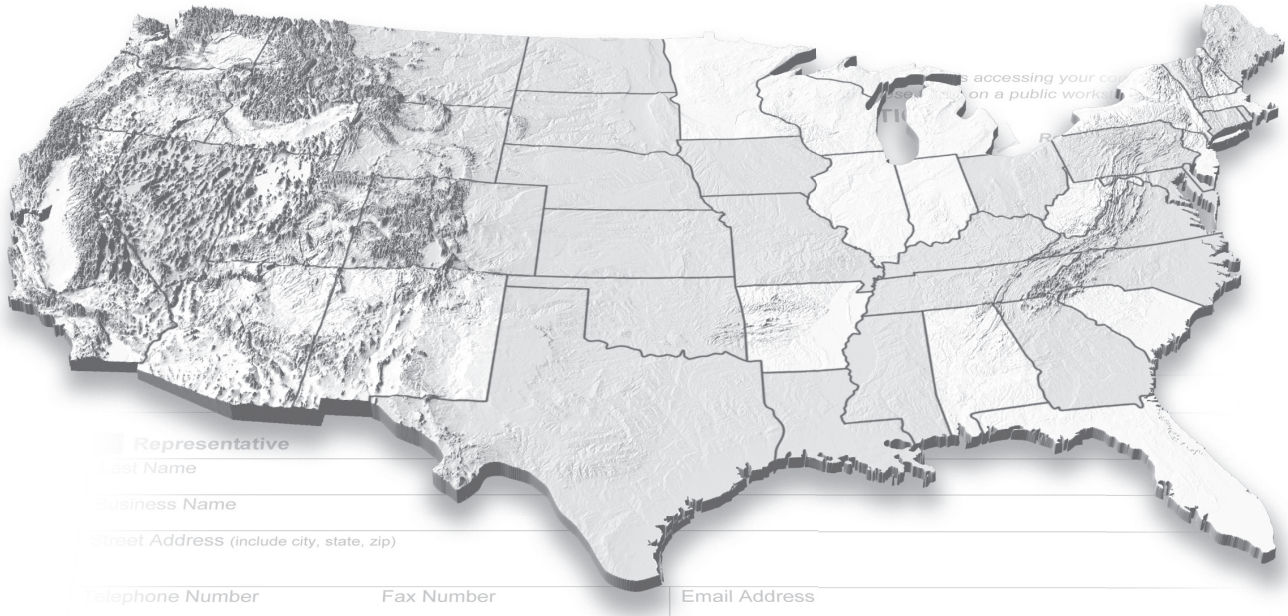
Benchmarking Administrative Tax Appeals



Representative
Last Name
Business Name
Street Address (include city, state, zip)
Telephone Number | Fax Number | Email Address

Notice/Item at Issue
☐ Assessment/balance due notice ☐ Taxpayer Information & Education Ruling ☐ Refund
☐ Successorship/Trust Fund Liability ☐ Other

Tax Period From To | Audit No.
Amount at Issue $ | Document No.

Internal Use Only
Docket No.
Timely
☐ ARTS ☐ AB2
☐ C. Scan ☐ OD Copy
☐ Scan Idocs ☐ Ack Ltr
☐ File

Type of Appeal (Complete only if you want your appeal heard other than as a regular, mainstream appeal)
☐ Small Claims
Small claims petitions are expedited and are limited to disputes over taxes of $5,000 or less or disputes over penalties and interest of $10,000 or less. A small claim decision is the final decision of the department – you cannot request reconsideration of small claim decisions.
☐ Executive Level
A petition for executive level consideration may be granted if the issue is one of first impression or the issue has industry-wide impact or significance. The reasons for an executive level appeal must be specified in the petition. An executive level decision is the final decision of the department – you cannot request reconsideration of executive level decisions.
☐ Reconsideration or ☐ Executive Reconsideration of Mainstream Appeal decision
Petitions for reconsideration must specify the errors in fact or law on which you base your request.

WASHINGTON STATE DEPARTMENT OF REVENUE
APPEALS DIVISION | APRIL 2005

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Introduction

The Appeals Division of the Washington State Department of Revenue conducts informal hearings on excise, sales, and use tax appeals brought by taxpayers, and issues written determinations that are the official position of the Department. Its mission is to justly and lawfully resolve tax appeals in a timely manner and provide written guidance on Washington tax laws. Taxpayers can seek independent review of adverse decisions by appealing to the Board of Tax Appeals or filing a suit for refund in Thurston County Superior Court.

Over the last several years, the division has implemented several new procedures and implemented technology improvements in an effort to make the appeals process more efficient. Such procedures include sending scheduling letters and the appeal petition to the Department's operating divisions for written response to be copied to the taxpayer, changing the format and content of decisions, and issuing proposed determinations in executive-level appeals. Technology improvements include an electronic Appeals Review Tracking System and a Document Imaging and Retrieval System.

During 2003, the Department conducted feedback sessions with both internal and external stakeholder groups to gain better understanding of their needs and expectations about the appeals process. In the winter of 2003, the director initiated a series of roundtable discussions with stakeholders about opportunities for improvement to the appeals process. Through those discussions, the Department learned that its customers are keenly interested in more timely resolution of appeals and an improved process for the exchange of information between the taxpayer and the Department. Further, in late 2003 and early 2004, in an effort to identify the "best practices" of others who perform similar functions, the Department began benchmarking its appeals process against its counterparts in other states.

Benchmarking is a process for identifying, understanding, and adapting outstanding practices from other organizations to help an organization's performance goals. It is a tool for improving performance by learning from best practices and understanding the processes by which they are achieved. After a period of planning, including creating timelines and expectations, the process typically involves internal data collection and analysis of current practices, external data collection and analysis, a review of the collected data and information, and recommendations for improvement. Our ultimate goal in benchmarking is to better understand and respond to the needs of stakeholders while ensuring that the appeals process and the division's role are aligned with the Department's overall mission, values, and goals.

From Revised Code of Washington 82.32.160:

"Any person having been issued a notice of additional taxes, delinquent taxes, interest, or penalties assessed by the department, may within thirty days after the issuance of the original notice of the amount thereof or within the period covered by any extension of the due date thereof granted by the department petition the department in writing for a correction of the amount of the assessment, and a conference for examination and review of the assessment."

In planning the benchmark effort, we concluded that external data would come primarily from on-going stakeholder meetings, questionnaires, and data from other states with internal appeal processes. This necessitated a review of the processes in other states. However, we found little current data available on the internal appeal processes in the other states. As a result, we conducted a fairly broad survey of the processes of other states' taxing authorities, which provided a wide spectrum of high level information. For example, the survey included information on policy development and communication in the various states. Based on this information, our role in

tax policy development and communication can be examined in the context of how other states address similar issues. It also can provide a baseline of information so that future benchmarking efforts will be more focused.

The on-going discussions with stakeholders also provided the basis for an initiative in the Department's current Strategic Business Plan. With the goal to build and strengthen relationships with each other and our customers, it was determined that the Department will continue to partner with both internal and external customers to implement improvements in a wide range of areas.

Areas of emphasis will include:

» Issuing proposed decisions in mainstream cases under a pilot program
» Shortening the time between the appeals hearing and issuance of the decision
» Examining alternatives for resolving less complex appeals faster
» Using pre-hearing conferences as a way to identify the issues early, set deadlines for the exchange of pertinent information between the Department and taxpayers, and assess the appropriateness of settlements.

This report outlines the results of what we learned from stakeholders and the division's benchmarking efforts. It also provides detail on recommended improvements, including those outlined in the Department's Strategic Business Plan.

Summary of Findings (Internal)

Current Practices: Washington State Department of Revenue

By law, the director of the Department of Revenue must provide an adequate system of review by the Department of its own actions or the actions of its officers and employees in the assessment or collection of taxes (RCW 82.01.060). Moreover, the Department must accept and consider timely written petitions from taxpayers for correction of assessments, whether paid or unpaid, or for refunds; and, when necessary, conduct conferences to examine these requests and make a just and lawful determination as to the taxpayer's request, and mail the decision to the petitioner (RCW 82.32.160; RCW 82.32.170). By providing the venue for a final internal review of Department actions and simultaneously providing the forum for taxpayers' appeals, the Department's Appeals Division fulfills the director's statutory obligation to create a system of internal review and address taxpayers' requests.

This system of review is non-adversarial in nature. The appeals are handled by the division's 16 administrative law judges (ALJs) and managers, who are all attorneys trained in the interpretation of Washington's Revenue Act, Washington Administrative Code (Rules), and Department's precedents established by prior departmental rulings and the courts. The division has offices in Olympia and Seattle. The ALJs serve as the director's designees.

Once an appeal is properly filed in the division, the ALJ conducts informal hearings with taxpayers (where a Department representative is rarely present), gathers the facts from Department staff and the taxpayer, researches the applicable law, and issues a written decision, known as a determination, analyzing the law in light of specific facts. Selected decisions have identifying information redacted and are published as agency precedent (RCW 82.32.410).

Cases are classified into one of three categories, according to complexity: small claims, mainstream, and executive-level. In addition, the Appeals Division hears license revocations and certain other

appeals, which are formal proceedings under the Administrative Procedure Act. The division also represents the Department on informal appeals at the Board of Tax Appeals (BTA).

The BTA is an external, independent tribunal to which taxpayers can appeal the Department's decisions prior to going to Superior Court. Appeals to the BTA are de novo. The BTA's processes are not the subject of this report.

The Department's performance measures for the Appeals Division for accomplishing resolution of appeals:

» Clear 90 percent of mainstream (regular) appeals within one year of receipt

» Clear 90 percent of executive-level appeals within 15 months of receipt

» Clear 90 percent of small claims appeals within 90 days of receipt

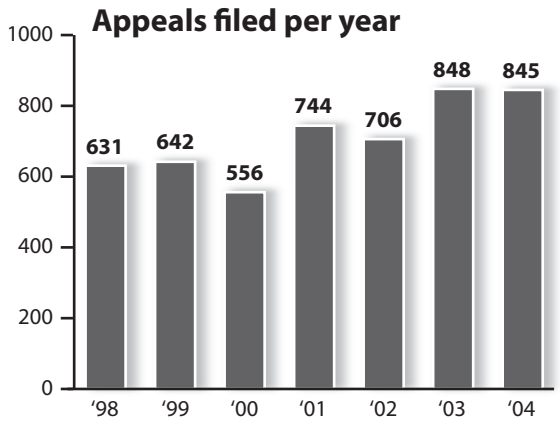
» Clear 90 percent of revocation appeals within 45 days of receipt

» Clear 90 percent of appeals removed from a "hold" status within six months of such removal

» Publish 100 percent of all determinations that meet the publishing criteria

» Maintain zero percent cases longer than 18 months, unless on hold

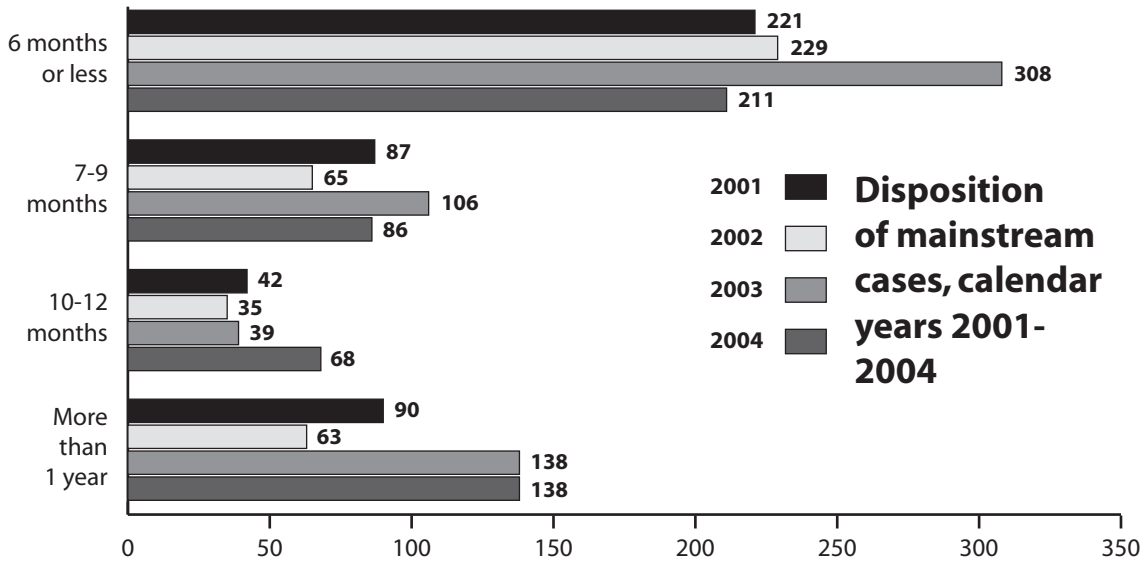
To identify opportunities to streamline processes, we developed detailed flow charts on the mainstream, small claim, and executive-level appeal categories, as well as, the publication and settlement functions. For more information on the division's processes, please go to the Department's Appeals Guide at **http://dor.wa.gov/content/doingbusiness/Appeals**.



Results of Current Operations

In the past five years we have had an increase in the number of appeals. We expect this trend to continue, but do not anticipate any increase in FTEs. We also do not anticipate any further technological advances to significantly help improve performance, as we have seen in the past.

The number of mainstream and executive appeals taking over a year has increased but stabilized for 2003 and 2004. This has caused concern with taxpayers and challenges the division's ability to meet its performance measures.

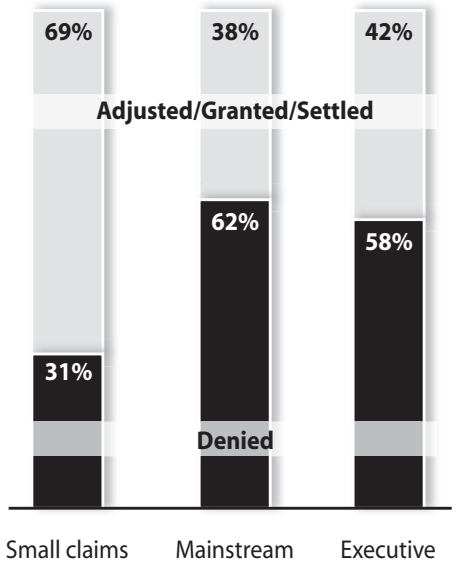


In examining some of the reasons for the increase in time to resolve an appeal, we noted that appeals with multiple issues take longer to resolve and that the number of complex, multiple-issue cases is on the rise. We also found that approximately 50 percent of the single-issue cases that took more than one year to resolve were at the request of taxpayers or due to pending litigation.

A relatively small number of appeals are decided under our small claims program. Fewer than 25 percent of the cases that currently qualify, based on amounts in dispute, are actually decided as small claims. This was largely due to taxpayers either not selecting small claims when filing a petition or being unaware of the program.

In issuing decisions the emphasis has been on the total time from filing to resolution. However, many decisions are currently issued within 90 days after a hearing. A fair number of the cases not resolved within 90 days after a hearing involved requests from either taxpayers or the Department for additional time to present additional evidence or to brief an issue. During the period under review, a submission deadline or close of record date – a date when additional evidence or briefing is no longer allowed – was not established and not measured.

Percentage of relief granted or denied in decisions issued in calendar years 2001-2004



Summary of Findings (External)

Stakeholders

As part of the benchmarking process we met with our internal stakeholders, the Taxpayer Services, Legislation and Policy, Appeals and Executive divisions, Taxpayer Advocate and Revenue Attorney General. We met with representatives from external stakeholder groups, including the Association of Washington Business, Tax Executives Institute, Washington Society of CPAs, Washington State Bar Association, State and Local Tax Section, National Federation of Independent Business, and Independent Business Association of Washington. Additionally, we participated in the director's on-going roundtable stakeholder discussions on Appeals. Roundtable participants were often members of an external stakeholder group but were not necessarily participating in a representative capacity.

Key findings from meetings with internal and external stakeholders include:

» Informal process is highly valued – little desire expressed for a contested case format or to have an operating division representative present at a hearing

» Flexibility valued – but recognize this may cause delays

» Desire to have the time between a hearing and a decision shortened in mainstream cases – recognize this will require more information gathering and case development prior to a hearing

» Settlement valued as a means to resolve disputes both individually and for an industry – visibility and utility (particularly for past periods) should be increased

- » Publication of precedent highly valued as guidance in making business decisions – desire for publication of more decisions to fill information gaps and to see law applied in different fact settings
- » Consistent treatment of equally situated taxpayers highly valued
- » Concern over how policy input/interaction takes place – perception that policy arguments are being made without the opportunity to respond – some interest in greater independence for ALJs and the Appeals Division
- » Executive proposed determinations well received – favor expansion to some mainstream cases but would like possibility of reconsideration in important cases
- » Desire for more information on appeal process, particularly for small businesses

Based on input from internal and external stakeholders, we identified the following key questions to explore in reviewing the practices of other states:

1. How do other agencies involve their appeals division in the development and articulation of Department policy?
2. For agencies that publish their decisions, is there a correlation between publishing decisions and either the formality or independence of the process?
3. What kinds of formal settlement programs are used by other agencies?
4. Do timelines for resolution of appeals exist and are they statutorily mandated?
5. What methods of early fact finding do other agencies use?

Other States

We reviewed the July 1994 State Tax Appeal Systems report by the Federation of Tax Administrators in selecting which states to survey. We also considered the Committee on State Taxation (COST) report, in Perspective, Volume 8, No. 4, at 231, State Tax Appeals and Best and Worst of State Tax Administration: COST's Scorecard on Appeals, Procedural Requirements (April 27, 2001). In our review, we included states that scored among the highest and the lowest on this report. We also looked at the web sites of all states that had on-line information about their appeal processes.

The surveyed 21 states:

Alabama	Minnesota
Alaska	New Hampshire
Arizona	New Jersey
Arkansas	New Mexico
California	New York
Florida	Oregon
Idaho	South Carolina
Illinois	Utah
Indiana	West Virginia
Massachusetts	Wisconsin
Michigan	

Based on this information, we studied states with taxing authorities that had an internal appeal system, either formal or informal, to measure our internal appeal processes against states similar to Washington's taxing authority, the Department of Revenue. For comparison, we also reviewed a few states that have no internal process, but have a formal process short of the court system. We also included states where the appeals division had undergone a recent change in function or process: Alaska, Florida, Oregon, and West Virginia. Finally, we focused on states that issued initial and final decisions.

Brief summaries of each state's appeal process are included in **Appendix A**. Agency and division names and individual titles vary widely among the states. For consistency throughout this document,; when referring generically to other states' agencies, we refer to the taxing authorities as the "Department," the head of the Department as the "director," the internal appellate body as the "appeals division," and the person in charge of the hearing as the "hearing officer." In compiling the survey answers, we identified 15 aspects common to the appeal processes reviewed. These are summarized in **Appendix B**.We developed a table of the 15 aspects for comparative purposes, which is included as **Appendix C**.

As a result of compiling and reviewing the information from the 21 states we surveyed, we developed findings about practices in the selected states that addressed the five key questions outlined above.

1. How other appeal divisions help to develop and articulate Department policy.

We were interested in understanding the role of the different states' appeals processes in the development and articulation of policy. The trend appears to be that states with independent or semi-independent appeals divisions are not directly involved in the development of policy. However, California, Massachusetts, Michigan, Oregon, and New Hampshire have independent or semi-independent appeals divisions and are involved in policy development. Regardless of the way policy is developed, all states use rules, excise tax bulletins, and other policy directives as their principal methods of announcing policy. When these policy announcements do not cover every policy issue that might arise during an appeal, states use a variety of processes to inform taxpayers, including a written appeal decision.

In states where the appeals divisions are not directly involved in policy development, their decisions often influence policy development. In Indiana, for example, when the Department agrees with the decision's analysis, the appeals decisions are incorporated into a new rule or policy directive. In several states the hearing officer makes an initial determination that is reviewed by the director or the director's designee, who may take the opportunity to announce the Department's policy in the decision. In Arkansas, the hearing officer makes a decision independent of any other input, but the director may revise such decisions to address a policy issue. In New Hampshire and Utah, the hearing officer's decision is entirely independent of the operating divisions, but policy input from those divisions is provided to the director during the course of issuing a final decision. In Arizona, the hearing officer may not announce a change in policy, but that officer's decision may be formally appealed by either the Department or the taxpayer to the director. Then the director, operating through two attorneys who are in charge of Department policy development, may announce a new policy or a change in course after reviewing the initial decision. In Michigan, if an initial assessment appears to be contrary to Department policy, the Office of Policy issues a policy memorandum in support of the assessment. After reviewing the memorandum, the director's designee confers with the operating divisions and issues a recommendation. If the recommendation results in a change in policy, rather than publishing the decision as precedent, the Office of Policy issues a revenue ruling, tax memorandum, or tax bulletin announcing the change. In Illinois, the Internal Conference Board, the first step in the appellate process, may identify an issue that needs policy resolution. While the appeal proceeds through the independent Office of Administrative Hearings, the policy issue is addressed by a policy group consisting of the heads of Audit, General Counsel, and the Board of Appeals, who formulates and announces the policy independent of the case that generated the issue.

Appeal divisions with a role in policy development do so using a variety of systems designed to articulate the one voice of the Department. In Idaho, the director's designee consults with the operating divisions for input during the course of an appeal. Alaska, Oregon, South Carolina, and Washington let the hearing officer seek the advice of the operating or other divisions in trying to determine the Department's policy. Where there is disagreement, the director may have to make the ultimate decision. In Massachusetts, controversial decisions arising in appeals may be taken to a tax policy-making group, consisting of the director, a senior deputy director, the director of appeals, and others. Because Massachusetts does not publish decisions of the appeals division, their decisions result in the Department's issuance of a public statement, a directive, regulatory change, or technical information release, as well as the decision in the appeal. Washington is the only state surveyed where the director is statutorily authorized to designate precedential decisions. Florida allows the attorneys or senior auditors in the appeals process to speak with the operating division, but when they issue a decision based on a new interpretation, the Department initiates rule-making to announce the new interpretation. Florida has adopted a Rules

and Policy Administrative Process to coordinate the adoption and amendment of agency policy decisions. In Minnesota, while the appeals division is a separate unit within the Department, when an issue of statutory interpretation arises, the hearing officer works hand in hand with the rule making and legislation unit, the auditor and the audit division, and the attorney general to resolve the appeal.

Appeals units often are involved in the development of rules. In Alaska, Minnesota, and Washington, the appeals division may be involved in the issuance of rules. Oregon's hearing officers are officially a part of the Department's Policy and Analysis Unit and its Corporation/Estate Policy Team.

The New Jersey Conference and Appeals Branch is involved informally in the development of new policy through its chief, who meets with the superior and other assistant directors to discuss "hot topics." Where consensus among the assistant directors can't be reached, the chief helps coordinate discussions with the deputy director or director, who makes the final call. Washington has a similar process to identify determinations to be published as the official position of the Department.

We also wanted to know if formal and informal appeals systems made a difference in whether appeals units were involved in policy development. While we could not identify a trend regarding policy development, we did observe a trend regarding policy review. States with formal appeals processes do not permit contacts between hearing officers and other Department personnel. It does not follow, however, that the final agency decision in the formal appeal does not include policy review. By contrast, we found that most Department-based informal appeals' processes permit contacts between the appeals division and other Department personnel. Generally, the reason for permitting these contacts is to prepare the record and to further consistent application of policy in decisions. Because these informal reviews are subject to review by an independent tribunal before the taxpayer must go to either a trial or a tax court, due process issues are not present. More than half of the states with semi-independent agencies had a similar outside review. Of the four completely independent bodies, Arizona and Alaska do not allow appeal by an intermediate body before superior court, whereas California and Oregon do offer an intermediate review.

We were also interested in understanding any correlation between an appeals unit role in policy development and consistency. While we could not identify a trend, we did find that most Department appeals processes further consistency by making the hearing officers' decisions subject to review by the director. Only Washington issues proposed decisions on executive-level appeals, allowing both sides to respond. Other Department and semi-independent agencies further consistency by permitting the Department to appeal the decision of an independent hearing officer to the director.

Although states use a variety of methods to articulate policy, the decisions of the appeals units play a crucial role, whether directly or indirectly. Whether published or not, these decisions are either the vehicle for the announcement of policy or they serve as the foundation for a later rule, policy statement, or both.

2. Publication as it relates to the formality or independence of the process.

In addition to Washington, eight of the 21 states surveyed publish their decisions in whole or in part. These states are: Alabama, Arizona, California, Illinois, Indiana, New Mexico, Utah, and West Virginia. Arkansas and Florida permit decisions by their appeals divisions to be internally circulated among their auditors and other Department personnel, but disallow external circulation. Thus, we do not consider Arkansas and Florida as publishing their decisions. Florida, however, will use the decision as a basis for publishing a General Tax Administrative Procedure Bulletin for educating the public.

Of the nine publishing states, only Illinois and Washington routinely publish their decisions as precedent. All of Washington's published determinations serve as precedent. Illinois publishes all second-tier review decisions issued by its Office of Hearings and all serve as precedent.

Utah publishes its selected decisions as precedent when it wishes to make policy statements known.

Arizona recently began publishing a few selected director decisions in redacted form. Decisions by hearing officers have no precedential effect. Policies in Arizona may be changed only by issuing tax rulings, procedures or instructions, rule making, and director's decisions.

Alabama publishes its decisions, but does not regard them as precedent and does not consider them as a method of announcing policy. Similarly, Indiana issues its decisions in a sanitized format and publishes them, but they are not precedent, cannot be cited by a different taxpayer, and are binding only on the taxpayer and the Department with regard to that case. If the Department intends the analysis in a decision to be more than persuasive, it incorporates it into a directive, rule, or other formal policy document.

New Mexico publishes all of its decisions. They are posted on the Department's web site. They are not sanitized because the state Legislature exempted the Department's hearing officers' decisions from confidentiality restrictions. Although the hearing officers' decisions do not serve as precedent, and are binding only on the taxpayer and the Department for that case, the Department usually follows the decisions unless it appealed them. New Mexico's purpose for publishing is to educate taxpayers.

As required by statute, the West Virginia Secretary of State publishes a synopsis of decisions by the Office of Tax Appeals and voluntarily publishes redacted ("sanitized") copies of all of its decisions to preserve taxpayer confidentiality, except non-precedent small claim decisions, on its web site at **http://www.wvota.gov**. When the Department disagrees with any of the decisions, it can formally non-acquiesce to such decisions.

California's Board of Equalization publishes annotations of the decisions that contain issues not previously covered by rule or other Department policy. When published by the Board of Equalization, these decisions serve as precedent. California does not publish its hearing officers' decisions.

The number of states that publish internal appeals decisions as a method of announcing their departments' policies is too small to identify any correlation between publication and either the formality or the independence of the appeals process. Among the states that use published decisions for precedent purposes, only Washington has an informal appeals process that is administered within and by its Department of Revenue. Arizona, Illinois, and Utah have semi-independent and formal processes.

3. Settlement programs used by other agencies

Oregon, South Carolina and Washington permit settlement through the appeals divisions. The hearing officers or the division director will consider risk of litigation as a factor when contemplating settlement. In Alaska and New Jersey, the hearing officers cannot settle cases but can make a settlement recommendation to the Attorney General/General Counsel (Alaska) or the head of the appeals division (New Jersey). Three states – Alabama, Arkansas, and Michigan – do not allow settlements through the appeals process, but may allow them at other stages of a taxpayer's dispute. Arkansas allows settlement through the Office of Legal Counsel. In California, offers of compromise are handled by the Audit Division and are handled separate from but simultaneously with the appeal. Similarly, settlements in Minnesota are handled solely by the audit division. In Idaho, New Hampshire, and New York, the hearing officer may suggest the parties settle, but has no formal part in the settlement process.

In Utah, a hearing officer may schedule an informal conference and then mediate a settlement between the taxpayer and the Department. The Department's representative is someone from the operating division who has settlement authority for the Department.

Arizona has a novel process. When it appears that more than 60 percent of a taxpayer class is reporting incorrectly, the Department holds a public hearing at which the taxpayers may explain why they think the error is being made. The Department may then issue closing instructions to the class with future reporting instructions and waive penalties, interest, and tax.

In New Mexico, all protests go first to the Protest Section, where a senior auditor tries to settle the case if it is under $10,000 or seek approval from an

attorney general if it is over $10,000. If the auditor thinks the assessment is correct, the case is passed on to the Legal Services Division, where an attorney reviews the case to see if settlement is appropriate before passing the case on to the Hearing Bureau.

Approximately one third of the cases in Massachusetts are settled with the approval of a separate board, which includes the director of the appeals division. The state publishes a Guide to Offers in Settlement which answers questions, provides forms, and explains what kinds of cases cannot be settled. Illinois also uses separate boards, the Informal Conference Board and Board of Appeals, in its settlement process.

Florida is currently benchmarking settlement processes with other states, but the results are not yet available. It has an active offer in compromise program.

The West Virginia Legislature required the Department to promulgate regulations, creating a pre-assessment conciliation process. The Department has issued the regulation, but the Legislature has not funded it, so the program is not in operation.

4. Timelines for resolution of appeals

Timelines for the resolution of appeals are commonly imposed as an internal goal by the appeals division. In three states, the Department has imposed performance measures on the appeals division. In a few states, timelines are imposed by statute or rule.

The timelines for the resolution of an appeal are often keyed to the close of the record, usually 60-90 days after the close. Many states also have a goal or performance measure for resolving a case within a set amount of time between the filing of the case and issuance of a decision. Nine months to a year is the average turn-around time for the majority of states. Several states are statutorily required to complete appeals within a shorter period of time.

5. Early fact finding and expedited review methods

The need for early fact finding and expedited review is a common problem faced by most state appeals processes.

Some states have identified the following issues for expedited review:

» *Penalty and interest.* Arizona provides a separate appeals process for penalty and interest cases. The Department may waive the penalty if the taxpayer had reasonable grounds not to pay, including a reasonable belief that the tax did not apply. Florida separates penalty and interest cases for early settlement or other resolution. Penalty and interest waiver cases in Oregon are handled by the collections personnel, not the hearing officers.

» *Jeopardy assessments.* Arizona permits expedited review. The taxpayer must appeal within 30 days of the assessment and the Department must decide within 15 days of receipt of the appeal. New Jersey has a separate group within its appeals branch that evaluates risk of collection issues for individual appeals.

» *Small claims.* Like Washington, several states have small claims provisions with faster resolution times than that required for other cases.

» *Merely factual disputes.* In New Jersey, the first 100 days of an appeal are before an initial review section that seeks to resolve factual issues and other disputes with the operating division and succeeds in resolving 60-70 percent of the cases. Indiana has a protest section staffed by senior auditors who resolve factual disputes before the protest is transferred to the appeals division.

Some other states use the following means for early fact finding or resolution:

» Oregon and Washington encourage taxpayers to have conferences with audit supervisors before cases go to appeal. Arizona issues a notice of proposed assessment; the taxpayer has 90 days to object, in writing. The operating division may then decide on its own to change the assessment or issue a modified assessment.

» New Hampshire taxpayers have a right to a conference with the operating division and a formal explanation from the revenue counsel within 120 days after the conference. If the explanation does not solve the dispute, it serves

as the Department's brief on the subsequent appeal to the hearing officer.

» Arkansas requires both sides to complete and exchange a pre-hearing information request to clarify facts.

» Illinois uses an Informal Conference Board to resolve pre-assessment issues. It holds informal hearings and investigates taxpayer's claims by listening to taxpayer's arguments, examining documentation and issuing an action instructing audit how the final assessment should be adjusted.

Conclusions

General Observations

In reviewing data from other states, we made the following observations about practices in the states surveyed:

» A direct or indirect role in policy development in appeals is common, except in states where the process is entirely independent and ex parte communications are prohibited. A majority of states have the hearing officer issue an initial decision subject to director review to control consistency and develop policy.

» A minority of states publish decisions. Only a few states publish their appeal decisions for the purpose of announcing Department precedent.

» Settlements are commonly part of informal appeal processes, although the authority to settle may reside outside the appeals division.

» Time for an appeal commonly takes nine to 12 months. Many states have 60-90 days from close of record to decision as a goal or performance measure. Few states have formal performance measures from outside the appeals division that deal with matters other than resolution time.

» Early fact finding or resolution of fact disputes is common. A large number of states also allow or require the Department to have a representative at the hearing.

Quality of current process

Each state's appeal process is different. As with many states, Washington's tax appeal process has evolved over the years in response to various and often competing demands. The need to resolve cases in a fair, timely, cost-effective, and consistent manner has often included involvement in policy development. In addition, Washington provides information to the public through a publication process. Given the Department and external stakeholder expectations of the Appeals Division in the Washington Department of Revenue, this preliminary analysis of other states' appeals processes leads us to conclude that our process overall is well aligned with best practices from other states that have informal, non-independent appeal processes.

» Washington's categorization of appeals, small claims, mainstream and executive-level, appears to be unique, although many states have some form of early resolution of small claim or penalty cases. This type of triage allows for different treatment and time frames based on appeal type and allows for director-level review for purposes of consistency and policy development.

» Our process is informal and flexible, which is highly valued by stakeholders, although the flexibility does reduce timeliness in some appeals. While independent processes may provide what is perceived as a fairer and less biased result, independent processes require increased formality and cost. We did not identify a strong or compelling interest by stakeholders to increase independence.

» We are responsive to stakeholder concerns and, though it is not independent of the Department, the process does provide a fresh

look at Department actions at reasonable costs to taxpayers and without the need to pay an assessment prior to further review by the courts. However, there is interest in increased transparency with respect to policy input into the process.

» We provide sound tax policy guidance through well analyzed decisions by attorneys. Selected decisions are published as agency precedent. Stakeholders are uniformly appreciative of the publication of decisions by the Department for tax guidance and, if anything, would like to see more decisions published.

» Current processes promote consistency and assist the Department in articulating and announcing Department policy. Stakeholders have shown a high interest in consistent treatment and uniform administration of the tax laws. They have also shown interest in increased public information about the appeal and settlement processes.

Recommendations

Through benchmarking, we identified various best practices for resolving an appeal of agency actions. Although the agency already uses many of these practices, we found opportunities to improve including: (1) improvements to the timely resolution of appeals; (2) improvements to the transparency and fairness of the appeal process; and (3) improvements in how we provide public information about appeals. We also identified areas for further study

Timeliness

a. Triage/Small Claims. One best practice for improving timeliness is the early identification of different types of appeals so that certain appeals can be resolved more quickly and at less cost, where appropriate. This typically involves the use of a small claims process. Besides providing a quicker and less expensive resolution for taxpayers, such programs provide the opportunity for the agency to spend any savings in time on the resolution of other appeals. The Department has had a small claims program for many years. Although we recently developed short decision and settlement forms for small claims, the program has remained underutilized. Underutilization has resulted from the lack of an increase in jurisdictional limits, the lack of taxpayers being required to opt out of the program, and the lack of information about the program. To increase interest and use, we recommend the following changes to the small claims program:

» Increase the jurisdictional amount for small claims from $5,000 for tax and $10,000 for tax plus penalties to $25,000 for tax and $50,000 for tax plus penalties and interest. Although some interest was expressed in not having jurisdictional limits, the short form decision and settlement process do not provide the level of accountability expected for larger dollar cases. After one year we will review the program to see if limits should be further increased.

» For cases that meet jurisdictional limits, require either the Department or taxpayers to opt out of the small claims program. This will require a letter to taxpayers in a “straight talk” format that fully explains the right to opt out, any consequences of not doing so, and time limits to opt out (30 days after the letter is postmarked).

» Increase the settlement authority of ALJs to $25,000.

b. Close of Record/Performance Measures. One best practice for improving performance is to adopt meaningful performance measures. Currently the Department has performance measures based on the total time to resolve an appeal. A potentially more meaningful measure may be the time between the collection of all information necessary to decide the case and a decision being issued. While these appeals are not record appeals under the Administrative Appeals Act, the information gathering process at some point ends. This is what we mean by “close of

record." We do not currently have data on this time frame. Accordingly, we propose the following:

» Establish a close of record date. The close of record would be the hearing date if no additional records or arguments are produced at the hearing or post-hearing. If additional records or documents are produced at a hearing, the close of record would normally be 15 days after the hearing (to allow the Department to respond). If additional document production or additional briefing is allowed post-hearing, the close of record would normally be 30 days after the hearing plus 15 days for response, unless good cause is shown for additional time. ALJs will have the discretion to allow additional time and to reopen the record for further fact-finding, as necessary in a particular case.

» Collect data on time between hearing date and close of record.

» Set a goal for mainstream cases of reaching a decision within 90 days of the close of record.

» After one year, examine data as a basis for a performance measure based on close of record.

c. Early Case Development. Another best practice for improving timeliness is to encourage early case development. Early case development is also necessary if we are making changes to performance measures. To do so, we recommend the following:

» Make it easier for petitioners to identify issues, arguments, and relevant supporting documentation at the start of a case. To this end we have developed a new petition form, which is now on the Department's web site at http://dor.wa.gov.

» Encourage greater use of scheduling letters and adherence to scheduled deadlines.

» Authorize ALJs to hold a status conference in complex cases to provide for the orderly resolution of the case and to narrow issues and arguments for hearing.

» Provide the ALJ with the authority to manage the case, including declining to consider arguments or documents if a party does not comply with scheduling letters or to dismiss the case where appropriate.

Transparency

a. Proposed Decisions. To improve consistency, which benefits both taxpayers and the agency, we identified the division's involvement in policy development as a best practice (in controversial or changing practice areas). On occasion this has raised concerns over the perception of fairness. Over the last several years, in a pilot project, we have issued proposed decisions in executive-level cases, where taxpayers and the Department have the opportunity to respond to proposed decisions before they became final. This pilot project has been well received. To further improve transparency over policy involvement, we recommend the following:

» Make the pilot project permanent for executive-level cases

» Commence a pilot project for issuing proposed determinations in select mainstream cases. To take part in the project, taxpayers would need to waive the right to reconsideration, except for executive reconsideration. Executive reconsideration would remain at the Department's discretion

b. Expedited Review. Historically, the Appeals Division has informally, and on a very limited basis, expedited certain appeals at the taxpayer's request, but the process has not been transparent and available to all taxpayers. In order to establish a consistent, limited expedited review process, we propose creating a program with the following criteria:

» Limit expedited review to cases where it is clearly shown that (1) there is a particular and extraordinary business necessity; (2) document review is the only issue; (3) only a legal issue remains following a remand; (4) a jeopardy warrant or bankruptcy is likely; or (5) urgent review is necessary within the agency.

» Granting such requests would be solely at the discretion of the Appeals Division. Such requests would be granted on a very limited basis.

Public Information

a. Appeal Guide. Making clear and readily understandable information on appeal procedures available on the Internet was identified early on as a

best practice. In fact, the final selection of other states for study was based in large part on information found on the Internet. As a result, an on-line Appeal Guide written in "straight talk" was created. To further the availability of public information on appeal procedures we recommend the following:

» Continue to update and improve on-line information.

» Create a brochure on appeal procedures that would be available in field offices and for persons who do not have Internet access.

» Pursue e-appeal functions so that taxpayers can complete and file appeal petitions on-line.

» Train staff to remind taxpayers to first seek a conference with the audit supervisor before pursuing an appeal.

b. Decisions. Issuing clear, concise, and complete written decisions to resolve appeals was identified as a best practice. Several years ago the division surveyed formats used in other states and made significant changes to decision format and content. Stakeholder response has been positive and, as a consequence, no further change on decision format and content is recommended at this time.

c. Publication. The publication of decisions as a means to provide guidance to taxpayers, and upon which taxpayers could rely in conducting business, was also identified as a best practice. The Department currently publishes a limited number of decisions as agency precedent, and it expends considerable resources in preparing, selecting, and publishing those decisions. Both internal and external stakeholders, however, have expressed the desire for the publication of more decisions. Some stakeholders have asked to have all decisions, except small claims, penalty cases, and letter rulings from the Department's Taxpayer Information and Education Section (TI&E) published but not designated as precedent. Under RCW 82.32.410 the director is authorized to designate and publish certain decisions as precedent. At present, the Department does not plan to commit resources or make changes that might be required to enable the Department to publish decisions or TI&E rulings that are not designated as precedent. Rather, to improve the current program we propose:

» During the next year, review the publication process and develop statistics as a means to identify when and why a decision is rejected for publication. Based on this information, identify what, if any, changes to publication criteria may be necessary. This may also lead to changes in the publication process and to the identification of other areas for improvements in policy development by the Department. The goal is to understand the trends that cause a decision to not be suitable for publication; evaluate whether these causes are a basis to change practices and recommend change. As part of this review we will also monitor how often determinations are not designated as precedential because they represent an area of unsettled policy.

» On a pilot basis implement a streamlined publication process to speed up the decision making process. Some cases are not published because they are dated due to the passage of time. The goal is to ensure that the process used to designate precedential decisions is timely and accountable.

» Solicit information from taxpayers where there is an information gap and identify ways to fill the gap, including publication, letter rulings, ETAs, rules and outreach. Increasing publication along with a more robust rule making and excise tax advisory process will provide the guidance taxpayers are seeking.

Further Study

a. Early Fact Finding. Other states employ early case resolution techniques that may warrant further study. In particular, we may want to further study the use of a panel of ALJs and auditors to identify and resolve cases that primarily present factual or record keeping issues. This would require a transfer of FTEs and other structural changes that would need to be studied and stakeholders consulted before further action could be taken. We recommend revisiting this concept in one year.

b. Initial/Final Orders. Several states use an initial order/final order model, or variation on the model, in informal appeals. Under such a model, ALJs issue initial decisions that are subject to review by the

director. This would require a major structural change in appeals, with part of the ALJs assigned to handle initial cases, and others assigned to assist the director in reviewing decisions and issuing final orders. We recommend waiting until a review of the pilot on mainstream cases to assess whether that effort yields positive results.

c. Continuous Improvement. We are committed to monitoring and reporting results, assessing impact on internal and external stakeholders, and revisiting whether the concerns over timeliness, transparency, and fairness were addressed.

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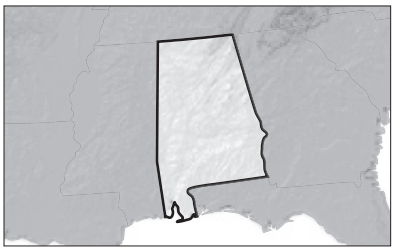
Appendix A

Summaries of State Appeals Processes

Alabama

After an auditor issues a preliminary assessment, a taxpayer may file a petition for review within 30 days with the Alabama Department of Revenue. If timely, the operating division schedules a conference with an assessment officer (a manager in the operating division). At the conference, the taxpayer and Department present their positions, discuss omissions or errors, and attempt to reach agreement. The assessment officer allows the taxpayer to submit documentation. The Department then issues a final assessment. Within 30 days, a taxpayer may appeal a final assessment to either the Department's Administrative Law Division or to circuit court. If appealed to the independent Administrative Law Division, it must notify the Department's Legal Division, who must respond to the appeal within 30 days. The Administrative Law Division schedules hearings, which are formal and contested. No ex parte contact is permitted. Following a hearing, the Administrative Law Judge (ALJ) may enter an opinion and preliminary order, setting forth findings of facts and conclusions of law and directing the Department or the taxpayer to take additional actions. Preliminary orders normally give analysis and instruct an operating division or taxpayer to perform certain actions and may not be appealed. The ALJ may also enter a final order on the case. There is no proposed decision or appeal to the director. Instead, either the Department or the taxpayer can appeal a final order to the circuit court. ALJ final orders have the same force and effect as a final order issued by a circuit judge and will be upheld by the circuit court unless the court finds the order was an abuse of discretion or the order was unreasonable. Review is de novo.



Although ALJ decisions are published, they are not precedential. The ALJ tries to issue final orders within 60 to 90 days after the record is closed but has no formal performance measures. There is no formal settlement procedure and the ALJ is not involved in setting Department policy.

Alaska

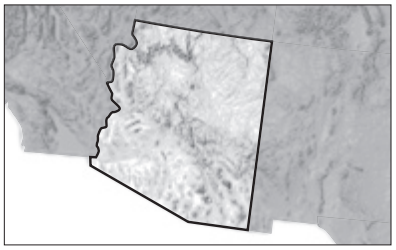
All tax functions of the Alaska Department of Revenue are within the Tax Division, which is divided into gaming and appeals. A taxpayer may appeal for an informal conference within the Department to review any action of the Tax Division that assesses a tax or penalty. The Tax Division's Appeals Group handles the appeal and issues a written decision on behalf of the Department. The informal conference is neither adversarial nor a due process hearing. While state law does not require that the appeals officers in this division be attorneys, the Department does. The appeals officers often assist in the Department's efforts to draft tax legislation. They also have an active role in policy making and work closely with attorneys from the Department of Law (equivalent to the Attorney General's Office) to resolve audit and compliance issues.

The informal decision may then be appealed to the Office of Tax Appeals, an independent agency placed within the Department of Administration. This is an adversarial and due process hearing before an administrative law judge. The ALJs are appointed by the Governor in the same manner as judges in the judicial system are appointed. The hearing in the Office of Tax Appeals is de novo and a record is made at this level for purposes of any further appeal into the Alaska courts. Very little, if any, deference is given to the Department determination in the de novo proceedings. More than 90 percent of the decisions issued by the Office of Tax Appeals against the Department have been reversed by the Alaska courts. In the last year, there has been speculation that the Legislature will return this function to the Department.

In the last two fiscal years, case inventories have decreased dramatically. This is attributable to two factors: 1) two years ago, the Department embarked on a program to work and resolve the simpler cases to reduce inventories to a more manageable level; and 2) the Tax Division's audit and compliance efforts have been limited.

Arizona

Taxpayers have 45 days (90 days for individual income tax cases) to appeal to one of two hearing processes. Prior to an appeal, the taxpayer may seek an informal hearing with an auditor's supervisor. A taxpayer may then request a formal hearing from a hearing officer in the Office of Hearings in the Department of Revenue, or from an administrative law judge in the Office of Administrative Hearings (Tax Appeals Office), which is separate from the Department. The Office of Hearings hears cases that require review of federal returns, such as individual and corporate income tax, withholding, and estate taxes. The Office of Administrative Hearings hears cases involving all other non-income taxes, mainly transaction privilege (sales), use, and luxury taxes.



If the amount at controversy is less than $5,000, the taxpayer may be represented by any appointed representative at the formal hearing. If the amount exceeds $5,000, only an attorney or CPA may represent the taxpayer at the formal hearing. But a legal entity, including the Department, may be represented by any officer or employee specifically designated to represent it, as long as legal representation is not that person's primary duty and that person is not additionally compensated for the representation. The Department is represented at the hearings by a representative from the Individual or Corporate Income Audit Section, who may be an auditor, a CPA, or an attorney. Attorneys represent the Department in sales tax cases before the Office of Administrative Hearings.

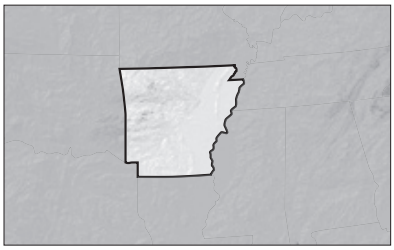
Formal hearings are held in Phoenix or Tucson or telephonically. The hearing officers do not engage in ex parte communication with the parties to the hearings. The hearing officers encourage parties to agree to a stipulation of facts for complex corporate cases so that the issues at the hearing are legal ones. The hearing officers issue decisions within 90 days after close of the record.

Decisions of both the Office of Hearings and the Office of Administrative Hearings may be appealed within 30 days to the director, to the Board of Tax Appeals, an independent agency, or to Tax Court, a division of the Superior Court. However, individual income tax cases with amounts in dispute of less than $5,000 may only appeal to the director or the Board of Tax Appeals. Approximately 30 to 40 cases a year are appealed to the director. They usually involve issues that are not clear. The director is assisted in these appeals by attorneys from the Department's Tax Policy and Research Division. Appeals to the director are handled on written submissions. The director issues decisions within 90 days of receipt of the submissions. There is no ex parte contact by the director, although the attorneys have access to the audit file. An appellant may seek legal fees up to $20,000 for appeals to the director in which the Department's position is not substantially sustained. Appeals from the director to the Board of Tax Appeals must be made within 60 days. Appeals from the Board of Tax Appeals are made within 30 days to the Tax Court. Alternatively, a taxpayer can appeal directly from the director to the Tax Court.

Decisions are in writing. Recently the Department has begun publishing a few selected director decisions in redacted form. Decisions by hearing officers have no precedential effect. Policies may be changed only by issuing tax rulings, procedures or instructions, rule making and director's decisions.

Arkansas

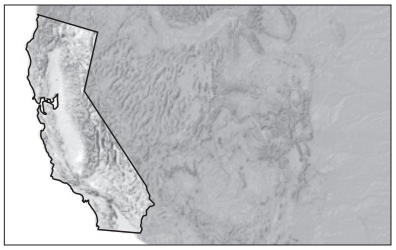
After receiving a proposed assessment, a taxpayer has 30 days to file a protest in writing and request a hearing. Taxpayers may request a hearing to present evidence to an administrative law judge from the Office of Hearings and Appeals (OHA). The OHA is an impartial third party consisting of three ALJs appointed by the commissioner and is separate and apart from the Department of Finance and Administration (DFA). Taxpayers may also choose to rely only on written submissions. Prior to any hearing, the DFA and taxpayer receive a "Pre-hearing Information Request." Completed forms must be exchanged by both parties. The ALJ presides over a semi-formal independent hearing. Rules of evidence may be followed and personnel from the tax sections may be present. After opening statements, the ALJ will swear-in witnesses and hear testimony. No ex parte contacts are permitted. In complex cases, the ALJ may request parties to file briefs on the legal issues. ALJs may rule orally from the bench or delay a decision to allow for more deliberation. The written Administrative Decision is prepared by the ALJ and identifies issues, facts relating to the issues, the legal reasoning that is applied to the facts, and conclusions of law. Once all documents, evidence, and testimony are presented a written decision is usually made within 30 to 60 days, but there are no formal performance measures. The ALJ's final order is subject to revision by the commissioner. Decisions are not published. Settlements do not occur within the appeals process, but the commissioner's Office of Legal Counsel can settle cases outside the appeals process.



After receiving the decision, the taxpayer and DFA have 20 days to request the commissioner to review and revise the decision or it will become final. The commissioner may also revise the decision on its own motion. The Department is bound by the decision for the individual taxpayer, but it is not precedential. Review of the final order is de novo to court. The OHA is not directly involved in setting Department policy.

California

California's Board of Equalization (BOE) is an elected body. The BOE has "sub" boards and divisions. The Franchise Tax Board, for example, administers the bank corporation franchise tax and Senior Citizens Property Tax Assistance. In addition to other functions, the BOE issues opinions that interpret and define the state's income tax and serves as an appellate



function for final action by boards (e.g., Franchise Tax Board) and divisions, such as the Appeals Division.

While the Appeals Division is part of the board, the division was removed physically from being in close proximity to the divisions that issue assessments because the location of the appeals personnel near the auditing or assessing personnel created a perception of influence and bias.

Appeals start with either a petition for redetermination or refund. Generally, taxpayers have 30 days from the date of mailing of an assessment. If no resolution is found through working with board staff, an appeals conference will be arranged. This is held by an Appeals Division attorney or auditor – one who has no prior involvement in the case.

After the appeal conference, the Appeals Division representative will prepare a decision and recommendation containing an analysis, conclusion and recommendation for the resolution of the case. If the parties agree with the decision, the board will issue a Notice of Redetermination, Statement of Account, and a Notice or Refund or Denial of the Claim. If the parties do not agree with the decision, a hearing before the elected members of the board will be scheduled. Appeals are to Superior Court. For refund claims, if there is no action by the board within six months of the filing of a claim, taxpayer may file an action in court.

Taxpayers may propose a settlement while an appeal is pending. This must be negotiated and a formal agreement must be reached with separate settlement staff. The staff determines whether there is sufficient basis for settlement such as risk of litigation or sufficiency of facts. Settlement agreements must be approved by either a member of the board or, for small settlements, by board management. Board members cannot participate in any fashion in the settlement process – except to approve or deny the settlement. There is a form for filing settlement proposals.

Florida

The Florida Department of Revenue (FDOR) is statutorily authorized to adopt rules establishing informal internal conferences and hearings procedures for resolving tax disputes. The Department has two primary sets of rules that govern informal protests, one for dispute resolution procedures and another covering compromise and settlement criteria. Taxpayers do not have to pay any fee for an informal review. Taxpayers have multiple opportunities to dispute tax assessments. FDOR receives between 1,500 and 1,800 appeals annually.

Dispute resolution begins when a taxpayer is issued a Notice of Proposed Assessment (resulting from noncompliance) or a denial of a refund claim and ends when the matter is resolved by withdrawal, payment, compromise of the assessment, or litigation. The time allowed for filing a protest differs according to the type of dispute. A taxpayer must file within 60 days of an audit assessment or refund denial and within 20 days from the date of an assessment resulting from delinquent or inaccurate returns. A taxpayer's appeal is always filed with the "originating" office that issues the assessment or refund denial. The originating offices are able to resolve many disputes that are based on documentation issues without further referral.

If resolution is not reached at the originating office, the taxpayer's protest is referred to Technical Assistance and Dispute Resolution (TADR). Technical staff with specialized expertise determine whether to sustain the position of the originating office, reverse that position, or recommend a compromise. They draft the Notice of Decision (NOD), which is the FDOR's written determination that may be further appealed through the formal administrative or judicial channels. If a taxpayer believes that additional facts or arguments can be made before seeking a formal appeal and submits a petition within 30 days of the NOD, TADR will consider those facts or arguments and issue a Notice of Reconsideration (NOR), which then becomes the FDOR's final written determination. A NOD or NOR is subject to various levels of review before

being issued, depending on the issues, the amounts involved, and the recommendation being made by the drafter.

A NOD or NOR will either sustain assessments of tax and interest, refund denials, or reverse the determination of the originating office. A NOD or NOR will not compromise any amount of tax or interest because its purpose is to set forth the FDOR's final determination of the correct legal result. However, a NOD or NOR may compromise assessments of penalties because those compromises are based on whether the taxpayer can show reasonable cause for taking a position rather than the correctness of the position. In addition to, or in rare cases instead of, issuing a NOD or a NOR, TADR may enter into an agreement to compromise disputed tax and interest amounts. The compromises must be based on doubt as to liability (e.g., because of the complexity or ambiguity of the applicable law) or doubt as to collectibility. Compromises are subject to review based on the amounts involved. The compromise authority of FDOR personnel has been established by rule.

TADR staff are subject to performance measures relating to the timeliness, accuracy, and clarity of their work. The FDOR is now involved in reviewing and restating performance measures for all its processes, including dispute resolution.

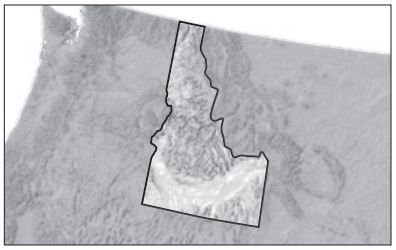
NODs, NORs, and compromise agreements are distributed to the taxpayer and internally within the FDOR. They cannot be published. They are not precedent except for subsequent audits of the same taxpayer, if there has been no change in either the facts or the applicable law.

Taxpayers have three alternatives for formal review of a FDOR determination, and they are not required to exhaust the informal dispute resolution process before pursuing formal administrative review by the Florida Division of Administrative Hearings or formal judicial review from the circuit courts or district courts of appeal.

The FDOR continues to look for ways to streamline and improve their overall services and their appeals processes (i.e., dispute resolution). Current efforts include increasing the number of disputes resolved prior to assessment or refund denial by improving the procedures for auditors to request assistance from TADR and encouraging consistency in compromises by developing automated systems to assist in those decisions. The FDOR tries to resolve cases in less than 175 days from the postmark of the taxpayer's protest. Case management systems have been developed to track the various dates and status changes in the development of a protested case. If delay points are discovered within the process, steps are taken to address them.

Idaho

Taxpayers who protest an action by the Department of Revenue and Taxation are encouraged to engage in informal discussions within the operating division to try to resolve the dispute. If the dispute cannot be resolved, taxpayers have 63 days following a notice of deficiency to file a written protest with the state Tax Commission. If the protest does not contain the required information, the commission will notify the taxpayer of an inadequate protest, to which the taxpayer has 28 days to perfect the appeal or the assessment becomes final. If the taxpayer does perfect its appeal, it must request a hearing or decision. If the taxpayer requests a hearing, the commissioner or designee will conduct an informal hearing and issue a final decision within 180 days. If the taxpayer requests a decision, the commission must issue a final decision within 180 days from the request. The 180- day requirement may be waived in writing.



The commissioner or his/her designee will draft an order that must be approved by the commissioner. Upon receiving the final order, the taxpayer may file suit in District Court within 91 days, or file an appeal with the state Board of Tax Appeals (BTA), an independent body within the Department of Revenue and Taxation. If the taxpayer appeals to the BTA, the BTA will conduct an informal, de novo hearing and issue a final determination which can be appealed to District Court within 28 days. Appeal from the District Court goes to the Idaho Supreme Court.

Illinois

The Illinois Department of Revenue's internal review process consists of three separate venues: the Informal Conference Board (ICB), the Office of Administrative Hearings, (OAH) and the Board of Appeals (BA). Each performs a different function. The ICB is a pre-assessment review process that allows the Department to reconsider and further develop the tax assessment before it is issued. The OAH is a contested formal process and allows the Department and taxpayer to receive an independent decision from an attorney. Once the final determination is made, the BA considers equitable issues and settlements.

The internal appeals process begins when a field auditor issues a proposed assessment or refund denial. The taxpayer may choose to appeal to the ICB which holds informal hearings and investigates claims. The ICB consists of three members, one from Board of Appeals, one from DOR's General Counsel, and one at large appointed member (currently the Head of Audit), and a staff of conferees. Three staff conferees set up and conduct an informal conference with the taxpayer. There is no DOR representative and the informal conference is not contested. Based on the evidence, the conferees make a recommendation to ICB members. Settlements may also be considered at this time. The ICB either accepts or rejects the staff recommendation by majority vote. After voting, the ICB issues an action decision. Based on the ICB action decision, Audit issues a final assessment. ICB is statutorily required to issue an action decision within 90 days. Illinois uses the ICB portion of the appeals process to identify or highlight an area that needs policy development, but the Policy Group (which includes Head of Audit, General Counsel, and BA) actually formulates the policy. ICB does not publish decisions and they are not precedential.

Only the taxpayer may appeal this final assessment to the Office of Administrative Hearings (OAH), a separate division within DOR that acts similar to a court. The OAH, through its ALJ, holds de novo formal contested hearings. No ex parte contact is allowed. The OAH allows discovery, applies rules of evidence, and swears-in witnesses. It is an adversarial process and both parties may cross-examine witnesses. Upon conclusion of the hearing, the ALJ submits a written recommendation for disposition of the dispute to the director. The director or his designee may accept or reject the recommendation or remand the matter for additional proceedings. After considering the ALJ's recommendation, the director issues a final administrative decision based upon the facts of record. OAH has no formal timelines or performance measures. All OAH decisions are required to be published by statute and are precedential. OAH is not directly involved in setting Department policy or in settlements.

Once the assessment has become final, the taxpayer may file a written petition with the Board of Appeals (BA). The BA primarily considers matters of equity. It conducts informal hearings and may consider the waiver of penalties and interest and offers in compromise. Based on information obtained during the hearing, the BA issues a recommendation that must be approved by the director. By statute, if BA takes no action within 360 days, a taxpayer's petition is deemed denied.

Indiana

The Legal Division of the Department of Revenue is divided into a Protest Review Board, staffed by senior auditors who decide penalty or factual questions only, and the Hearing Section, which is comprised of hearing officers, who are attorneys. Legal issues or unresolved matters are referred to the Hearing Section, where there is an attempt to settle the matter before setting a hearing date. No hearings are set until detailed reasons for the protest are provided.

Protests involving all listed taxes administered by the Department are heard by the Legal Division. They include sales taxes, adjusted gross income, as well charity gaming, motor carrier authority,

and commercial drivers' licenses. All tax appeals hearings are informal and non-adversarial, but motor carrier authority, commercial drivers' licenses, and charity gaming licenses appeals follow the Indiana Administrative Procedures Act.

There are 12 hearing officers in the Legal Division and they are independent of the assessing divisions. The hearing officer can speak with the auditor outside the hearing, but makes a detailed Letter of Findings that includes the facts, discussion and conclusion, so that the taxpayer can understand why the decision was made. Decisions by the hearing officers are first reviewed internally before issuance. If the hearing officer is going to find for the taxpayer a draft is first sent to the administrator of the initiating division for comment. If necessary, the administrator of the Legal Division resolves the dispute.

Appeals from final decisions of the Department are de novo to the Indiana Tax Court, which is equivalent to the state's Court of Appeals. Its decisions are binding on the Department.

All Department decisions are written in a sanitized format and are published, but they are not precedential, cannot be cited by a different taxpayer, and are binding only on the taxpayer and the Department with regard to that case. If the Department intends the analysis in a decision to be more than persuasive, it incorporates it into a directive, rule or other formal policy document.

Massachusetts

Massachusetts has a multi-step internal appeal process. Taxpayers are issued a notice of intention to assess and have 30 days to request a conference. They can still later request abatement of the assessment or refund. They are referred to as pre-assessment and post-assessment appeals. All internal appeals are informal. Taxpayers can appeal adverse decisions to an independent Appellate Tax Board outside the Department, which has four members appointed by the Governor, three of which are currently attorneys. Appeals to the board are formal and follow APA type procedures. There has been some dissatisfaction with the board in the past and there have been discussions on making it a tax court.

Appeals are not adversarial. Audit at their election can attend, which they do in controversial cases. Questions can be asked by everyone attending, and there is no record or oath. Review is independent from audit and legal. About four years ago they decided to follow the IRS guidelines on ex parte communications. If a taxpayer submits additional information, it is sent to the other divisions for comment.

Decisions by the appeals officers (who are attorneys and auditors) are not published, are not precedential, and do not bind the taxpayer for future audits. When a decision is for the taxpayer, the taxpayer will get a simple statement of result, and an internal memo explaining the reason is circulated. If the decision will go against the taxpayer, the taxpayer is encouraged to withdraw the appeal and, if so, a simple abatement determination will be issued from which further appeal can be taken. If not withdrawn, a determination letter giving reasons for the decision and an abatement determination will be issued.

Controversial issues are taken to a tax policy making group, which the commissioner and senior deputy commissioner attend, along with the director of Office of Appeals and others, which may result in a public statement (directive, regulatory change, or technical information release).

There is a separate settlement program (similar to IRS) based on need, which goes through the Collection Division. With respect to settlements through the Appeal Office, they get approved by a board, which includes the director of the Appeal Office. Approximately one third of the cases are settled. Their goal is to resolve 70 percent of their cases within six months.

Michigan

The Michigan Department of Treasury, Office of Legal and Hearings (OLH) is informal and is responsible for drafting both the initial

recommendation and the treasurer designee's rebuttal recommendation when the initial recommendation is not accepted. This allows for considerable independence at the initial referee level while still maintaining control over the final order.

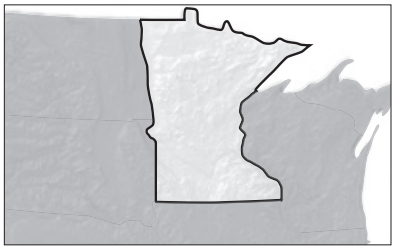
Operating divisions first go to the Office of Policy for policy guidance and then issue a preliminary assessment. Taxpayers may appeal preliminary assessments to OLH to determine if they are consistent with Department policy. After receiving taxpayer's petition, OLH will refer the petition to a Tax Unit within the operating division to examine documentation. The Tax Unit makes corrections and also provides a written explanation of the billing to the taxpayer. If the appeal can't be resolved, the Tax Unit returns the file to OLH, and prepares a sheet discussing facts and applicable laws, identifies the division representative appearing at the conference, and prepares the file for the OLH referee.

A semi-independent referee schedules the informal conference. During the conference, taxpayers and division representatives discuss and narrow the issues, if possible. Both parties may present evidence, documentation, and oral arguments on the issues to the referee. If the referee allows additional documentation or submissions, the deadline for submitting information is documented by letter. Based on testimony and arguments presented at the conference, the referee issues a recommendation and proposed order for the state treasurer's consideration. The case is then forwarded to the hearing administrator (HA) for review as the state treasurer's designee. The HA reviews for policy concerns and may agree, disagree, or refer the recommendation to staff for further review of the issue. If HA agrees, the HA signs and issues the decision and order of determination. If the HA disagrees, the unsigned decision and order is referred to another referee to prepare a Statement of Reasons and Authority and a revised order. The HA may ask the Office of Policy to brief an issue on the case. If the treasurer does not accept the referee's recommendation, the taxpayer receives a copy of the original referee's recommendation, the rebuttal recommendation, and the final order. Approximately 90 percent of all orders affirm the Department's action. No orders are published. The taxpayer may appeal the state treasurer's order for a de novo review by the tax tribunal within 35 days.

Settlements do not occur inside or outside the appeals process. The OLH informal goal is to issue a recommendation within one year after receiving all comments from the Tax Unit, but there are no formal performance measures.

Minnesota

The Minnesota Department of Revenue provides an informal reconsideration process for the appeal of commissioner orders. The Appeals Office is part of the Appeals and Legal Services Division of the agency. If a dispute is not resolved at this level, the taxpayer can formally appeal to the Minnesota Tax Court. The state's attorneys general represent the Department of Revenue on these formally appealed cases.



The internal, informal administrative appeal is handled by an appeals officer. There is no requirement to be an attorney; often appeal officers are former senior auditors. If an issue of statutory interpretation or other complex issue arises appeals officers will request an attorney from the Legal Services Office and work "hand in hand" with them. Informal conferences are held upon request from taxpayers or their power of attorney representatives. The Appeals Office has 11 officers and handles about 1,500 cases a year.

Appeals must be filed within 60 days. There is no specific form required for filing a petition but taxpayers generally are asked to list or identify the exceptions to a tax assessment. Generally, the division is liberal in what is accepted for review.

The Appeals Office is separate from the assessing

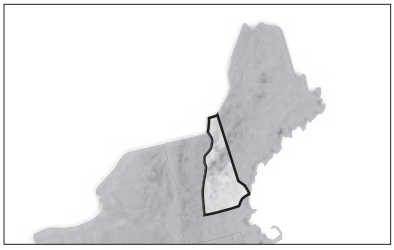
divisions. The appeals officer may talk with the Audit Division to verify facts and taxpayer's statements. If additional work is needed by the auditor, the appeals person will coordinate with the auditor and the taxpayer to get the matter resolved at the audit level.

An appeal that raises complex or policy issues will be discussed internally within the division. This is to ensure consistency. If deemed necessary complex, large assessment, or policy issues will also be discussed within the Department.

The Appeals Office will issue a written determination or enter into a settlement agreement on the appeals received. Both written determinations and settlements are reviewed and signed by the supervisor. Generally the written determinations are issued within one year from receipt. A quarterly status report to the supervisor is provided for all cases over one year old. The cases could be held up for various reasons including policy issues and related litigation.

New Hampshire

The New Hampshire Department of Revenue has an internal appeal process, through its Hearings Bureau, that is formal and independent, with decisions subject to approval by the commissioner. By statute taxpayers have a right to a conference with the audit division (similar to a supervisor's conference) and a formal explanation of the action within 120 days after requesting an explanation. The explanation is often done with assistance from revenue counsel and the response often serves as the Department's brief in appeals to the Hearings Bureau. Taxpayers can appeal bureau decisions either to a completely independent Board of Tax and Land Appeals or Superior Court.

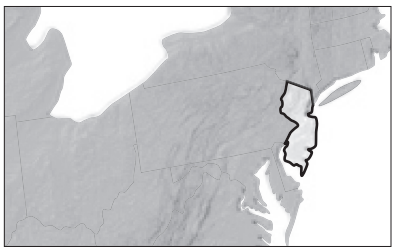


All hearings have a supervisor from the initiating division present and follow APA style rules. Currently there is only one hearing officer and all decisions are reviewed by and signed by the commissioner along with the hearing officer. Any policy input would be from the commissioner. No decisions are published.

The Hearings Bureau has no settlement authority. The process takes approximately one year, but the hearings officer tries to issue written decisions within 30 - 60 days after the record is complete.

New Jersey

The New Jersey Division of Taxation, Conferences and Appeals Branch (C&A), provides an informal process and allows interaction for factual development between the conferees and the assessing division. If an audit examination and supervisor's conference results in a final audit determination with which a taxpayer disagrees, the taxpayer may appeal to C&A within 90 days. All incoming protests are screened by the branch's Review Section (five employees consisting of one auditor and four taxpayer service representatives) for compliance with statutory and regulatory provisions. This section also attempts to resolve all disputed matters within 100 days, either internally within the branch or in cooperation with the initiating office. All unresolved cases are forwarded to the Conferences Section of C&A (13 employees consisting primarily of former auditors) to provide an informal administrative hearing. At the hearing, only the taxpayer or their authorized representative may present documentation and oral arguments to the conferees. After the hearing process, conferees issue the division's final determination on the assessment. Final determinations can be appealed only to the Tax Court of New Jersey for a de novo review. While in court, the Appeals Section (two employees with audit background) tracks and manages these cases, acting as the division's liaison with the attorney general.



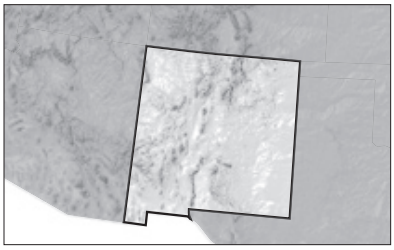
Settlements occur during the appeals process with conferees. A variety of issues are settled. Conferees make recommendations to the chief of C&A, who forwards the appropriate proposals to the deputy director or assistant director for approval. A very limited number of offers of compromise are approved, mostly based on risk of litigation or documentation issues.

The C&A Branch divides cases among categories for purposes of early resolution. An initial review section works all appeals for 100 days and attempts to resolve them, either internally or with the originating division (60 to 70 percent are resolved). Once conferees are assigned a case, the informal policy is that a hearing must be scheduled within 60 days, and a determination issued within 90 days of the hearing. The overall goal is to have a determination issued within six months after the case is assigned to a conferee.

The final orders are neither precedential nor published. The chief of C&A also coordinates high profile policy discussions with his assistant director and others to reach consensus.

New Mexico

The Taxation and Revenue Department's Legal Services Bureau receives approximately 1,000 protests a year. These are reviewed first by the Bureau's Protest Office staffed by senior auditors who can recommend abatement or other appropriate action for amounts under $10,000 and settle protests for higher amounts with the approval of the attorney general. If the protest officer believes the Department's action was correct and cannot convince the taxpayer to withdraw the protest, the protest is referred to an attorney in the Legal Services Bureau who also reviews the case to determine whether settlement is possible. If the attorney believes there are no grounds for settlement, the attorney files a written request for hearing with the Department's Hearing Bureau. Taxpayers also have the right to file a request for hearing. Attorneys from the Legal Services Bureau represent the Department at the hearings.



All protests to assessments of taxes administered by the Department are heard by the Hearing Bureau. They include gross receipts taxes (similar to Washington's sales tax), personal and corporate income taxes, oil and gas taxes, motor fuel taxes, cigarette and tobacco taxes, and centrally assessed property tax. Of the 50 cases set for hearing last year, 34 written decisions were issued. The Hearing Bureau is housed and administered separately from the Legal Services Bureau. It has a chief hearing officer, one hearing officer who conducts tax hearings, and five who conduct license revocation hearings under the Implied Consent Act.

The Hearing Bureau notifies the taxpayer of the hearing date by a Notice of Administrative Hearing scheduling a hearing within 30 to 60 days after receipt of the Request for Hearing. The Hearing Officer issues scheduling orders in complicated cases setting deadlines for discovery, motions, and prehearing statements. Formal discovery may be used by attorneys in centrally assessed property tax with the Department following the discovery rules in the Rules of Civil Procedure. More frequently, discovery is conducted through informal discussions between the taxpayer and the Department's attorney. The Rules of Evidence and the Rules of Civil Procedure do not apply to administrative tax hearings. But hearings are recorded and, together with the briefs and exhibits, form the basis for the record to the New Mexico Court of Appeals, where appeals are decided solely on the record made at the administrative hearing. Both the Department and the taxpayer may appeal to the New Mexico Court of Appeals within 30 days of the hearing officer's decision. Hearing officers have no ex parte contact with the Department or taxpayers and their decisions are issued without any prior review by the Department, usually within 30 days of the close of the record. All decisions are posted on the Department's web site (the Legislature has exempted the hearing officer's decisions from confidentiality requirements), but they are not precedential and are binding only on the taxpayer and Department for that case.

Hearing officers are barred from participating in policy discussions within the Department. There has been some effort recently to create an Office of Tax Appeals instead of the Hearing Bureau. This movement appears to be waning, but it did result in the Hearing Bureau being physically, but not administratively, removed from the Department to underscore its independence.

New York

In New York, two options are offered: taxpayers can use the informal process through the Bureau of Conciliation and Mediation Services (BCMS), or they can go through the formal process at the Division of Tax Appeals (DTA). Although both are technically within the Department of Taxation, the DTA is organized as being entirely independent, with its own budget, run by a tribunal appointed by the Governor, and does not report to the Department's commissioner. BCMS reports directly to the commissioner and operates independent from other divisions. Taxpayers are free to select one or the other option (approximately 99 percent choose initially to go the informal route). If they go informal, they can appeal an adverse decision to the DTA.

The tax conference conciliator or conferee (none of whom are currently attorneys), a Department representative, and the taxpayer or representative are present at the conferences. There is no prohibition on ex parte contact. This is necessary for quicker resolution and mediation purposes. Often the conferee goes between the Department and taxpayer to get an agreed resolution.

Because decisions in favor of taxpayers cannot be appealed, BCMS informs the Department of the proposed resolution in the form of consent before it is issued. On rare occasions, a concern may be raised with a supervisor on the substance of a proposed consent. Factual decisions are never open to question. Generally taxpayers are presented with a consent form to sign, which mainly has numbers on it. If they don't sign, a conciliation order is issued and they can appeal from that to the DTA. The orders set forth the result and provide very little in the way of argument or fact finding. Orders are not published and are not precedential.

Conferees do not have settlement authority. Most settlements go through the counsel's office when the case moves to the DTA stage. The average time to resolve a case from receipt to consent is 60 percent within six months, 90 percent within one year.

Oregon

In Oregon, there is no independent review process other than the state courts. Taxpayers must exhaust agency administrative remedies before proceeding to the courts. Taxpayers do not have to pay the tax before an appeal to the Magistrate Division of the Oregon Tax Court (the second level of appeal), but they do have to pay before an appeal to the Regular Division of the Oregon Tax Court (the third level of appeal).

Protests of Department actions regarding corporations excise and income tax, tobacco taxes, estate and trust taxes, transit district self-employment taxes and some other miscellaneous business taxes are reviewed by the Department's conference officers, with three possible exceptions. Appeals for waiver of penalty or interest only are first handled by the Department's collections personnel. Taxpayers may request a conference after an appeal for waiver of penalty or interest is denied by collections personnel. Taxpayers also have the option to by-pass the conference and take their appeal directly to the Magistrate Division of the Oregon Tax Court. As an alternative to requesting a conference, taxpayers may also protest the Department's action with a written objection and a Department auditor will issue a Letter of Determination.

The conference officers are physically located in the same section as the Department's corporate auditors. There are occasional consultations with the Corporation/Estate Policy Team and other sections within the agency under unusual (which is undefined) circumstances. The taxpayer is not present at these consultations.

The appeal process is adversarial; that is, the Department does have an opportunity to argue before the conference officer; but the process requires an impartial hearing. The decisions rendered by the conference officers are not published and are not precedential. A conference decision letter is issued if the taxpayer requested a conference. Conference decision letters and letters of determination are

confidential and are not disclosed outside the Department.

A conference officer may, depending on the circumstances, send a draft decision to be sure facts are stated correctly. Unless the taxpayer corrects a misunderstanding of the facts or provides new information or documentation, the final letter goes out as drafted. After that, any objection by the taxpayer must be sent to the next level of appeal – the Magistrate Division of the Oregon Tax Court.

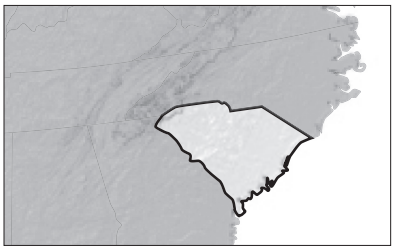
A conference officer renders decisions under statutes and rules authorized by statute, and policies based on statutes and rules. If a decision interprets statutes, rules, or policies for previously unencountered circumstances and fact situations, a new rule or a rule revision will likely be adopted.

There are two levels of administrative appeals: the informal conference and the formal hearing which is recorded and participants are under oath. The hearing level was removed from the Department to the Magistrate Division. Settlements may be reached during either the internal agency conference appeal or at the court level.

Conference officers are members of the Policy and Analysis Unit and the Corporation/Estate Policy Team. The latter group establishes policy regarding application of the law, communicated through rules, forms and instructions, audit procedures, etc. The same team also proposes legislation for the section and reviews legislative proposals/bills outside the section for administrative concerns, fiscal impacts, integration with current law, etc.

South Carolina

South Carolina's internal appeal process is informal. Appeals are directed to the Appeals Office, where there is usually a conference with the taxpayer. The appeals then go to the General Counsel's Office within the agency for final agency determination. The counsel's office may or may not confer with the taxpayer. From there, a taxpayer can appeal to the Administrative Law Court, which is external to and independent from the agency, and from there to court.



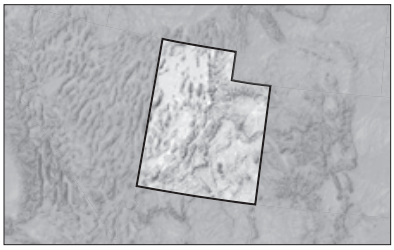
The Appeals Office process is not adversarial. However, often an audit supervisor will sit in on conferences and sometimes an attorney from the General Counsel's Office will sit in when it is known that there is a significant controversy. Everyone tries to get the right result and to get consensus in the agency. The Appeal Office role can be described as being "responsible for developing defense of assessment." A draft appeal report is often discussed with the audit supervisor and, if they strongly disagree, it may be reviewed by the General Counsel's Office to try to reach consensus. On rare occasion, the director would make the final call on how the report will be issued. When a taxpayer disagrees with the appeal report, they can seek review in the General Counsel's Office. The director reviews the final agency determination prepared by the General Counsel's Office. The taxpayer may appeal the determination to the Administrative Law Court. The taxpayer is not present during discussions with audit or general counsel. Ex parte contact concerns arise only when the case goes to the Administrative Law Court.

There is always a report by the Department representative (who may be an attorney or a CPA), but detail varies. For example, they handle a lot of income tax refund requests which may involve only a short letter to the taxpayer and a resolution report to the audit division. Reports are not published. We have examples of more detailed final agency decisions and Administrative Law Court decisions (Washington's format closely aligns with the format used by the Administrative Law Court). Appeal order drafts are generally not sent to tax policy for review. Because the tax policy head is in the General Counsel's Office, controversial issues may be discussed and resolved with the general counsel for tax litigation.

The Appeals Office has settlement authority but not for risks of litigation. Recent legislation requires final agency decision within nine months plus any additional time needed by the taxpayer to produce records.

Utah

The Utah Tax Commission's appeals process is internal, formal, and dependent. All decisions are written by the ALJs, who serve as the commissioner's designees in appeal matters, and are subject to approval by the commissioners.



After a taxpayer has received a notice of assessment, the taxpayer may file a written appeal with the commission's Appeals Section, within 30 days of the notice of an action by the commission. The taxpayer may also request an Audit Division conference in order to discuss and resolve the issues with a supervisor. If the audit conference does not resolve the dispute, the appeal proceeds. A taxpayer may have two to three years (depending on the issue), to request a refund from the Taxpayer Services Division. The Taxpayer Services Division will either grant or deny the refund request in writing and the taxpayer has the 30 days to appeal that decision to the Appeals Section.

Depending on the complexity of the issues, the ALJ may schedule a status conference to identify the issues, or an informal "initial" hearing to attempt to resolve the issue. The ALJ does not, however, have settlement authority. A status conference and initial hearing may be held simultaneously. Mediations are conducted by ALJs. For locally assessed property appeals, mediation is scheduled unless the parties opt out. If the appeal is not resolved at mediation, the formal hearing is scheduled before another ALJ. Parties may also agree to mediation in lieu of an initial hearing. (Mediations are not conducted by the ALJ.) Parties waiving the initial hearing, or appealing the results of an initial hearing, will be scheduled for a formal hearing conducted in accordance with the state's Administrative Procedures Act. The taxpayer may represent itself at the formal hearing, or have a representative present. The commission's attorneys, along with commission personnel, will represent the operating division. However, for more complex cases, the assistant attorney general represents the operating division.

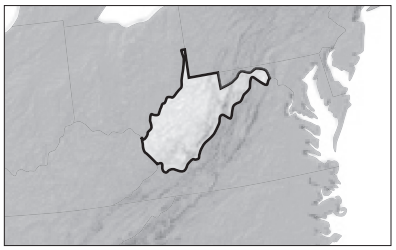
Once the ALJ has written the draft order, it is circulated to the commissioners and when necessary, explained. The draft is not shared with the taxpayer. The commissioners may approve, modify, or reject the decision. Once the commissioners give final approval to the order, it becomes the official decision of the Tax Commission. Within 20 days of the date of the order, the taxpayer may request reconsideration of the order and must describe in detail the grounds for reconsideration.

Appeal from an order of the commission is to the District Court under a modified de novo standard. Appeal may also be taken directly to the Utah Supreme Court on the record. Appeals of Tax Commission decisions go directly to the Utah Supreme Court. The Supreme Court occasionally refers these appeals back to the Court of Appeals.

While the appeals section attempts to resolve appeals as quickly as possible, the division does not have performance measures per se. Orders are rarely published.

West Virginia

The purpose of the West Virginia Office of Tax Appeals is to impartially and timely adjudicate state tax disputes between taxpayers and the State Tax Commissioner, as well as charitable bingo and raffle license disputes. The Legislature created the Office of Tax Appeals when it removed the former Office of Hearings and Appeals from the State Tax Commissioner's Office and transferred its personnel to the new Office of Tax Appeals, which is entirely independent and separate from the Tax Commissioner. The Tax Commissioner no longer has an Appeals Division. The Office of Tax Appeals is administratively housed in the West Virginia Department of Revenue, which is an umbrella agency that also includes the Tax Commissioner. At the request of CPAs, the Legislature specifically asked the commissioner to adopt a pre-assessment conciliation program. The commissioner has drafted the rules to implement such a program, but the



Legislature has not funded it, so neither an appeals process nor a pre-assessment conciliation process currently exists in the Tax Commissioner's Office. Probably because there is currently no settlement process in the Commissioner's Office, 600 of the 900 cases filed in 2003 with the Office of Tax Appeals were small claims cases.

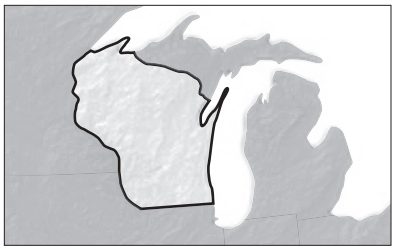
The Office of Tax Appeals hears appeals of all state taxes, except property taxes. The taxes include corporate and personal net income, business franchise, sales and use. Three lawyers from the Tax Commissioner's Office represent the commissioner before the Office of Tax Appeals. The Office of Tax Appeals has one full-time chief administrative law judge appointed by the Governor, and two full-time, civil service administrative law judges. Non-small claim appeals are formal and are guided by the state's Rules of Civil Procedure for discovery purposes, and by procedural rules incorporating the Model Procedural Rules of the U.S. Tax Court and the New York Tax Court. Compliance with the Rules of Evidence used in state trial courts is not required. Decisions are usually issued within 90 days after the dispute is fully submitted for decision and certainly within the statutory limit of six months after such submission.

Approximately 75 percent of the cases are decided in favor of the commissioner. Both the taxpayer and the commissioner may appeal – on the record made before the Office of Tax Appeals – to the state circuit (general jurisdiction) court (any subsequent appeal would be to the state's highest court, the West Virginia Supreme Court of Appeals). By statute, the commissioner may publish a formal "non-acquiescence" to a decision of the Office of Tax Appeals, rather than appeal an adverse decision.

As required by statute, the West Virginia Secretary of State publishes a synopsis of decisions by the Office of Tax Appeals, and the West Virginia Office of Tax Appeals voluntarily publishes redacted ("sanitized") copies of all of its decisions (to preserve taxpayer confidentiality), except non-precedential small claim decisions, on its web site at http://www.wvota.gov.

Wisconsin

Wisconsin has an internal as well as an external appeal process. Some income, sales, and corporate franchise taxes are first appealed to the originating unit for possible adjustments to an assessment. If the originating unit cannot act on the appeal, it is sent to the Resolution Unit for an impartial review of income, franchise, and sales, tax adjustments. Appeals of field audit adjustments go directly to the Resolution Unit. This unit is part of the Office of General Counsel. If the tax assessment is for manufacturing, property taxes, the taxpayer appeals to a Board of Review in the State and Local Finance Division. These internal reviews are independent. The resolution officers may confer with other Department personnel. Appeals of public utility, railroad, air carrier company, and telecommunication company assessments are appealed directly to the circuit court.



The Resolution Unit issues a final determination. The Board of Review issues a final decision.

The next level of review goes to an outside body, the Tax Appeals Commission. The process is adversarial. The Department is represented by one of its attorneys in an appeal before the Tax Appeals Commission. A taxpayer must pay $25 to file an appeal. The commission's decisions may be appealed to circuit court. If the decision is not appealed to the circuit court, the decision is binding on the Department unless it "nonacquiesces." This means the Department will be bound only to the taxpayer that received the decision and only as to the specific facts of the decision. These decisions are published.

The Legal Services Unit, in addition to representing the Department before the Tax Appeals Commission and in the courts, provides legal advice and reviews all major tax policy development and communication. Other divisions have staff that has major responsibility for policy development and communication for their individual divisions. There

is a Research and Policy Division that provides review and fiscal analysis of any law change and change in policy. The appeals process, however, follows established Department policy. There are other processes to articulate the Department's policy and those reside in the divisions and the Office of the Secretary.

Their key performance measures are to reduce cycle time and to review and change the processes to be as efficient as possible. Currently, there is a six month cycle time in the Resolution Unit, which is statutory, but it can be extended with agreement from the taxpayer.

Appendix B

Summaries of Appeal Practices

Based on our review of the selected states, appeal practices in the various states are summarized in 15 categories, as follows:

1. Degree of independence of the appeal process from the Department. About half the states have semi-independent processes, meaning that they are part of the Department, but have a high degree of separation either physically or by reporting authority. Many other states, including Washington, are a part of the Department and are not independent. Several states have appeal processes totally independent of the taxing authority.

2. Formal or informal process. A process is formal if at least two of the following factors are present: contested or adversarial hearings, where both the Department and the taxpayer are represented by counsel; a record of the proceeding forms the basis of the next appeal; parties are under oath; or formal rules of evidence, civil procedure, and/or rules of discovery are used. Most states have an informal appeals process under these criteria. However, many states have a purely formal appeals process and some states, such as Illinois, have a combination of informal and formal processes.

3. A Department employee appears at the hearing in addition to hearing officer. In most states, an employee of the Department is usually present at the hearing to testify or represent the Department. In many states, however, the Department is almost never present, except through the hearing officer.

4. States that permit the hearing officer or the Appeals Division director to have contact with other members of the Department regarding an appeal. Most states allow either the hearing officer or the director of the Appeals Division to have contact with other members of the Department to verify facts and clarify policy with regard to a specific case. The appeals processes of many states, however, prohibit any ex parte contact.

5. The hearing officer issues a proposed decision to which both the Department and the taxpayer may respond, or the hearing officer issues an initial decision which is reviewed by and may be changed by the director before issuance. Only Washington state issues proposed decisions in executive-level cases. In about half the states, the hearing officer's initial decision is subject to review by the director or the director's designee and issued as a final determination of the director. This is true even if the final determination is adopting the hearing officer's initial decision. The decisions of hearing officers in about half of states are not subject to director review prior to issuance.

6. Formal appeal to the director after initial decision by hearing officer. Some states have a process for either the Department or the taxpayer to formally appeal to the director after the initial decision of the hearing officer is issued. Most states, however, do not have such a process. These states generally have extensive pre-issuance review or the director is the person who issues the final decision.

7. Binding effect of published decisions. Nearly half the states publish all or some of their decisions. A few publish only final decisions issued by the director. Of those who publish, only two states consider published decisions binding on the agency and taxpayers. Although Wisconsin does not publish, their decisions are available internally and considered precedential, unless a non-acquiescence ruling is issued.

8. Formal timelines for issuance of decisions. About half of states try to issue decisions within 30 to 90 days after the hearing or close of the record. A few states are required to issue a decision within 180 days of receipt of the petition and supporting documentation. One state is required to issue decisions within a year of receipt of the petition, but has an internal goal of doing so in nine months. Other states have internally imposed goals that vary from six to eight months, clearing all cases or 70 percent within nine months, clearing 60 percent in six months and 90 percent within a year. One has a goal of clearing all decisions in one year. Some have no internal or external requirements regarding timeliness. In Alaska an appellant may go to court if no decision has been issued after six months.

9. Performance measures beyond timelines. Only a third of the states have appeals divisions that must regularly report on compliance with performance measures (other than time for resolution of cases) that are imposed from outside the division.

10. Formal settlement processes. Most states have formal settlement processes which may or may not be separate from the appeals division. Some states also allow settlements, but do not have a formal process.

Hearing officers are involved in the settlement process in approximately one third of the states.

11. Appeals from decisions of the Appeals Division. Some states allow both sides to appeal the decision of its Appeals Division. Most, however, allow only the taxpayer to appeal. In addition, some states allow the Department to non-acquiesce to a superior tribunal's decision, in lieu of allowing the Department a right of appeal. One state allows the Department the choice of appealing or nonacquiescing.

12. Standard of review. Most states allow a de novo review of the decisions issued by its Appeals Division at the next level. A few states limit review of the decision to the record.

13. Appeal to independent appellate body before superior court review. A majority of states allow the decisions of the Appeals Division to be appealed to an independent appellate body before superior court review. A minority require an appeal directly to court.

14. The hearing officer is an attorney. Hearing officers are always attorneys in about half of the states, either because a law degree is required or only attorneys have been hired. In several states, the hearing officers may be senior auditors or CPAs.

15. Involvement of Appeals Division in the Department's policy development. In most states the Appeals Division is not formally involved in policy development, and in some states such involvement is prohibited. Informal involvement in tax policy is more common. In some states the Appeals Division actively engages in policy development for the agency; i.e., develops tax policy, helps write rules, or recommends statutory changes.

Appendix C: Internal, administrative appeals divisions

State Appeals Division	Div. is Indep (I), Semi-Indep (S-I), or part of Dept. (D)	Hearing is formal (F) or inform. (I)	Is Dept. present at hearing?	Are contacts with Dept. allowed?	Is proposed decision subject to review? By whom?	Is appeal to Director allowed?	Are decisions published? If so, precedential (P) or not (NP)?	Time for resolution	Are perfor. meas. in place?	Is settle. process formal?	Who can appeal: taxpayer (TP), Dept, or both	De Novo (DN) or record (R) review of appeal	Is Indep. appeal available before court? With whom?	Is hearing officer required to be an attorney?	Is Appeals Div. involved with policy?
Alabama Admin. Law Div.	I	F	Y	N	N	N	Y – NP	60-90 days fcr	N	N	Both	DN	N	Y	N
Alaska Appeals Group	D	I	Y	Y	Y OTA	Y	Y Rarely	App. Ct. after 6 mo.	Y	N	TP	DN	Y	N[1]	Y
Arizona Office of Hearings	S-I	I	Y	N	N	Y	Y – Dir decisions	90 days fcr	Y	Y	Both[2]	–	Y BoTA	Y	N
Arizona OAH	I	F	Y	N	N	Y	Y – Dir decisions				Both[2]		N	Y	N
Arkansas Office of Hearings & Appeals	I	F	Y	N	N	Y	N	30-60 days fcr	N	N	TP	DN	N	Y	N
California Appeals Div.	I	I	Y	Y Facts	Y BOE	N	Y – P[3]	90 days fcr	N	Y	Both	DN	Y BOE	N	Y Recom
Florida Tech. Assist. & Dispute Resol.	D	I	N	Y Various depts.	Y	Y-Gen. Coun.	N	175 days[4]	Y[5]	Y	TP	N/A	Y DOAH	N	N
Idaho Tax Commission	D	I	Not usually	Y	Y Dir	Y	N	180 days	Y	N	TP	DN	Y BoTA[6]	N	Y
Illinois OAH	S-I	F	Y	N	Y Dir	N	Y – P	Avg. 6-8 mo.	N	N	TP	DN	N	Y	N
Illinois Informal Conference Board	D	I	N	Y	N	N	N	Within 90 days	Y	Y	TP	DN	N	N	Y
Indiana Legal Div.	D	I	N	Y	Y Op. Div.	N	Y – NP	Within 60 days of hearing	N	Y	TP	DN	N	Y	N
Massachusetts Office of Appeals	S-I	I	Y *Optional*	N	N	N	N	70% within 6 mo.	N	Y	TP	DN	Y ATB	N	Y
Michigan Office of Legal & Hearings	S-I	I	Y	Y	Y Dir	N	N	1 yr[7]	N	N	TP	DN	Y Tax Trib.	Y	Y
Minnesota Appeals Office	S-I	I	N	Y	Y	N	N	1 yr[8]	N	Y	TP	DN	Y – Tx. Ct.	N	N

State Appeals Division	Div. is Indep (I), Semi-Indep (S-I), or part of Dept. (D)	Hearing is formal (F) or inform. (I)	Is Dept. present at hearing?	Are contacts with Dept. allowed?	Is proposed decision subject to review? By whom?	Is appeal to Director allowed?	Are decisions published? If so, precedential (P) or not (NP)?	Time for resolution	Are perfor. meas. in place?	Is settle. process formal?	Who can appeal: taxpayer (TP), Dept, or both	De Novo (DN) or record (R) review of appeal	Is Indep. appeal available before court? With whom?	Is hearing officer required to be an attorney?	Is Appeals Div. involved with policy?
New Hampshire Hearings Bureau	I	F	Y	N	Y Comm.	N	N	30-60 days fcr	N	N	TP	DN	Y BTLA	Y	Y
New Jersey Conf. & Appeals	S-I	I	N	Y	N	N	N	100 days/ 6 mo.[9]	N	Y	TP	DN	Y – Tx. Ct.	N	N[10]
New Mexico Hearing Bureau	S-I	F	Y	N	N	N	Y NP	30 days fcr	Y	Y	Both	R	N	Y	N
New York Bureau of Concil. & Med. Services	S-I	I	Y	Y	N	N	N	60%/6 mo. 90%/1 yr[11]	Y	Y	TP	DN	Y DTA	N	N
Oregon Conf. Officer	D	I	Y	Y	N	N	N	1 yr[12]	N	Y	TP	DN	Y – Tx. Ct.	N	N
South Carolina Appeals Office	D	I	Y	Y	Y GCO	N	N	9 mo. fcr	Y	Y	TP	DN	Y AL Div.	N	Y
Utah Appeals Section	S-I	F	Y	N	Y Dir	Y	Y Rarely	N	N	Y[13]	TP	R	N	Y	N
West Virginia Office of Tax Appeals	I	F	Y	N	N	N	Y	90 days/ 6 mos.[14]	N	N	Both	R	N	Y	N
Wisconsin Resolution Unit	S-I	I	N	Y	N	N	N BN[15]	6 mo.	Y	N	TP	DN	Y TAC	N	N
Wisconsin Board of Review	S-I	I	Not usually	Y	N	N	N BN[15]	6 mo.	Y	N	TP	DN	Y TAC	N	N
Washington Appeals Div.	D	I	N	Y	Y Dir	Y	Y-P	1 yr/9 mo. goal	Y	Y	TP	DN	Y BoTA	Y	Y

Notes:

1. State law doesn't require it, but the Department does.
2. Both can appeal to the director, but only the taxpayer can appeal from the director to the BoTA.
3. Precedential if adopted by the Board of Equalization.
4. Florida's goal is to resolve cases within 175 days from postmark of taxpayer's protest.
5. Performance measures are in place, but appeals cases don't have to be resolved in a specific time frame.
6. Effective 7/1/05, appeals of DOR informal conference decisions will go to the Office of Admin. Hearings instead of the Office of Tax Appeals.
7. The goal is to issue a recommendation within one year after receiving all comments from Tax Unit.
8. Quarterly status reports are given for cases older than one year.
9. On initial review, the Appeals Board attempts to resolve cases within 100 days. If not successful, a referee tries to issue a decision within six months.
10. The division is not formally involved with policy.
11. Sixty percent of cases are resolved within six months of close of record; 90 percent within one year.
12. One year to hold conference and assess deficiencies.
13. The Administrative Law Judge mediates.
14. Decisions are usually made within 90 days. The statutory limit is six months.
15. Decision is binding unless it "non-acquiesces."

Legend:

AL Div: Admin. Law Division
ATB: Appellate Tax Board
BOE: Board of Equalization
BoTA: Board of Tax Appeals
BTLA: Board of Tax & Land Appeals
Comm: Commissioner
Dir: Director
DOAH: Division of Admin. Hearings
DTA: Division of Tax Appeals
fcr: From close of record
GCO: General Counsel's Office
mo: months
OAH: Office of Admin. Hearings
Op. Div: Operations Division
OTA: Office of Tax Appeals
TAC: Tax Appeals Commission
Tx. Ct.: Tax Court
Tax Trib: Tax tribunal
yr: year