Members:
Gerald Parsky, Chair
Ruben Barrales
Michael Boskin
John Cogan
Edward De La Rosa
Christopher Edley, Jr.
George Halvorson
Bill Hauck
Jennifer Ito
Fred Keeley
Monica Lozano
Becky Morgan
Richard Pomp
Curt Pringle

Independent Tax Appeals Body

Proposal:

California should create an independent body with tax expertise to resolve disputes between the state and taxpayer. A taxpayer should be able to appeal for a ruling from the independent tribunal prior to having to pay the tax bill in question.

Rationale:

The current tax appeals process has some aspects that raise questions of fairness. A taxpayer's final, prepayment stop for administrative review is with a hearing with the elected members of the Board of Equalization, who are in general perceived to be the same people who administer the tax system. By creating an independent, experienced body to hear cases, the state will improve the fairness of the system. Allowing taxpayers to pay their tax bill after an independent body reviews their case will improve the appellate system's access to all taxpayers.

Background:

The Franchise Tax Board (FTB) administers the personal income tax and corporation tax. It includes the director of the Department of Finance, the state Controller and the chair of the Board of Equalization. The Board of Equalization (BOE) administers the sales and use tax, special tax and fee programs, property tax, and the tax appellate program. The Board is composed of the state Controller and four elected members.

Each Board has its own internal protest or appeals process for administrative tax disputes.

A taxpayer's final, prepayment stop for administrative review – either to appeal a FTB action on an income or corporation tax protest or to appeal a BOE action on a sales and use, special tax and fee, or property tax petition – is with a hearing with the elected members of the BOE. Members of the BOE are elected officials and not required to have any particular tax training or expertise.

To prepare for the hearing with the BOE, the parties provide written briefs detailing their factual contentions and legal arguments. Once the briefing is completed, the Appeals Division prepares a hearing summary or proposed decision in the matter.

The matter is then scheduled either for oral hearing before the BOE or for a decision based on the written record, at the taxpayer's request. The actual hearing can be between 30 and 60 minutes long. Given the complexity of tax cases, the short hearings lead some taxpayers to feel they must contact some BOE members in advance to try to explain their case. These informal meetings between taxpayers and BOE staff break from traditional legal practice and may be improper.

If a taxpayer wants to challenge the BOE's determination on an appeal, the taxpayer must pay the tax liability and file a claim for refund with the assessing tax agency prior to filing a suit in court. Some taxpayers cannot afford this option. In contrast, the U.S. Tax Court hears disputes about federal taxes without payment of tax.

The BOE mails written notifications of its determinations to the parties but does not make its decisions public, which would provide guidance to taxpayers. The U.S. Tax Court publishes all of its decisions.

Recommendation: Create an Independent, Administrative Tax Appeals Body.

Following the guidelines as set by the American Bar Association's "Model State Tax Tribunal Act," the state should create an independent administrative body with tax expertise to resolve disputes between state and taxpayer. The judges should be trained in tax issues. The body will be the prepayment court for challenges to personal income tax, sales and use tax, property taxes[1], payroll and excise taxes and the BNRT.

The ABA recommends that the governor appoint the head of the body, such as a judge, and that the entire body would report to the executive branch. Decisions would be rendered in writing and made public. Both sides would be able to appeal to Superior Court. (The current situation permits only the taxpayer to appeal, not the state agency).

[1] Including property tax disputes will require a Constitutional amendment.