



## STATE TAX TRIBUNALS

### Issue

As a means to resolve state tax appeal controversies prior to litigation, but in a forum outside the dominion and control of the state tax authority, many states are considering the adoption of state tax tribunals.

### Background

More than half the states have adopted independent state tax tribunals (either in the judicial or executive branch). In the 2012 legislative session, Georgia and Illinois enacted bills to establish independent state tax tribunals. The issue was also considered in Alabama, Louisiana, Oklahoma, and Pennsylvania.

The 2006 [American Bar Association \(ABA\) Model State Administrative Tax Tribunal Act](#) (Model Act) provides legislative language that often serves as a base for legislation on this issue in various states. As more states consider establishing new independent tax appeal forums or revising existing tax appeal systems, it is important to review the proposals to ensure CPAs authorized to practice in the state are able to represent taxpayers before the tribunal; this includes those licensed in another state but who have a practice privilege which makes them eligible to practice in this state under the state's CPA mobility laws). The AICPA continues to consider this issue and is available as a resource to state CPA societies. (See AICPA Position below).

In addition to the rights of CPAs to represent clients before proposed tax tribunals, it is also important to consider whether tax laws promote fairness and efficiency in regard to tax administration and policy, such as: independence (from the State Revenue Commissioner/ Department of Revenue), avoiding "pay-to-play" (the ability to challenge an assessment without first paying the tax (and interest and penalties), limited jurisdiction/specialized tax expertise, experienced tax judges, and published precedential decisions. The specific details of the forums vary among the states, so as states consider this issue, it is important for CPAs to advocate for fairness and mobility in representation rights before the tribunals. This issue is expected to continue to be debated around the country over the next several years.

### Importance to CPAs

There are several reasons why state tax tribunals are a good idea for taxpayers and CPAs, as well as for the broader goal of good tax administration.

- 1) Tax tribunals ensure a fair and effective tax administration system for taxpayers. All taxpayers would have a state tax appeal forum for state tax disputes that functions independently from the state tax authority.
- 2) Tax tribunals, when structured in line with the Model Act, provide CPAs with greater taxpayer representation rights and service opportunities.

### AICPA Position

While the AICPA does not lobby directly at the state level, it supports efforts by state CPA societies who may advocate for the creation of state tax tribunals structured in line with the provisions of the Model Act.

The AICPA believes that if a state is considering possible legislation on this issue, “Section 16. Representation” of the Model Act should be slightly revised to take into account state CPA mobility laws.

#### **Existing language**

(a) Appearances in proceedings conducted by the Tax Tribunal may be by the taxpayer, by an attorney admitted to practice in this State (including an attorney who is a partner or member of, or is employed by, an accounting or other professional services firm), by an accountant licensed in this State, or by an enrolled agent authorized to practice before the Internal Revenue Service. The Tax Tribunal may allow any attorney or accountant authorized to practice or licensed in any other jurisdiction of the United States to appear and represent a taxpayer in proceedings before the Tax Tribunal for a particular matter. In addition, the Tax Tribunal may promulgate rules and regulations permitting a taxpayer to be represented by an officer, employee, partner or member.

(b) The [department of revenue] shall be represented by an authorized representative in all proceedings before the Tax Tribunal.

#### **Proposed language (*italicized new language*)**

(a) Appearances in proceedings conducted by the Tax Tribunal may be by the taxpayer, by an attorney admitted to practice in this State (including an attorney who is a partner or member of, or is employed by, an accounting or other professional services firm), *by a certified public accountant licensed or authorized to practice in this State under the State’s accountancy laws*, or by an enrolled agent authorized to practice before the Internal Revenue Service. The Tax Tribunal may allow any attorney (*deleted “or accountant”*) authorized to practice or licensed in any other jurisdiction of the United States to appear and represent a taxpayer in proceedings before the Tax Tribunal for a particular matter. In addition, the Tax Tribunal may promulgate rules and regulations permitting a taxpayer to be represented by an officer, employee, partner or member.

(b) The [department of revenue] shall be represented by an authorized representative in all proceedings before the Tax Tribunal.

Such a revision to Section 16 acknowledges the extensive efforts the CPA profession has undertaken to allow individual CPAs to practice across state lines without having to obtain a reciprocal license or meet other barriers to practice (e.g. special notices or fees). These “mobility” laws have already passed in 48 states and the District of Columbia and are an important priority of the profession as it seeks to adapt to clients’ needs and help CPAs thrive in the ever-changing marketplace. As long as a CPA meets the requirements to obtain a practice privilege in the state under the state’s accountancy law, the CPA should be allowed to represent a client before a tax tribunal. For example, a CPA in Kansas City, Missouri should be able to represent a client in Kansas City, Kansas even though she lives across the state border. In addition to the mobility laws reflecting the modern practice of accountancy, the public is also protected under mobility laws because any CPA practicing in a state, even if licensed elsewhere, falls under the jurisdiction of the state’s board of accountancy.

The enhanced language also puts CPAs on a level playing field with enrolled agents, who, under the Model Act, do not have a state-specific requirement to represent a client in a state. They must simply be registered with the Internal Revenue Service. This change reflects the ways in which CPAs and enrolled agents are regulated and may operate across state lines.

For more specific information about the CPA profession's position on a specific pending legislative proposal in a state, interested parties should contact the state CPA society in that state.

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