

SENATE BILL REPORT

SB 5866

As Reported by Senate Committee On:
Law & Justice, March 22, 2017
Ways & Means, March 29, 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].
Ways & Means: 3/28/17, 3/29/17 [DP2S, DNP, w/oRec].

Brief Summary of Second 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)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 5866 be substituted therefor, and the second substitute bill do pass.

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 Braun, Chair; Brown, Vice Chair; Honeyford, Vice Chair, Capital Budget ; Bailey, Becker, Fain, Miloscia, Padden, Rivers, Schoesler, Warnick and Zeiger.

Minority Report: Do not pass.

Signed by Senators Ranker, Ranking Minority Member; Rolfes, Assistant Ranking Minority Member, Operating Budget; Carlyle, Conway, Darneille, Hasegawa, Keiser and Pedersen.

Minority Report: That it be referred without recommendation.

Signed by Senators Frockt, Assistant Ranking Minority Member, Capital Budget; Billig.

Staff: Carrie Graf (786-7708)

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 Bill: The bill as referred to committee not considered.

Summary of Bill (Second 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.

Generally, as of July 1, 2021, taxpayers do not need to pay the disputed amount as a prerequisite to having their appeal heard by the Tax Court. However, 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. The Main Department's decisions are precedential. 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 appointed by the Tax Court. Judges are elected for six year terms. They must be admitted to the practice of law in Washington. Their salary is commensurate with that of judges from the court of appeals. Commissioners must be Washington residents and have at least three years of work experience relevant to their

responsibilities as a commissioner. The Tax Court will have two physical locations, one in the largest city east of the Cascades and one in the largest city west of the Cascades.

EFFECT OF CHANGES MADE BY WAYS & MEANS COMMITTEE (Second Substitute):

- Changes references from “districts” to “divisions” to clarify that the tax court consists only of three judges—one from each division, rather than nine—one from each district;
- Delays provision allowing taxpayers to avoid paying disputed amount into court from the effective date of the bill to July 1, 2021.
- Specifies that all decisions of the main department are precedential.
- Removes requirement that judges have practiced tax law for five years.
- Creates requirement that the judges’ salary is equal to that of court of appeals’ judges.
- Removes from the tax court’s jurisdiction appeals of the sales price of second-class shorelands.
- Provides that if the supreme court denies review of a single judge decision, the case will be transferred to the three-judge panel of the tax court.
- Specifies that there will initially be two court locations, one in the largest city east of the Cascades and one in the largest city West of the Cascades.
- Makes technical corrections.

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.
- 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 (Law & Justice): *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 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 (Law & Justice): 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 (Law & Justice): No one.

Staff Summary of Public Testimony on Second Substitute (Ways & Means): PRO: This bills allows for exceptionally well-reasoned opinions. These benefit individuals and small businesses by giving them a path forward to see where their planning can go. It's critical that there's a fair and efficient tax dispute resolution system. Washington has a sub-par dissolution system which we know in part by looking to Oregon's tax court, which this legislation is patterned after.

OTHER: More than 90 percent of these cases at the BTA are property valuation cases. They don't have anything to do with legal tax issues, they're just questions of property tax valuation. The BTA is already an excellent forum for handling property tax issues. Most of the goals of the tax bill are focused on excise tax problems. The BTA is already responsive to goals of the bills. It is a wholly independent agency not related to the DOR. It is transparent and informal. It does not require taxpayers to pay taxes before having a hearing. Relatively simple changes to the BTA could accomplish the goals of this bill. The BTA has a large backlog due to the fact that the BTA lost funding at the same time as it experienced an increase in case filings. If the bill goes forward, it needs to make provision to handle this backlog.

Persons Testifying (Ways & Means): PRO: Eric Lohnes, Association of Washington Business; Norm Bruns, Garvey Schubert Barer; Michael Bernard, Microsoft.

OTHER: Kate Adams, Washington State Board of Tax Appeals.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.