Conway, Fraser, Hatfield and Rolfes.

**Staff:** Juliana Roe (786-7438)

**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 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 Second Substitute Bill:** 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 may stay the payment of disputed taxes: (1) for \$500,000 or less through June 30, 2019; (2) for \$750,000 or less from July 1, 2019 through June 30, 2023; (3) for \$1 million or less from July 1, 2023 through June 30, 2027; and (4) for any amount beginning July 1, 2027. However, the Tax Appeal Division must not condition the appeal on payment of amounts asserted as due.

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.

**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 (Law & Justice):** 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 (Law & Justice):** 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.

**Persons Signed in to Testify But Not Testifying:** No one.

**Staff Summary of Public Testimony as Heard in Committee (Ways & Means):** PRO: Constituents from around the state have notified us of the difficulties they've had with tax

appeals in our state. These complaints cover a broad number of issues. This bill is in recognition of those issues and a step toward bettering our system. The tax system has changed over the years and we need to evolve to address those changes. If you look at the grade given to our state from the Council on State Taxation, we are currently a C and they've sent a letter that with this legislation Washington would move to an A-. This bill would increase our grade by focusing on four principles that originated from model legislation: (1) holding a hearing prior to paying the amount in dispute; (2) providing a decision that is precedential; (3) holding hearings in a forum that is independent of the tax collector; and (4) using a tax expert as a judge.

While court might sound intimidating, it is what the business community is asking for. It is the gold standard recognized nationally as providing the most independent, fairest, and experienced way to provide due process to the taxpayer. Because it can be a scary process, there are two distinct levels with mediation offered in the commissioner division. We're not the only state looking at tax reform for our appeal system. Fifteen other states are looking at legislation. Alabama is the most recent state to implement this type of legislation and if they can do it, we can do it.

CON: In addition to the significant costs in creating an appellate court system, this bill is unnecessary because there are adequate rules and procedures in effect now to protect the rights of all the participants in this process. In addition, there are rules in law in effect now for an appellant or a respondent to advance their dispute to superior court, yet only eight cases over the last six years out of 3000 cases filed have been advanced to the superior court. That doesn't indicate that change is necessary nor that the BTA lacks the competency to adjudicate these cases. Furthermore, the bill differentiates inappropriately between the excise and property tax appellants.

You shouldn't have to hire a lawyer to appeal your taxes. This will thwart ongoing efforts to reform and improve the process. We are working with DOR to improve the current process.

OTHER: The Court of Appeals has a concern about whether this bill requires a constitutional amendment, whether you create a standalone Tax Court of Appeals or incorporate this within the current court. Without an amendment, you could be putting important tax decisions in doubt if that new system is implemented. A standalone entity would be easier to implement than incorporating into the current Court of Appeals.

**Persons Testifying (Ways & Means):** PRO: Senator Braun, prime sponsor; Amber Carter, Assn. of WA Business.

CON: Stephen Saynisch, Board of Tax Appeals, Executive Director; Seamus Petrie, WA Public Employees Assn.

OTHER: Mellani McAleenan, Court of Appeals.

**Persons Signed in to Testify But Not Testifying:** No one.