



Independent Tax Appeals Tribunals

Policy Position

Position: *Foremost in good tax administration is a fair and efficient tax appeals system. A state's ability to recognize the potential for error or bias in its tax determinations and to provide taxpayers access to an independent appeals tribunal is one of the most important indicators of the state's treatment of its tax customers. The American Bar Association's model legislation for independent tax tribunals should be considered by states that do not currently have an independent tax appeals process.*

Explanation: Today, nearly half of the states provide an independent appeals forum specifically dedicated to tax cases. Although the structure and rules may differ from state to state, taxpayers in these states are able to establish a record for appeal in an independent adjudicative body before judges well-versed in tax matters. The ability to reach an independent tribunal, non-judicial or judicial, without prepayment is another key factor of a fair and efficient appeals process. In addition, many tax dispute systems are designed to allow taxpayers and the state adequate opportunity to meet and discuss settlement opportunities before incurring the hazards and costs of litigation.

States with fair and efficient tax appeal systems share three essential elements:

- **Independence** – Fairness can only be achieved through a truly independent tax tribunal. The tribunal must not be located within or report, directly or indirectly, to the department of revenue or to any subordinate executive agency. Without independence, the appearance of objectivity is simply not present. That perception, regardless of its accuracy, necessarily detracts from even exemplary personnel and work product of the adjudicative body. Independent tribunals are less likely to be driven by concerns over revenue collection, upholding departmental policies, or offending departmental decision-makers.
- **Trained Tax Judges** – The tax tribunal's judges must be specifically trained in federal and state tax law. The tribunal should be dedicated solely to deciding tax issues. The tribunal should be structured to accommodate a range of disputes from less complex tax issues, such as those arising from personal income tax matters, to highly complex corporate tax disputes. The tremendous growth and complexity in the body of tax law and the nature of our economy makes this consideration paramount. Judges not trained in tax law are less able to decide complex corporate tax cases on their merit and are saddled with the perception, rightly or wrongly, that the *revenue impact* of these complex cases too often plays a role in decisions. That perception reflects poorly on a state's business climate and reputation as a fair and competitive place to do business.
- **No Prepayment Requirement** – Taxpayers should not be required to post bond or pay a disputed tax prior to an initial hearing before an independent tribunal. More than 60% of the states grant taxpayers at least a *de novo* hearing on the validity of the assessment, in front of an independent arbiter, before payment of the tax is required. It is unfathomable that taxpayers would be denied a fair hearing before being deprived of property (*i.e.*, disputed taxes). It is inherently inequitable to force a taxpayer to pay an assessment, often based on the untested assertions of a single auditor or audit team, without the benefit of a hearing before an independent trier of fact. Free access to an independent hearing without having one's property confiscated is especially important in those states that fail to provide refunds timely (or at all) even after disputes are resolved in the taxpayer's favor.