

Independent Tax Tribunals for Alabama

Background

The Alabama legislature has considered bills during the previous three sessions to establish an independent tax tribunal in the state. More than half of the states now maintain an independent tax tribunal and in 2013, eight states, including Alabama, considered legislation on this issue.¹ Notably, Alabama's neighboring states of Mississippi and Georgia both have an independent tax tribunal or court.²

Currently, an Alabama taxpayer seeking to appeal a tax assessment does so via the Administrative Law Division of the Alabama Department of Revenue. Because the Administrative Law Division is contained within the Department that issued the assessment being appealed, it is difficult for individual or business taxpayers to believe that they are on equal footing during an appeal. Despite a record of apparent fairness and neutrality by Alabama's current Administrative Law Judge, any judge employed by the Department of Revenue faces the perception of a conflict of interest.

During the 2013 Regular Session, Representative Paul DeMarco introduced HB264 known as the "Alabama Taxpayer Bill of Rights II" which would create the Alabama Tax Appeals Commission (ATAC).³ The current functions and responsibilities of the Administrative Law Division of the Department of Revenue would be transferred to this new independent agency in total. In addition to appeals of Revenue-administered taxes, the bill would allow taxpayers to appeal assessments of sales, use, rental, and lodging taxes from self-administered cities and counties and their contract auditing firms to the ATAC, unless the governing body of the city or county opts out.⁴

ISSUE SNAPSHOT

More than half of the States maintain an independent tax tribunal. In 2013, Alabama and eight other state legislatures considered their creation.

An independent tax tribunal would allow taxpayers to appeal their tax assessments before a judge who does not report to the Department of Revenue.

Considering tax tribunals are utilized by the majority of states, Alabama would most likely benefit from the careful creation of a tax tribunal.

Policy Considerations

HB264 would set up the ATAC as an executive agency. The bill specifies that \$425,000 would be transferred from the Department of Revenue Administrative Fund to the ATAC for the first fiscal year and will then require an annual appropriation from the Fund beginning in fiscal year 2015.⁵ The bill seeks to essentially reallocate personnel, records, and equipment from the Administrative Law Division to the new ATAC in an effort to avoid new costs. After the first fiscal year, the Commission will prepare its own annual budget.⁶

Legislators must assure Alabama taxpayers that the establishment of any independent tax tribunal does not result in increased spending and simply moves the Administrative Law Division out from the control of the Alabama Department of Revenue. The fiscal note on HB264 points out that because the bill provides the option of adding more than one judge to the Commission, the expenses of the Commission could be

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greater than the annual expenses of the current Administrative Law Division; however, these increased expenditures could be offset by the collection of expedited revenue ruling fees as set out in the bill. Still, the ATAC should strive to keep its costs within the previous Administrative Law Division budget until it is clear that the revenue generating provisions of the bill could cover spending increases by the Commission.

HB264 also lays out a detailed process for the appointment of ATAC judges.⁷ Under the bill, these judges would be appointed by the Governor from a list of five candidates, selected by a non-partisan nominating committee. The seven-member nominating committee will consist of appointees from the Alabama State Bar, the Alabama Society of CPAs, the Commissioner of Revenue, the Alabama League of Municipalities, the Association of County Commissions of Alabama, and the Alabama Circuit Judges Association. All ATAC judges must possess a “high level of knowledge of and degree of experience in the area of state and local taxation.”⁸

Unlike the American Bar Association’s model Taxpayer Bill of Rights,⁹ HB264 does not require Senate Confirmation of judicial appointees to the ATAC. For an independent tax tribunal to achieve its stated goal, individual taxpayers and businesses of all sizes must be assured that a judge appointed to the ATAC will be a neutral arbiter without allegiance or obligation to special interests or political pressures.

Recommendations

More than half of the states in the union have some form of an independent tax tribunal, including many of Alabama’s neighboring states. Alabama cannot afford to lose taxpaying citizens or businesses to nearby states that appear to provide a fairer, more efficient tax appeals process. In establishing an independent tax tribunal, legislators must assure that there is no perceived or actual expansion of bureaucracy or red tape, that there is no significant increase in expenditures beyond that of the

current Administrative Law Division, and that judges are selected in a manner that raises no questions of favoritism or cronyism.

Legislators should also consider an independent tax appeals process that would include the appeal of property taxes. For the same reasons that an independent tax tribunal is needed for the appeal of sales or income tax assessments, property taxpayers need the assurance of a fair and balanced appeals process. While property taxes are imposed at the local level, the taxpayer similarly appeals his or her assessment to the same body that levied it. An independent appeals process would also help to ensure equality and proportionality between business and residential property taxpayers.

¹ American Institute of CPAs, Chart of States With and Without State Tax Tribunals (2013), <http://www.aicpa.org/interestareas/tax/resources/stateandlocal/toolsandaids/downloadabledocuments/chart-of-states-with-and-without-state-tax-tribunals-3-8-13.doc>.

² *Id.*

³ H.B. 264, 2013 Regular Session, 3 (Ala. 2013), available at <http://alisondb.legislature.state.al.us/acas/ACTIONViewFrameMac.asp?TYPE=Instrument&INST=HB264&DOCPATH=searchableinstruments/2013RS/Printfiles/&PHYDOCPATH=/alisondb/acas/searchableinstruments/2013RS/PrintFiles/&DOCNAMES=HB264-int.pdf,HB264-eng.pdf>.

⁴ *Id.* at 6.

⁵ *Id.* at 37.

⁶ *Id.*

⁷ H.B. 264, *supra* note 3 at 25-33.

⁸ *Id.* at 31.

⁹ American Bar Association, Model State Administrative Tax Tribunal Act (2006), available at http://apps.americanbar.org/tax/groups/salt/ABAI_OFFICIAL_MODEL_ACT_REPORT_AS_ADOPTED_8-7-06.pdf.