

ALASKA LEGISLATURE COMMITTEE BILL FILES - 1987 - 1988 8879

SB 401 cont. thru SB 404 124

Nineteenth. Have authority to provide by regulation (1) that in any determination, assessment, collection, refund or credit under this chapter, a fractional part of a dollar may be disregarded unless it amounts to fifty cents or more, in which case it shall be increased to one dollar, and (2) that any person making a return, report or other statement required to be filed with it under this chapter may elect with respect to any amount required to be shown thereon, if such amount is other than a whole dollar amount, either to disregard the fractional part of a dollar or to disregard the fractional part of a dollar unless it amounts to fifty cents or more, in which case the amount (determined without regard to the fractional part of a dollar) shall be increased by one dollar provided, however, that such election shall not be applicable to items which must be taken into account in making the computations necessary to determine the amount required to be shown on any such return, report or other statement but shall be applicable only the final amount required to be shown thereon.

Twentieth. Have authority, of its own option, to abate any small unpaid balance of an assessment of tax, or any liability in respect thereof, under articles twelve-a, eighteen, twenty or twenty-one, if the tax commission determines under uniform rules prescribed by it that the administration and collection costs involved would not warrant collection of the amount due. It may also abate, of its own motion, the unpaid portion of the assessment of any of such taxes, or any liability in respect thereof which is excessive in amount, or is assessed after the expiration of the period of limitation properly applicable thereto, or is erroneously or illegally assessed. No claim for abatement under this subdivision shall be filed for any of such taxes

Twenty-first. Provide a hearing, as a matter of right, to any taxpayer upon such taxpayer's request, pursuant to such rules, regulations, forms and instructions as the tax commission may prescribe unless a right to a hearing is specifically provided for, modified or denied by another provision of this chapter. Where the request for a hearing is made by a person seeking review of any taxes determined or claimed to be due under this chapter, the liability of such person shall become finally and irrevocably fixed unless such person, within ninety days from the time such liability is assessed, shall petition the tax commission for a hearing to review such liability. After such hearing, the tax commission shall give notice of its decision to such person. The decision of the tax commission shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made within four months after the giving of such decision.

Twenty-second. Be required to render a determination after a hearing, within nine months after submission of briefs subsequent to completion of such a hearing or, if such briefs are not submitted, then within nine months after completion of such a hearing. Such nine month period may be extended by the tax commission, for good cause shown, to no more than three additional months. If the tax commission fails to render a decision or determination within such nine month period (or such period as extended pursuant to this subdivision), the applicant for such hearing may institute a proceeding under article seventy-eight of the civil practice law and rules to compel the issuance of such decision or determination.

Twenty-third. Be required to publish and make available to the public all decisions and determinations of the tax commission rendered after a hearing. The tax commission may charge a reasonable fee for a copy of such a decision or determination.

Twenty-fourth. Be required to render advisory opinions with respect to taxes administered by the tax commission within ninety days of the receipt of a petition for such an opinion. Such ninety day period may be extended by the tax commission, for good cause shown, to no more than thirty additional days. Such advisory opinion shall be rendered to any person subject to a tax or liability under this chapter or claiming exemption from such tax or liability. Such advisory opinions, which shall be published and made available to the public, shall not be binding upon the tax commission except with respect to the person to whom such opinion is rendered provided, however, that a subsequent tax commission modification of such an advisory opinion shall operate prospectively only. A petition for an advisory opinion shall contain a specific set of facts and be submitted in such form as may be prescribed by the tax commission and subject to such rules and regulations as the tax commission may promulgate with respect to the procedures for submission of such a petition. Nothing herein shall be construed to limit or otherwise alter the rights of any applicant for a declaratory ruling pursuant to section two hundred four of the state administrative procedure act.

6. For the powers of the Commission, see *id.* The issuance of advisory opinions illustrates the dichotomy between what the statute requires and what happens in practice. Statutorily, the Commission is charged with the rendering of advisory opinions; in practice, the Commission is rarely, if ever involved, notwithstanding that all advisory opinions carry the name of the Tax Commission.
7. As chief executive officer of the Department, the Commissioner is responsible for every aspect of the Department's activities. The Commissioner is not necessarily involved in the early stages of the regulatory process. Initial drafts of the regulations are prepared by the Technical Services Bureau of the Department and are then reviewed by the Law Bureau and placed in final form. The Commissioner of Taxation and Finance may see a proposed regulation for the first time only shortly before it is to be considered for approval at a meeting of the Tax Commission.
8. 20 N.Y.C.R.R. §601.
9. While 90 days is the usual time period there are exceptions--Articles 12 (Stock Transfer Tax), 12-A (Gasoline Tax) and 21 (Highway Use Tax) provide for a 30 day period. In the case of some taxes, for example, the sales tax, a notice of determination and demand is issued rather than a notice of deficiency.
10. A taxpayer may obtain review of a refund application if a timely refund claim was previously filed, if the taxpayer did not previously file a petition for redetermination of a deficiency for the same taxable year, and if either six months have expired since the claim was filed or the Tax Commission has disallowed the claim in whole or part. The petition for review of a refund application must be filed within two years after the notice of disallowance was mailed, unless the taxpayer obtains a written extension from the Commission during those two years. A request for a refund may be made in a petition for redetermination of a deficiency for the same taxable year(s).
11. If a case raises only questions of law, and no questions of fact, under certain circumstances the case may be assigned for a hearing without a conference.
12. Conversation with John Sollecito, Director, Tax Appeals Bureau, August 5, 1982. Mr. Sollecito described the conferee's role in these circumstances as "acting as the taxpayer's counsel, but not his advocate."

13. Some members of the State Bar have indicated, however, that in practice the conferee usually defers to the auditor. See Comeau & Rosen, note 1 *supra* at 260. The Department, however, indicates that the reverse is true and that auditors will frequently not propose a resolution on their own initiative but will concur with one proposed by a conferee.
14. Subsections 15 and 16 of section §171 of the New York State Tax Law, note 3 *supra*, grant the Commission the authority to compromise taxes under certain narrowly defined circumstances. By inference, these sections would seem to deny the power to do so generally. Subsection 18, however, grants the Commission broad powers to enter into agreements with taxpayers relating to their liability. This section has not been interpreted by the Commission, however, as a grant of any type of settlement authority. Rather this section protects taxpayers from having an agreement or determination of the Commission reopened in the future, except under very limited conditions.

Conversation with Saul Heckelman, Special Counsel to the Department of Taxation and Finance, December 8, 1983.

15. 20 N.Y.C.R.R. §601.8(b).
16. Letter from John Sollecito, Director, Tax Appeals Bureau, to the Legislative Drafting Research Fund of the Columbia University School of Law, 1982.
17. Small claims hearings are transcribed in cases where the taxpayer requests a transcript (a fee of \$1/page is charged) or when an Article 78 proceeding for judicial review is taken from the Commission's decision.
18. This training program is overseen by the Department of Civil Service. Hearing officers are appointed to the program from a Civil Service list that results from an open competitive examination. Appointees are all attorneys, but with varying degrees of legal experience. More experienced lawyers face a somewhat shorter training program. Letter from Paul Coburn, Secretary to the State Tax Commission, February 14, 1984.

Small claims hearing officers need not be attorneys. Qualifications include strong experience in accounting and auditing and a background in the technical and legal aspects of a particular tax.

19. 20 N.Y.C.R.R. §§601.9(c), 601.11(c).
20. N.Y. Tax Law §§689(e), 1089(e).
21. The post-hearing review unit consists of two supervisors, one in charge of sales and one in charge of income tax, and five technicians. They review decisions for technical accuracy, conformity with precedent, and general form.
22. 20 N.Y.C.R.R. §601.9(e).
23. N.Y. State Tax Law §171(22).
24. The Commissioners usually open the record only to check a fact or if there is a novel issue or large sum of money at stake. Conversations with Mark Friedlander, Commissioner, and Thomas Lynch, former Commissioner, New York State Tax Commission, August 24, 1982.

25. Commissioner Mark Friedlander states that this occurs in maybe one case out of a hundred, although there are no procedural barriers to more extensive contact. As an example, he mentions that on one occasion he needed to know whether Audit Division procedures would permit an entirely fresh audit of the matter in issue. Id. In about 15% of the cases, the Commission sends the decision back to the hearing officer for a rewrite. The hearing officer must rewrite the decision in accordance with the Commission's directions. Id.
26. N.Y. State Department of Taxation and Finance, Executive Memorandum E-130.
27. The complete texts of decisions of the State Tax Commission dating back to 1978 will soon be available through LEXIS, a computerized legal research service. Conversation with Paul Coburn, Secretary to the State Tax Commission, December 1983.
28. N.Y. CPLR §7803.
29. Id. §7803(3).
30. Id. §7803(4).
31. See, e.g., *People ex rel Hull v. Graves*, 289 N.Y. 173, 45 N.E. 2d 161 (1942); *Grace v. N.Y. State Tax Commission*, 37 N.Y. 2d 193, 371 N.Y.S. 2d 715, 332 N.E. 2d 886 (1975).
32. N.J. P.L. 1978, C. 33 N.J. S.A. 2A:3A-1 to 2A:3A-29, approved June 13, 1978.
33. N.J.S.A. 2A:3A-12.
34. See Lasser, Lawrence L., "Year One: New Jersey's Tax Court," New Jersey Lawyer, August 1980, p. 11.
35. Conversation with Lawrence L. Lasser, Presiding Judge of the New Jersey Tax Court, July 1983.
36. Annual Report of the Presiding Judge of the Tax Court of New Jersey for the Court Year Ending August 31, 1982.
37. Tax disputes can also be litigated in the district courts or in the Claims Court.
38. 26 U.S.C. §§7441 et seq.
39. Conversation with Charles S. Casazza, Clerk of the U.S. Tax Court, June 28, 1983.
40. 26 U.S.C. §7452.
41. Wisconsin Statutes Annotated §§73.01 et seq.
42. Conversations with Clayton Seth, Director of the Appellate Division, Department of Revenue, Wisconsin, and Joe Ziesel, Administrative Assistant to the Wisconsin Tax Appeals Commission, June 1983.
43. See note 2 supra.

44. See note 7 supra and accompanying text.
45. N.Y. Tax Law §170(5).
46. Currently all formal hearing officers, including the supervising tax hearing officer, have come to the Tax Appeals Bureau from outside the Department, although there is no requirement that they do so. This is not true of small claims hearing officers or those individuals in post-hearing review.
47. Statutorily, the Commission is responsible for issuing advisory opinions; in practice, however, the Commission rarely plays any role in their issuance.
48. In New York City, taxpayers arriving for a hearing confront a floor directory that lists "conferees" under the Department of Taxation and Finance, which further adds to perceptions about the tax appeals bureau's lack of independence.
49. Members of the State Bar have asserted that "in some cases the Commission has received unilateral input from the Law Bureau, without the taxpayer being notified of such input or being given the opportunity to respond." Comeau & Rosen, note 1 supra at 261-262. See also id. at 235. Arthur R. Rosen has also indicated that "several individuals are willing to disclose specific examples [of bias] in an appropriate forum." Letter from Arthur R. Rosen to Robert D. Plattner, Counsel to the Legislative Tax Study Commission, February 7, 1984.

One explanation that has been offered for the lack of documented instances of bias is that taxpayers and their representatives are unwilling to come forward with specific allegations for fear that such complaints might lead to retaliation at some future time.

50. Statistics can be compiled to indicate what percentage of cases tried before the Commission are favorable, either in whole or in part, to the taxpayer. Such statistics, however, are not terribly meaningful unless they can be compared with the percentage of cases which should have been won by the taxpayer. This, of course, is an extremely difficult percentage to ascertain. Moreover, a high percentage of cases won by taxpayers is ambiguous and may merely reflect the Department's inability to settle cases based on hazards of litigation, see Chapter III(C) infra, or the failure to weed out cases that should not be tried. Alternatively, a high percentage of cases favorable to the Department would not necessarily be probative of bias.
51. See B. SCHWARTZ, ADMINISTRATIVE LAW 316 (1976); Hector, Problems of the CAB and the Independent Regulatory Agencies, in PERSPECTIVES ON THE ADMINISTRATIVE PROCESS 208 (R. Rabin ed. 1979).
52. N.Y. State Administrative Procedures Act §307(2); 5 U.S.C. §554.
53. See, e.g., Withrow v. Larkin, 421 U.S. 35 (1975). See also Outman v. State Tax Commission, 50 A.D. 2d 1015, 377 N.Y.S. 2d 659, appeal dismissed, 429 U.S. 1067 (1975).
54. See J. FREEDMAN, CRISIS AND LEGITIMACY: THE ADMINISTRATIVE PROCESS IN AMERICAN GOVERNMENT 172-76 (1978); R. LORCH, DEMOCRATIC PROCESS AND ADMINISTRATIVE LAW 47-49 (1969); Auerbach, Some Thoughts on the Hector Memorandum, in PERSPECTIVES ON THE ADMINISTRATIVE PROCESS

234, 236-37 (R. Rabin, ed.); Stewart, The Reformation of American Administrative Law, 88 Harv. L. Rev., 1667, 1678 (1974); 1 ADMINISTRATIVE ADJUDICATION IN THE STATE OF NEW YORK 44-71 (1942).

55. See, e.g., Stewart, note 54 supra at 1699.
56. N.Y. Banking Law §10.
57. The classic statement of the need to make policy through adjudication is found in S.E.C. v. Cheney Corp., 332 U.S. 194, 202-3 (1947). See also Diver, Policy Making Paradigms in Administrative Law, 95 Harv. L. Rev. 393, 400, 431-33 (1981); Cohen & Rabin, Broker Dealer Selling Standards: The Importance of Administrative Adjudication in Their Development, 29 Law and Contemp. Prob. 725 (1964).
58. The Commission was established on March 3, 1939 under Section 8 of the State's Executive Law to study the exercise of quasi-judicial functions by various entities of the State. Robert M. Benjamin served as Commissioner. The Report of the Commission is entitled Administrative Adjudication in the State of New York (1942).
59. Id. 270 (1942).
60. See, e.g., Tax Appeals in New Jersey: A Critique and Program for Legislative Action, Report of the Special Committee on Tax Appeals Procedure of the Senate of New Jersey, June 26, 1977; Report of Tax Simplification Board, H.R. Doc. No. 103, 68th Congress, 1st Session (1923).
61. The Board of Tax Appeals was created as an entirely independent agency in the Executive branch of the government. In 1942, its name was changed to Tax Court of the United States and in 1969, the Court was moved to the Legislative branch. For a detailed history of the U.S. Tax Court see Dubroff, The U.S. Tax Court: An Historical Analysis, 40 Alb. L. Rev. 7 (1975); see also Comeau & Rosen, note 1 supra at 267.
62. Report of Tax Simplification Board, H.R. Doc. No. 103, 68th Cong. 1st Sess. 4 (1923).
63. Statement of Joseph H. Murphy, President of the New York State Bar Association, before the New York State Legislature's Select Task Force on Judicial Reorganization, October 2, 1975.
64. "The Tax Appeals System in California," Commission on California State Government Organization and Economy, Summary (May 1979) (emphasis in original). Other current issues in New York also have parallels elsewhere. The Congress, for example, in creating the Board of Tax Appeals, was concerned about the lack of published precedents of the prior tax appeals system. See Section F, infra. The California report speaks to issues of expertise and timeliness as well as the issue of independence. Each of the policy issues faced by New York has been addressed by the federal government, New Jersey, California, and other jurisdictions that have examined their tax appeals procedures. See, e.g., Dubroff, note 61 supra.
65. Administrative Management and Systems Group, Organization and Management Unit, Division of the Budget, Study of Tax Department Conference and Hearing System (June 1974.) (emphasis in original); for other criticism, see Creating a New

York State Tax Court, statement of Martin D. Ginsburg, Chairman of the Tax Section of the New York State Bar Association, before the Select Task Force on Court Reorganization on Senate Bill 6760 and Assembly Bill 7802, November 20, 1975.

66. Prior to 1975, a case was handled by the same bureau of the Department of Taxation and Finance that originally assessed the tax (e.g., appeals in personal income tax cases were heard by the Income Tax Bureau). The 1975 changes established the Tax Appeals Bureau, initiated the prehearing conference, created a small claims procedure, and significantly increased the number of hearing officers.
67. 2,917 of these cases were resolved in conference, including 441 defaults; 1,325 were decided by the Commission.
68. Office of the State Comptroller, Report 84-S-104, Department of Taxation and Finance, Tax Appeals Bureau, pp. 5, MS-1. For the Department's responses to the report, see id. at A-3 to A-14.
69. This review was undertaken by Kenneth Gold, formerly of the staff of the New York Assembly Ways and Means Committee.
70. See generally L. Wright et al., COMPARATIVE CONFLICT RESOLUTION PROCEDURES IN TAXATION 1-101 (1968).
71. Id. at 11, 86-90.
72. Id.
73. See note 14 supra.
74. See Wright, note 70 supra at 87-88.
75. See id. at 70-101.
76. Conversation with John Sollecito, Director, Tax Appeals Bureau, December 1983.
77. See, e.g., the Annual Report of the Presiding Judge of the Tax Court of New Jersey for the Court Year Ended August 31, 1982. The Clerk of the U.S. Tax Court, Charles S. Casazza, indicated that 28,945 cases were closed by the Court in the 12 month period ending September 30, 1983. 22,899 of these cases were closed as the result of settlement between the parties. 2,524 were disposed of through trial and opinion. The remainder of cases closed consisted largely of dismissals. Conversation with Charles S. Casazza, Clerk of the U.S. Tax Court, December 1983.
78. Id.
79. The recent Comptroller's report on the Tax Appeals Bureau is critical of the role of Post Hearing Review in this multi-layered process:

"The reviewer is required to examine the entire Bureau file, including the hearing transcript or tapes, applicable briefs and evidence submitted by the taxpayer and the Department, and the recommended decisions of the hearing officers. The decisions are reviewed for format, to determine whether conclusions are supported by findings, and to determine consistency with past decisions, applicable laws, and

court rulings. The reviewer also proofreads the decision to ensure dates, dollar amounts, assessment numbers, tax years, and decision references are cited properly and to correct for grammatical errors. When the reviewer disagrees with a hearing officer's decision, he prepares a memo citing the differences for supervisory review. The review of small claims hearing requires about a day while formal hearing cases require three to four days. Additionally, all cases are reviewed by the unit supervisors and may also be reviewed by the Bureau's managers.

The Post Hearing review duplicates the work of the hearing officers as well as that of the supervisors of the Small Claims and Formal Hearing Units and the Bureau's managers. Although there may be a need for a review function, such reviews could be done on a test basis, focusing on items such as specific issues or certain hearing officers. With a supervisory review already in place, complete reviews of all cases does not seem be [sic] warranted. The existing post-hearing review staff could then be used in assisting the hearing units prepare decisions, or conduct hearings, especially since these units have significant backlogs.

Department officials disagreed that this function duplicates the responsibilities of others. Management considers the Post Hearing Review function vital to assure that decisions are informative, correct and consistent and that it offers an objective review by someone independent of the hearing process." Report 84-S-104, Department of Taxation and Finance, Tax Appeals Bureau, pp. 13-14.

80. Hearing officers' opinions are sent back for redrafting in a relatively small percentage of cases. Conversation with Paul Coburn, Secretary to the State Tax Commission, November 1983.
81. N.Y. CPLR §7803.
82. See N.Y. Jur. 2d, Article 78 and Related Proceedings, §15 (1980); Schwartz, note 51 supra at 596.
83. Grace v. New York State Tax Commission 37 N.Y. 2d 193, 371 N.Y.S. 2d 715, 332 N.E. 2d (1975).
84. "The arbitrary and capricious test is apparently regarded as more restrictive [with respect to the reviewing power of the court] than the substantial evidence rule; that is, something less than substantial evidence can support a determination as not being arbitrary or capricious. The difference in approach seems to be that the arbitrary or capricious rule is applied where there is no right to a hearing. It is said that the substantial evidence rule and the arbitrary or capricious rule are but two different expressions of the judicial power and duty to check administrative abuses, the former applicable where evidence is required and the latter applicable where there is no requirement of evidence. Thus where there is neither a statutory nor a constitutional right to a hearing, the determination is a matter of judgment or discretion confined by the legislative to the administrative agency and the aim of judicial review is to determine whether its action was arbitrary or capricious." 5 N.Y. Jur. 2d Article 78 and Related Proceedings, §31 at 393, 394 (1980) (citations omitted); see also Schwartz, note 51 supra at 605-06.
85. See note 31 supra.
86. See note 49 supra.

87. Conversation with Mark Friedlander, State Tax Commissioner, October 27, 1983.
88. Id.
89. New York Constitution, Article 6, §7.
90. N.J.S.A. 2A:3A-5 to 2A:3A-8.
91. A proposal for a judicial tax court would be likely to become entangled in the debate concerning other knotty, highly publicized issues involving the judiciary which are now before the Legislature, thus creating additional obstacles to its full consideration.

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## APPENDIX I

### Survey of State Tax Appeal Procedures (Including the District of Columbia)

#### Alabama

The Department of Revenue mails a notice to the taxpayer stating the amount of tax due. The notice states a date for hearing any protest by the taxpayer. The hearing date cannot be less than 15 days from the date of the notice. After the hearing or the taxpayer's default, the Department assesses the tax and notifies the taxpayer by certified or registered mail.

Either the State or the taxpayer may appeal from the Department's final assessment. The circuit court of Montgomery County or the circuit court of the county in which the taxpayer resides has jurisdiction to hear the appeal in a de novo proceeding. The taxpayer bears the burden of proof. The taxpayer may appeal directly to the Supreme Court within 42 days from the entry of judgment.<sup>1</sup>

#### Alaska

The taxpayer may initiate the administrative appeal process by requesting either an informal conference or a formal hearing. The taxpayer has 60 days from the date of the mailing of the notice of assessment to apply for the informal hearing. If the Department of Revenue fails to make the requested change following the informal conference, the taxpayer may obtain a formal hearing by making request within 30 days from the date of the Department's decision.

Instead of the informal conference, the taxpayer may request a formal hearing within the same 60-day period. Following the formal hearing, the taxpayer has 30 days from the date of the decision to

appeal to the Superior Court in the county in which the taxpayer resides. The taxes must be paid within the 30-day period, even though an appeal is pending in the Superior Court.<sup>2</sup>

#### Arizona

Arizona has an independent board of tax appeals. The State Board of Tax Appeals has jurisdiction over all appeals from decisions of the Department of Revenue as well as over appeals involving property tax valuations. The Board is composed of six members appointed by the Governor. The members are selected on the basis of tax expertise.

The taxpayer has 90 days from the date of the notice of assessment to request a hearing within the Department. The Department must hold a hearing within six months. The hearing is informal although testimony is taken. The taxpayer has 30 days from the date of the Department's decision to appeal to the Board. The Board adheres to the rules of evidence followed by the courts.

The taxpayer has 30 days to appeal decisions of the Board to the Superior Court. Review is de novo. Deficiency assessments may be challenged without paying the disputed tax.<sup>3</sup>

#### Arkansas

A taxpayer seeking relief from a proposed assessment may elect to have the Commissioner of Revenue consider the case solely upon written documents furnished by the taxpayer or upon written documents and other evidence produced by the taxpayer at a hearing. The period for exercising either of these options runs for 30 days after the service of the notice of the proposed assessment. The

taxpayer initiates the appeal by filing a written protest under oath.

The Commissioner appoints a hearing officer to review all written protests, hold all hearings, and make written findings regarding the applicability of the proposed assessment. Decisions of the hearing officer are final unless revised by the Commissioner. The taxpayer has 20 days from the date of the mailing of the hearing officer's decision to request the Commissioner to revise the determination.

In order to pursue an appeal in the courts, the taxpayer must either pay the tax under protest and file suit within one year or post a bond and file suit within 30 days after posting such bond. Jurisdiction for the appeal lies in the Pulaski County Chancery Court or the Chancery Court of the county in which the taxpayer resides or has his principal place of business. The trial is de novo. Appeals are taken from the Chancery Court to the Supreme Court of Arkansas.<sup>4</sup>

#### California

The Franchise Tax Board administers the individual and corporate income taxes. Assessments regarding these taxes may be appealed to the California Board of Equalization. In addition to its review responsibility, the Board of Equalization administers the property tax laws and numerous other State taxes. The Board of Equalization is composed of five members, four of whom are elected from equalization districts in the State. The fifth member is the State Comptroller who serves in an ex officio capacity.

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An assessment becomes final 60 days from the date of the assessment unless the taxpayer files a protest. The Franchise Board will grant an oral hearing at the taxpayer's request. An appeal from the Franchise Board's decision must be made within 30 days of the decision. The Board of Equalization's determination becomes final in 30 days unless the taxpayer or the Franchise Tax Board files a petition for rehearing.

To obtain judicial review, the taxpayer must pay the tax and sue for a refund. The taxpayer need not apply for a hearing but the taxpayer's claim for a refund claim must have been disallowed. A suit for refund may be maintained within one year from the date the tax was paid, within four years from the last date prescribed for filing the return, or within 90 days after notice of agency action disallowing the claim, whichever period is longest. If the Franchise Tax Board fails to mail notice of action on any refund claim within six months after the claim was filed, the taxpayer may consider the claim disallowed and bring suit.<sup>5</sup>

#### Colorado

The taxpayer may request for hearing on a proposed assessment from the Executive Director of the Department of Revenue within 30 days of the mailing of a notice of deficiency. The request for a hearing must be accompanied by a statement of the taxpayer's reasons and the amount of the requested changes in the deficiency. The Executive Director conducts the hearing. The taxpayer may file any pertinent briefs and affidavits.

Rejected refund claims may be appealed in the same manner as proposed tax assessments. As an alternative to the administrative

hearing, a taxpayer may sue for the refund in the district court if the Department disallows the claim. The taxpayer has two years from the date of the mailing of the notice of disallowance to commence suit. If the Department fails to act on the claim within six months, the taxpayer may proceed to court.

Final determinations of the Executive Director may be appealed within 30 days of the mailing of such determinations. The taxpayer must file any appeal in the district court in which he resides or has his principal place of business. Trial is de novo. The taxpayer bears the burden of proof with few exceptions. Within 15 days after filing a notice of appeal, the taxpayer must file a bond for twice the amount of the contested taxes.<sup>6</sup>

#### Connecticut

The administrative agency in charge of taxation is the Department of Revenue Services. The Commissioner of Revenue Services examines returns and assesses additional taxes. Taxpayers may apply for a hearing within 30 days of the mailing of the assessment. The Commissioner may grant or deny the requested hearing.

The taxpayer has one month from the Commissioner's hearing decision to file an appeal in the Superior Court for the district of Hartford-New Britain.<sup>7</sup>

#### Delaware

Delaware's independent board of tax appeals is named the Tax Appeals Board. It has jurisdiction over all appeals from decisions of the State Tax Commissioner. The Board is composed of five members appointed by the Governor. At least two members must be attorneys, one an accountant, and two must be laymen.

An assessment becomes final unless the taxpayer requests a hearing with the State Tax Commissioner within 90 days after the mailing of the notice. After the Commissioner's decision, the taxpayer has 90 days to appeal to the Tax Appeals Board. During the formal hearing, the Board takes testimony and makes a record of the hearing. Rules of evidence apply to the proceedings. Judicial review may be obtained if sought within 30 days of the Board's decision.<sup>8</sup> The scope of review is limited and does not involve a trial de novo.<sup>9</sup>

#### District of Columbia

The Tax Division of the Superior Court has exclusive jurisdiction over all appeals from tax assessments. The Department of Finance and Revenue makes the initial assessments. The taxpayer has six months after paying the tax and penalties to pursue an appeal in Superior Court. Decisions of the Superior Court are reviewable in the same manner as other decisions of the court in civil cases tried without a jury.

The Chief Judge of the Superior Court designates one Superior Court judge as Judge of the Tax Division. The proceedings are conducted in a formal manner. Federal rules of civil and criminal procedure apply.<sup>10</sup>

#### Florida

The Department of Revenue issues a deficiency determination. Taxpayers may protest a determination within 60 days of the mailing of the notice by requesting a hearing. The taxpayer may also request a conference for which a written protest is not required.

The conference is an informal proceeding with no official transcript. A request for a conference stays the time to petition for a hearing. If the taxpayer and the Departmental conferee cannot agree, the taxpayer has the right to proceed to a formal hearing. If the petition seeks review of a tax refund denial, the State Comptroller must be made a party.

The taxpayer has 60 days from the date of the Department's final order to seek review in circuit court. Judicial review is confined to a review of the record.<sup>11</sup>

### Georgia

A taxpayer may contest any tax assessed by the Commissioner of Revenue by filing a written protest with the State Board of Equalization within 30 days from the date of notice of assessment. The Department makes a record of the hearing including any report by the hearing officer.

A taxpayer may also obtain a hearing to resolve a refund claim. If the claim for refund is denied by the Commissioner, or if the claim is not decided within one year from the date of filing, the taxpayer has the right to sue for refund in Superior Court. The taxpayer can appeal any other final order of the Commissioner by filing a bond to cover the tax in Superior Court. The appeal must be filed within 30 days from the date of the Commissioner's decision. The judicial proceeding is de novo.<sup>12</sup>

### Hawaii

Hawaii has a tax court to handle tax appeals. The State has local boards of review to hear property tax appeals. The taxpayer

may, however, bypass the review boards and appeal directly to the tax court.

The Chief Justice of the Circuit Court of the First Circuit designates two judges to serve on the tax court. The hearing before the tax court is de novo. The court has all the power and authority of a Circuit Court.

The taxpayer must file a notice of appeal in writing stating the grounds of his objection within 30 days from the mailing of the assessment. The tax court holds meetings to hear and determine appeals not later than July 1 of each year.<sup>13</sup>

#### Idaho

Idaho's independent board of appeals is the Board of Tax Appeals. The Board has jurisdiction to hear appeals from final determinations of any tax liability made by the State Tax Commissioner. The taxpayer may file for review with the Board within 30 days from the date of the Commissioner's decision. As an alternative, the taxpayer can, within the same limitations period, seek court review by paying the tax.

Hearings by the Board are conducted in an informal manner, usually by one Board member. The Board takes testimony and makes a record of the proceeding. The Board also has a small claims division.

Review of a Board decision must be made within 30 days in the District Court located in the county of the taxpayer's residence or in the district court of Ada county. Judicial review is limited.<sup>14</sup>

### Illinois

A taxpayer has 45 days after a notice of deficiency is mailed to file a protest with the Department of Revenue. The Department holds a hearing at the taxpayer's request. A denial of a refund claim may be appealed within the same limitations period.

The Department or any officer designated by the Director of the Department may hold hearings. The proceedings are informal and the Department is not bound by rules of evidence. The hearing officer's report is not binding on the Director.

A taxpayer may seek review in the Circuit Court of the county where he received a copy of the decision. Demand for payment of the tax cannot be made until the court proceedings have terminated. Review is limited to the record.<sup>15</sup>

### Indiana

The Department of State Revenue administers, collects and enforces taxes. The taxpayer has 60 days from notice of a proposed assessment to file a written protest.

Court review may be obtained if such appeal is made within 90 days from the date the Department mails its decision. Appeals may be filed in the Circuit or Superior Court of the county in which the taxpayer resides or has his principal place of business. Under newly revised laws, there is no provision for appeal when the tax has not been paid. The Department is authorized to send out a demand for payment after denying a taxpayer's protest. If the tax is paid, the taxpayer may pursue the appeal in court to obtain a refund. The court hears the appeal de novo and without a jury and

after the hearing may order or deny any part of the requested refund.<sup>16</sup>

#### Iowa

Iowa has established an independent board to review tax appeals: the State Board of Tax Review. The Board has jurisdiction to review decisions of the Director of Revenue and local property assessors. The Governor appoints three members to the Board.

A taxpayer has 90 days to appeal a notice of deficiency to the Director of Revenue, who is authorized to grant a hearing. Appeal to the Board is available for 30 days after the Director's decision. The appeal before the Board may be heard by two members or before a hearing officer.

The taxpayer has the option of bypassing the Board and seeking judicial review of the actions of the Director. The petition must be filed within 60 days of the date of the Director's decision. A bond of twice the contested tax must be filed. Review is limited to the record.<sup>17</sup>

#### Kansas

Kansas' independent board is the Kansas Board of Tax Appeals. It is authorized to hear appeals from the Director of Taxation and the Director of Property Valuation. The Governor appoints the five-member board, one member from each congressional district.

Taxpayers may appeal from decisions of the Directors within 30 days. The Board fixes a time for the hearing. Before an appeal can be sought in the District Court, the taxpayer must file a motion for rehearing with the Board. Taxpayers may petition for judicial

review within 30 days from the Board's decision on the rehearing application. Review is not de novo, but is limited to the Board's transcript. The taxpayer must submit a bond for 125 percent of the amount of the contested taxes.<sup>18</sup>

#### Kentucky

Kentucky has established a Board of Tax Appeals to handle appeals from decisions of any agency of the State or county government. The Governor appoints three members to the board, one of whom must be an attorney.

An aggrieved taxpayer may file a petition of appeal within 30 days of the date of such decision in the Franklin Circuit Court or the Circuit Court where the taxpayer resides or has his principal place of business. Judicial review is limited to the record.<sup>19</sup>

#### Louisiana

The Louisiana Board of Tax Appeals hears all appeals for redetermination of assessments or determination of overpayments made by the Collector or Revenue of the State. The Board is composed of three members appointed by the Governor.

A taxpayer has 30 days from the date of the decision to petition the Board for review of an assessment. The limitations period for a disallowed refund claim is sixty days. If the Collector of Revenue fails to act within one year, the taxpayer may appeal the claim to the Board.

The taxpayer may appeal to the district court by posting a bond 1 1/2 times the tax and filing a petition within 30 days of the Board's decision. The court renders its decision upon the record.<sup>20</sup>

### Maine

Taxpayers may petition the State Tax Assessor within 15 days after receipt of an assessment. The State Tax Assessor must reconsider his determination and hold an informal conference at the taxpayer's request.

The Assessor's decision on reconsideration with or without the informal conference constitutes final agency action. Taxpayers may appeal the decision to the Superior Court within 30 days of the agency's action. Review is limited to the record; in the absence of a record, the hearing on appeal is de novo. No tax, bond, or deposit need be paid or filed prior to applying for a refund or to seeking review.<sup>21</sup>

### Maryland

Maryland's independent body designated to hear tax appeals is the Maryland Tax Court. The Court consists of five judges appointed by the Governor.

A taxpayer may apply to the Department of Assessments and Taxation for revision or abatement of any tax within 30 days of the notice of such assessment. The Department may affirm or modify the assessment, or set a date for an informal hearing. Application to the Department is a prerequisite to any appeal. Within 30 days of the Department's final action, the taxpayer may appeal to the Tax Court. The taxpayer must file a bond with surety approved by the Department.

Proceedings before the Tax Court are de novo and conducted in a manner similar to proceedings in courts of equity in the State. Upon the request of any party, the Tax Court may submit issues of

fact for jury trial before a court of law in the jurisdiction where the taxpayer resides. Any party to the proceedings may appeal from the Tax Court's final order directly to the Court of Appeals. Review is limited to the record.<sup>22</sup>

### Massachusetts

The State has an independent board, the Appellate Tax Board, to hear appeals from decisions of the Commissioner of Revenue. The Appellate Tax Board has five members appointed by the Governor. The Board is located in the Department of Revenue, but not subject to the control of the Department.

A taxpayer aggrieved by an assessment may apply to the Commissioner for abatement of the tax within three years from the last day for filing the return for such tax, within two years from the date the tax was assessed, or within one year from the date the tax was paid. The Department has a Bureau of Appeal and Review that is authorized to hold conferences relating to proposed additional assessments and to conduct hearings relating to tax abatements. The Chief of the Bureau of Appeal and Review reports to the Commissioner of Revenue.

The taxpayer has 30 days in which to request a hearing from the Bureau of Appeal and Review. After any hearing or the expiration of the 30 day notice period, the Bureau Chief decides whether relief should be granted in whole or in part.

If the Bureau Chief refuses to abate a tax, the taxpayer may appeal to the Appellate Tax Board within 60 days after the date of notice of the decision. If the Department fails to act within six months, the application is deemed denied.

A hearing will be granted upon the request of any party. Parties may also request that all proceedings be officially reported by a stenographer. If no party requests that the proceedings be reported, all parties will be deemed to have waived all rights of appeal to the Supreme Judicial Court concerning the admission or exclusion of evidence and the sufficiency of the evidence. The right to appeal questions of law raised by the pleadings, an agreed statement of facts, or the Board's report, will not be deemed waived.

Taxpayers may appeal to the Supreme Judicial Court in accordance with the Massachusetts Rules of Appellate Procedure. The decision of the Board is final regarding findings of fact. In addition, the court will not consider any issue of law which was not raised before the Board.<sup>23</sup>

#### Michigan

Michigan has an independent administrative body to hear tax appeals: the Tax Tribunal. The Tax Tribunal is a quasijudicial agency located in the Department of the Treasury. Its rules are similar to those of the U.S. Tax Court. In property valuation disputes, a taxpayer invokes the jurisdiction of the Tax Tribunal by filing a written petition not later than June 30 of the tax year involved. In all matters, the taxpayer must file a written petition within 30 days after a final decision. If the tax is paid subsequent to the filing of the petition, the taxpayer may amend his petition to seek a refund. If the date set by law for payment of taxes has passed, a final decision will not be made until the taxes

are paid. A decision must be made by the Tax Tribunal within a reasonable period.

An appeal from the Tribunal's decision is by right to the Court of Appeals within 20 days after the entry of the order or decision appealed from or within 20 days after denial of a timely motion for rehearing. Scope of review is limited. The court is bound by the factual determinations of the Tax Tribunal.

The Tax Tribunal has two divisions: (1) the Residential Property and Small Claims Division; and (2) the Entire Tribunal Division. Hearing referees may hear cases and prepare proposed findings of facts and conclusions of law to be submitted to the entire Tribunal.

The Small Claims Division is informal. The proceedings are conducted without counsel on either side. The Tribunal supplies the forms and service of process. The hearing is short and a decision is rendered in a matter of weeks. A taxpayer has no appeal, but decisions of a hearing officer may be reheard by a Tribunal member. The entire Tribunal hears matters in a three-member panel in Lansing or Detroit.

#### Minnesota

Minnesota has an independent agency to hear tax appeals called the Tax Court of Appeals. The agency is the final authority for all questions of law and fact arising under the tax laws. The Governor appoints the three members to the Tax Court.

The taxpayer may appeal a decision of the Commissioner of Revenue within 60 days of such decision. The hearing is de novo. The

Tax Court follows the rules of procedure for the district courts of Minnesota.

Minnesota has a small claims division that holds informal hearings. These decisions are not appealable.

Certiorari by the Supreme Court is available upon petition of any party within 60 days of the Tax Court's decision. Review is limited to questions of Tax Court jurisdiction, sufficiency of the evidence, and conformity of the order with the law.<sup>25</sup>

### Mississippi

A taxpayer may appeal an action of the State Tax Commissioner to the Board of Review. The Board of Review is staffed by the chiefs of six of the major divisions of the Tax Commission. The appeal must be filed within 30 days from the date of the disputed action. The Board of Review renders a decision within 30 days of the hearing. If the Board of Review determines that the taxpayer owes tax, the taxpayer has 30 days to pay. Within this period, the taxpayer may appeal to the Board of Review's full Tax Commission.

The taxpayer's written petition to the Tax Commission must state the taxpayer's reasons for requesting a hearing. The State Tax Commission considers the petition, grants a hearing, and notifies the taxpayer of the time and place. After the Tax Commission's determination, the taxpayer has 30 days to file a petition in the Chancery Court. The petition must be accompanied by a bond in a sum double the amount in controversy.<sup>26</sup>

### Missouri

The Missouri Administrative Hearing Commission hears appeals from all orders of the Director of Revenue. The Administrative Hearing Commission is assigned to the Department of Consumer Affairs, Registration and Licensing. The two Commissioners are appointed by the Governor.

The Department of Revenue is also authorized to hold hearings. A taxpayer has 30 days from the date of the Department's action to appeal. The taxpayer need not meet any formal procedural requirements when filing the complaint.

Appeals are heard by the Court of Common Pleas. Application must be made within 30 days of the Commission's decision. Court review is confined to the record.<sup>27</sup>

### Montana

The Montana State Tax Appeal Board has jurisdiction to hear appeals from county tax appeals boards concerning property taxes, and from the Department of Revenue. The three members, who must have knowledge of tax matters, are appointed by the Governor.

A taxpayer has 20 days to appeal decisions of the county tax appeal board and 30 days to appeal decisions of the Department of Revenue. The hearing is conducted in accordance with the provisions of the Montana Administrative Procedure Act.

The taxpayer may obtain judicial review by filing a petition in District Court within 60 days of the Board's determination. Review is upon the record, but the Court may, if good cause is shown, permit additional evidence to be introduced. In cases of alleged

procedural irregularities not shown on the record, the Court may admit additional evidence.<sup>28</sup>

### Nebraska

A taxpayer wishing to contest a proposed assessment made by the Tax Commissioner may appeal to the State Board of Equalization and Assessment. The State Board is composed of the Governor, Secretary of State, Auditor of Public Accounts, State Treasurer and Tax Commissioner. The Board has the authority to review and equalize property assessments as well as to hear appeals from income tax deficiency assessments.

The taxpayer has 30 days after the date of mailing of the Tax Commissioner's notice in which to request a hearing. The Board must set a hearing date at the earliest possible date but in no event can it be more than 90 days after the filing of the notice of appeal. Proceedings before the Board are governed by Article 9--Rules of Administrative Agencies. A taxpayer also has the option of bypassing the Board and seeking judicial review. The appeal is taken to the District Court by filing a petition within the same 30-day limitations period.

Following a decision of the Board, a taxpayer may seek judicial review within 30 days from the Board's decision. Judicial review is without a jury and based solely upon the record of the agency, whether the appeal is from a Commission decision or a State Board of Equalization and Assessment decision. No court may enjoin the collection of any tax.<sup>29</sup>

## Nevada

The Nevada Tax Commission heads the Department of Taxation. The Tax Commission consists of seven members appointed by the Governor. The Governor is an ex officio, non-voting member of the Commission. The Tax Commission may review all decisions made by the Executive Director of the Department of Taxation.

A taxpayer initiates the review process by filing a petition for a redetermination within 30 days after receiving a deficiency determination. The Department must consider the determination and grant the taxpayer an oral hearing at his request. The Department's resulting order becomes final within 30 days, but the Department may grant an extension of up to 15 days if the taxpayer appeals to the Tax Commission. Appeals to the Tax Commission must be filed within 15 days after the receipt of the Department's decision. Hearings before the Tax Commission are conducted according to the provisions of the Nevada Administrative Procedure Act.

The Administrative Procedure Act provides for judicial review within 30 days after service of the final decision. The review is without a jury and is based solely upon the record, although the Court may for cause, hear additional evidence.<sup>30</sup>

## New Hampshire

The Board of Taxation hears appeals concerning all tax matters, including equalization of valuations. The Board consists of three members, appointed by the Supreme Court and commissioned by the Governor.

A taxpayer may appeal to the Board or petition the Superior Court for a hearing within 60 days of the decision of the Commis

sioner of Revenue Administration. The proceedings before either body are de novo. Electing to bring an action before the Board is deemed a waiver of any right to bring an action in the Superior Court.

The taxpayer may appeal the Board's decision within 30 days by submitting an appeals notice to the Supreme Court. The Supreme Court is bound by the Board's finding of fact. Review is limited to questions of law. The review procedures thus provide the taxpayer with a de novo hearing before the Board or in court. The taxpayer is not entitled to a de novo administrative hearing and de novo court trial on the same issue.<sup>31</sup>

#### New Jersey

New Jersey's Tax Court was established in 1978 and began operating on July 1, 1979. The Tax Court has jurisdiction to hear and determine appeals from decisions of the County Board of Taxation and from decisions of the Director of Taxation. A taxpayer has 45 days to appeal actions of the County Tax Board and 90 days to contest actions of the Director of Taxation.

The Tax Court consists of eight judges, all with tax expertise. The Court also has a small claims division that holds informal hearings. The Court began hearing cases in September 1979. Determinations of the Tax Court may be appealed as of right to the Appellate Division of the Superior Court.<sup>32</sup>

#### New Mexico

Taxpayers may file a written protest with the Taxation and Revenue Department. The Director may provide for an informal con-

ference before setting a hearing date or acting on a claim for a refund. The protest must be filed within 30 days of the date of the mailing of notice of assessment. A taxpayer whose refund is denied may request a hearing within the same limitations period. The Director has 30 days to notify the taxpayer in writing of the decision and of the right to appeal to the Court of Appeals. The taxpayer must pursue the appeal in court within 30 days of the decision. Review is confined to the record.

If a refund claim is denied, the taxpayer may, instead of requesting a Departmental hearing, commence a civil suit in District Court. The same 30 day limitations period applies to such suits.<sup>33</sup>

#### North Carolina

The independent review board that handles tax appeals is the Tax Review Board. It is composed of the State Treasurer ex officio; chairman of the Utilities Commission, ex officio; a member appointed by the Governor, and the Secretary of Revenue (for certain limited purposes).

The taxpayer initiates the review process by requesting a hearing before the Secretary of Revenue within 30 days of receiving a proposed assessment. A taxpayer cannot obtain a hearing before the Tax Review Board without first having a hearing before the Secretary. Within 30 days of the Secretary's decision, the taxpayer must file a notice of intent to appeal with the Tax Review Board. The written petition is due 60 days after the filing of the notice. The same procedure applies to the denial of refund claims.

A taxpayer who chooses can pay the tax and within 30 days of the Secretary's decision bring a civil action instead of seeking administrative review with the Tax Review Board.

A taxpayer aggrieved by the Board's decision can file an appeal in Superior Court within 30 days of the Board's action. Under the provisions of the Administrative Procedure Act, review is limited to the record.<sup>34</sup>

#### North Dakota

Taxpayers have a right to a hearing before the Tax Commissioner following any determination of additional liability made by the Commissioner. A taxpayer may also apply for a revision of a tax at any time within three years after the return was filed. The Tax Commissioner must hold a hearing if he determines that the tax is incorrect or excessive. He is authorized to resettle the tax.

The taxpayer may appeal any final agency action according to the provisions of the Administrative Agencies Practice Act. The taxpayer has 30 days from the receipt of notice of the action to appeal to District Court. The Court will hear the appeal and review the evidence in the record.<sup>35</sup>

#### Ohio

The Ohio Board of Tax Appeals hears appeals from the County Board of Revision (property tax), the Tax Commission, and the Commissioner of Tax Equalization. The Board is composed of three members appointed by the Governor. The Board of Appeals obtains a transcript of the proceedings before the Tax Commissioner or the Commissioner of Tax Equalization. A taxpayer must file a petition with the Tax Commissioner within 30 days after service of the notice of assessment. Following a hearing, the tax becomes due and payable within three days. The taxpayer has 30 days after the Tax Commissioner's decision to appeal to the Board.

The Board may order the appeal to be limited to the record, but upon the application of a party, the Board can order the introduction of additional evidence.

The taxpayer may appeal to the Supreme Court or to the Court of Appeals for the county in which the property is located or in which he lives. The appeal must be taken within 30 days of the Board's decision. If upon the record the Court finds that the decision of the Board was lawful and reasonable, it must affirm the decision.<sup>36</sup>

#### Oklahoma

A taxpayer may protest an additional assessment within 30 days after the notice is mailed. If the taxpayer requests a hearing, the Commission must grant the hearing and advise the taxpayer of the date. The taxpayer may appeal any order of the Commission directly to the Supreme Court of Oklahoma by filing a written notice with the Tax Commission of his intention to appeal within ten days of the order. Within 30 days from the Commission's order, the taxpayer must file a petition with the Clerk of the Supreme Court. Payment of the tax is a jurisdictional prerequisite. In lieu of payment, a taxpayer may file a bond with the Commission in double the amount of the tax.

The taxpayer has the option of paying the tax and suing for a refund, within the same 30-day limitations period. This judicial remedy is available without exhausting any administrative remedies, provided that the taxes are an unlawful burden on interstate commerce, or that their collection violates a congressional act or a

provision of the federal constitution, or that jurisdiction is vested in the federal courts.<sup>37</sup>

### Oregon

The Oregon Tax Court is a court of record and of general jurisdiction. The Court has judicial authority to hear and decide all questions arising under the tax laws. All proceedings before the Court are original proceedings, tried de novo without a jury.

In the case of proceedings to set aside an order of the Department of Revenue, the issues of fact and law are restricted to those raised by the parties before the Department. The Court promulgates rules of practice and procedure for the conduct of proceedings, except with respect to the small claims division, which conforms to the rules of equity practice and procedure in the State.

A judge of the Tax Court is elected for a term of six years. A judge must be an attorney who has practiced for at least three years preceding his election.

A taxpayer may pursue an appeal in the Small Claims Division of the Tax Court. Hearings are informal and judgments cannot be appealed.

Appeals to the Tax Court must be filed within 60 days after a copy of the Department's order has been served on the appellant. The appeal may include issues of law which cannot be raised before the Department. If the Department fails to respond to the appeal within 12 months, the appeal is considered denied and a taxpayer can bring suit in the Tax Court. The Tax Court may, as a condition

of staying collection of the tax, require the posting of a bond sufficient to guarantee the payment of the tax.<sup>38</sup>

#### Pennsylvania

The Board of Finance and Revenue hears appeals from the Department of Revenue. A taxpayer may first file a petition for review with the Department within 90 days of any assessment. The Department must dispose of the petition within six months. The taxpayer has 90 days from the date on which the Department of Revenue mails its decision in which to request review by the Board. The Board's members are the State Treasurer, the Attorney General, the Secretary of the Commonwealth, the Auditor General, and the Secretary of Revenue. The Board must act on all appeals within six months.

The Board designates monthly meeting dates for hearing oral arguments, but a taxpayer may elect to have his case decided on the record. The oral presentation is relatively informal. Either immediately following oral argument or within a few days, the Board discusses the case and votes. Decisions are mailed shortly thereafter.

The taxpayer may appeal from the Board's decision within 30 days to the Commonwealth Court. The hearing is de novo, except that the taxpayer may only raise those questions argued below.<sup>39</sup>

#### Rhode Island

A taxpayer may petition the Tax Administrator for a redetermination of a deficiency assessment within 90 days of the mailing of such notice. The petition may also assert a claim for refund.

No petition may be denied without an opportunity for the taxpayer to present his case during a hearing. The taxpayer may appeal the Tax Administrator's decision to the Sixth Division of the Division Court. The Court is authorized to determine the correct amount of the liability. Unless the taxpayer files a bond with the Tax Administrator, a pending review in court will not stay collection of the tax.<sup>40</sup>

#### South Carolina

A taxpayer may apply to the Tax Commission for revision of an assessed tax at any time within one year from the filing of the return or from the date of the notice of the assessment. The Commission is authorized to hold a hearing and redetermine an incorrectly assessed tax. An aggrieved taxpayer may pay the tax under written protest and bring an action within 30 days for a refund.<sup>41</sup>

#### South Dakota

A taxpayer wishing to challenge the assessment of a tax must pay the tax under written protest. Within 30 days after payment and the filing of a notice of protest, the taxpayer must serve a petition on the Secretary of Revenue. The petition must be verified and state the legal and factual reasons for the taxpayer's claim. Upon receipt of the petition, the agency proceeds under the "contested case provisions" of the South Dakota Administrative Procedures Act. A taxpayer is entitled to judicial review if filed within 30 days of the decision. Review is conducted by the courts without a jury and is confined to the record.<sup>42</sup>

## Tennessee

The Department of Revenue provides an opportunity for a hearing at the taxpayer's request if made within ten days of the Department's disputed action. The Commissioner of Revenue may personally hold such hearings or designate a hearing officer. The Commissioner may utilize prehearing conferences to simplify issues. An informal disposition may also be made of any contested action.

If a formal hearing is held, the hearing officer submits his fact-findings and conclusions of law to the Commissioner within a reasonable time after the conclusion of the hearing. If the Commissioner concurs, he issues the same findings. However, he may upon review of the record make such conclusions as the record justifies.

A taxpayer is required to pay the tax under protest in order to pursue an appeal to courts. The taxpayer may at any time within six months after payment sue for a refund. Suit is brought against the collection officer.<sup>43</sup>

## Texas

The State Comptroller administers the various State taxes and makes assessments. A person may contest an assessment by filing a petition for redetermination with the Comptroller within 30 days of the date of the notice of the assessment. Taxpayers are entitled to a hearing at their request. An order of the Comptroller becomes final 15 days after service on the taxpayer. A taxpayer may also obtain a hearing on a refund claim.

Further review requires payment of the tax under protest. The protest must be in writing and state the reason for recovering

payment. The taxpayer has 90 days after the date of the protest payment to bring suit. The trial is de novo.<sup>44</sup>

### Utah

The Utah Tax Commission assesses taxes and hears appeals from its determinations. A taxpayer has 90 days from the date of the notice to file a petition for redetermination. The petition must specify each error alleged to have been committed by the Tax Commission, together with a statement of facts upon which the taxpayer relies. A hearing is held at the taxpayer's request. The action of the Tax Commission on the petition becomes final 30 days after the date of mailing of the notice. Before appealing to the Tax Division of the District Court, the contested taxes must be deposited with the Tax Commission.

The Tax Court Act of 1977 created a Tax Division in each of the District Courts, with jurisdiction over all petitions for review of Tax Commission decisions rendered after a formal hearing. Within 30 days after notice of any decision by the State Tax Commission, a taxpayer may file a petition for review in the Tax Division of the District Court located in the county of the taxpayer's residence. As an alternative, a taxpayer may elect to waive review and trial de novo in the district court and seek review by the Utah Supreme Court upon writ of certiorari.

Proceedings in the District Court are independent proceedings without a jury by a trial de novo. The issues of fact and law are restricted to those raised by the parties in the hearing before the Commission. The sole remedy for review of a decision of the tax division of the District Court is appeal to the Supreme Court.<sup>45</sup>

### Vermont

A taxpayer may petition the Commissioner of Taxes within 30 days after receipt of a deficiency assessment. The Commissioner shall grant a hearing and notify the taxpayer in writing of his determination. The Commissioner conducts the hearing according to the provisions on administrative procedure in contested cases.

The taxpayer has 30 days from the Commissioner's determination to file an appeal in Washington Superior Court or the superior court of the county in which the taxpayer resides or has business. Judicial review of administrative proceedings are confined to the record.<sup>46</sup>

### Virginia

A taxpayer may pursue an appeal from an assessment by applying for relief to the State Tax Commissioner within 90 days from the date such assessment was mailed. As soon as possible after the filing of the petition, the Commission sets a date for the hearing. The Commission sits in its capacity as a court and considers all matters of law and fact. Petitions for refund of any fee or assessed tax must be filed within one year of the payment of such fee or tax. A taxpayer aggrieved by the action of the Commission may present a petition to the Supreme Court or Appeals for a writ of error and supersedeas.

Any person assessed with any tax administered by the Department of Taxation may, within three years from the date of such assessment, apply to a Circuit Court for relief. The tax must be paid before judicial review is granted.<sup>47</sup>

### Washington

The Board of Tax Appeals hears appeals from decisions of the County Board of Equalization as well as from the Director of Revenue. The three members are appointed by the Governor. A person may appeal a notice of a denial of a petition or a notice of determination within 30 days from the date of the decision. A party has the option of a formal or informal hearing. The petition to the Board must state if the taxpayer intends to hold the hearing pursuant to the Administrative Procedure Act.

A taxpayer may obtain a de novo judicial review of the Board's decision only if the decision was rendered pursuant to an informal hearing. If the taxpayer had a formal hearing, the provisions of Title 34 on Administrative Law apply to the appeal process. Review is confined to the record. Pursuant to Title 34, the petition must be served and the tax must be paid within 30 days of the final decision of the agency.

A taxpayer has the option of suing for a refund. Within ten days after filing a notice of appeal, the taxpayer must file a surety bond payable to the State for \$200. The trial in the Superior Court is de novo. The taxpayer need not protest against payment of any tax or petition the Director for a hearing in order to appeal to Superior Court. This judicial review, however, does not apply to any tax that has been the subject of an appeal to the Board of Tax Appeals for which a formal hearing was elected. No refund may be made by the Department for taxes paid more than four years prior to the beginning of the calendar year in which the refund application is made.<sup>48</sup>

### West Virginia

A taxpayer has 60 days after the service of a notice of assessment to file a petition for review with the Tax Commissioner. If a taxpayer is not satisfied with the Tax Commissioner's determination of a refund claim, or if the Tax Commissioner has not determined the claim within 90 days of its filing, the taxpayer may file a petition stating any objections. The petition must be filed within 60 days after the taxpayer is served with notice of denial of the claim. The taxpayer is entitled to a hearing on the petition contesting an assessment or the denial of a refund claim. The hearing must be held within 90 days from the date of filing of the petition.

The hearing is informal. It is conducted by the Tax Commissioner or a hearing examiner designated by the Commissioner. The taxpayer has the burden of proving that the assessment is incorrect.

The taxpayer may appeal the Commissioner's decision to the Circuit Court within 60 days of such decision. The taxpayer must file a cash bond or a corporate surety bond with the Clerk of the Circuit Court. The Court determines anew all questions submitted to it.<sup>49</sup>

### Wisconsin

The Tax Appeals Commission is the independent agency established to hear tax appeals. The Commission is the final authority for the determination of all questions of law and fact arising under the tax laws. The Commission is composed of three members who are appointed by the Governor.

A taxpayer must appeal determinations of the State Board of Assessors within 15 days; appeals from all other decisions must be made within 60 days. No taxpayer may have a matter reviewed by the Court unless the taxpayer had a hearing before the Commission. The appeal to the Circuit Court must be filed within 30 days.<sup>50</sup>

#### Wyoming

The three members of the State Tax Commission serve as the executive and administrative heads of the Department of Revenue and Taxation and also as the State Board of Equalization. The State Board of Equalization hears appeals from county boards of equalization, reviews State excise tax cases, and reviews its own assessments of property and tax determinations. The three members of the Commission are appointed by the Governor, with Senate confirmation, to six year terms.

The Commission may not compromise or reduce the tax liability of any person owing a tax. The Commission is required to assess and levy the full amount. An aggrieved taxpayer may appeal a decision pursuant to the Wyoming Administrative Procedure Act. Appeal is to a county district court, where a trial de novo is available.<sup>51</sup>

NOTES TO APPENDIX I

1. ALA. CODE §40-18-40; 40-2-22 (1975).
2. ALASKA STAT. §§43.05.240; 43.05.250 (1977).
3. ARIZ. REV. STAT. ANN. §§42-141; 43-532; 43-553 (1980).
4. ARK. STAT. ANN. §§84-4719; 84-4720; 84-4721 (1980).
5. CAL. CONST. ART. 13 §17; CAL. REV. TAX CODE §§18591, 18593, 18596, 19082, 19083, 19085.
6. COLO. REV. STAT. §§39-21-103, 39-21-104, 39-21-108, 39-21-105 (Supp. 1981).
7. CONN. GEN. STAT. ANN. §§12-510, 12-521, 12-522.
8. DEL. CODE ANN. TIT. 30 §§329, 321, 1182, 1185, 1203, 330, 331.
9. State Tax Comm. v. Wilmington Trust Co., 266 A.2d 419 (Del. Super. Ct. 1968).
10. D.C. CODE ANN. §§11-1201, 47-3304, 11-908 (1981).
11. FLA. STAT. ANN. §214.11 (1980); FLA. ADMIN. CODE Ch. 12 C-1.311; FLA. STAT. ANN. §120.68; FLA. ADMIN. CODE Ch. 12c-1.311(5).
12. GA. CODE ANN. §91A-241, 217, 245, 255.
13. HAWAII REV. STAT. §§232-16, 232-8, 232-13, 232-12, 235-114, 232-10 (1976).
14. IDAHO CODE §§63-3811, 63-3049, 63-3809, 63-3815, 63-3812 (1976).
15. ILL. ANN. STAT. CH. 120, §§9-904, 9-908, 9-910, 9-914, CH. 110 §267, CH. 100 §12-1201, CH. 120 §9-902(b) CH. 110, §274.
16. IND. CODE ANN. §§6-8.1-3-1, 6-8.1-5-1, 6-8.1-9-1, 6-8.1-8-2.
17. IOWA CODE ANN. §§421.1, 422.28, 422.29; IOWA ADMIN. CODE §730-2.2; IOWA CODE ANN. §17A.19.
18. KAN. STAT. ANN. §§74-2437, 74-2433, 74-2438, 74-2426 (1980).
19. KY. REV. STATE. §§131.340, 131.315, 131.340, 131.370.
20. LA. REV. STATE. ANN. §§47:1407, 47:1403, 47:1565, 47:1625, 47:1434.
21. ME. REV. STAT. ANN. TIT. 36, §151, TIT. 5, §11002, TIT. 5, §11006.
22. MD. ANN. CODE ART. 81, §§224, 259, 260, 229.
23. MASS. ANN. LAWS CH. 58A, §1, CH. 62C, §2, CH. 62C, §39, CH. 58A, §10, CH. 58A, §13.

24. MICH. COMP. LAWS ANN. §225.731, §205.735, §205.743, §205.753; see also Morgan, The Michigan Tax Tribunal, 56 Mich. State B.J. 135 (1977); Op. Atty. Gen. 1976, Mo. S138, p. 704; 306 N.W. 2d 461, 105 Mich. App. 231 (1981).

The Tax Tribunal has a complicated history. In 1974, the Tax Tribunal was created to hear protests of property valuations. The Tax Tribunal was to assume jurisdiction of all tax appeals from the State Board of Tax Appeals beginning in January, 1977. The initial proposal envisioned an agency that functioned both as a trier of contested tax cases and as an administrator of the various State taxes. However, the final provisions omitted the administrative functions. Administration of the property tax laws rests primarily with the State Tax Commission. Other taxes are administered by the Revenue Division of the Department of the Treasury.

The Tax Tribunal's functions were substantially undercut when the law granting the Tribunal jurisdiction over tax appeals that were formerly heard by the State Board of Tax Appeals was declared unconstitutional by the Attorney General because it violated Article 4, Section 25 of the State Constitution for attempting to amend or revise another statute by reference to its title alone. In subsequent litigation, the Attorney General's opinion was reversed. Meanwhile, the Legislature acted on the presumed validity of the Attorney General's opinion and passed statutes in 1980 which maintained the existence of the State Board of Tax Appeals. The new enactments also amended specific tax statutes and repealed those provisions which provided specific methods of review. The 1980 statutes designated January 1981 as the new cutoff date for transfer of appeals to the Tax Tribunal.

25. MINN. STAT. ANN. §271.01, §271.06, §271.013, §271.10, §271.21.
26. MISS. CODE ANN. §27-7-79, §27-7-71, §27-7-73.
27. MO. ANN. STAT. §161.252, §161.273, §536.110, §536.140.
28. MONT. CODE ANN. §§15-2-201, 15-2-101, 15-2-102, 15-2-301, 15-2-302, 15-2-303, 2-4-704.
29. NEB. REV. STAT. §77-501, 77-27, 84-917.
30. NEV. REV. STAT. §§360.010, 360.245, 360.360, 360.390, 360.400, 233B.020, 233B.130, 233B.140.
31. N.H. REV. STAT ANN. §§71-3:5, 71-8:1, 71-b:25, 71-B:11, 70-B:12, 541:6, 541:13.
32. N.J. STAT. ANN. §§2A:3A-1, 2A:3A-4.1.
33. N.M. STAT. ANN. §7-1-24, §7-1-25, §7-1-26.
34. N.C. GEN. STAT. §§105-2698.2, 105-241.1, 105-241.2, 105-241.4, 105-241.3, 150A-51.
35. N.D. CENT. CODE §§57-01-11, 57-38-40, 28-32-15, 28-32-19.
36. OHIO REV. CODE ANN. §§5717.01, 5717.02, 5703.03, 5745.07, 5717.04.
37. OKLA. STAT. ANN. TIT. 68 §§221, 225, 226.

38. OR. REV. STAT. §§305.405(1), 305.425, 305.452, 305.455, 305.555, 305.560, 305.565.
39. PA. STAT. ANN. TIT. 72, §§1102, 1103, 1104, TIT. 71 §115; see also Schweintz. Practice and Procedure of the Board of Finance and Revenue, 36 Temp. L. R. 443. 456-7 (1963).
40. R.I. GEN. LAWS §44-30-89, §44-30-90.
41. S.C. CODE ANN. §§12-7-2300, 12-47-220.
42. S.D. COMP. LAWS ANN. §§10-55-2, 10-55-4, 10-55-5, 1-26-31, 10-55-6, 1-26-35.
43. TENN. CODE ANN. §§67-101, 67-2303, 67-2305.
44. TEX. TAX CODE ANN. §§111.009, 112.051, 112.054, 112.054.
45. UTAH CODE ANN. §§59-14A-71, 59-14A-72, 59-14A-74, 59-14A-77, 59-24-1, 59-24-2, 59-24-3, 59-24-8.
46. VT. STAT. ANN. TIT. 32, §§5883, 5885, TIT. 3 §815.
47. VA. CODE §§58-1118, 58-1124, 58-1122, 58-1126, 58-1130.
48. WASH. REV. CODE ANN. §§82.03.130, 82.03.190, 82.03.020, 82.03.140, 82.03.180, 34.04.130, 82.32.180.
49. W. VA. CODE §§11-10-8, 11-10-9, 11-10-10.
50. WIS. STAT ANN. §§73.01(4), 73.01(5), 73.015, 227.16.
51. WYO. STAT. §§39-1-302, 39-1-304, 39-1-305, 39-1-306; WYOMING CONSTITUTION ARTICLE 15, §10.

## APPENDIX II

### INDEPENDENCE OF TAX ADJUDICATION IN THE CONTEXT OF ADMINISTRATIVE ADJUDICATION GENERALLY

This Report suggests that a primary defect in the existing system of tax appeals is the failure to provide a decisionmaking agency that is entirely independent of the functions of tax collection and administration. At the least, the existing structure creates a perception that the process for determining the relevant facts and law creates a risk of bias. The President of the Tax Commission's other role as executive officer of the Department means that he is called upon to judge the very acts for which he is responsible. His role as the promulgator of regulations carries the risk that he will bring the policy considerations that properly concern him as "legislator" to the tasks demanded of him as a "judge." For these reasons, one of the options facing the State is to structure the appeals process so that it is entirely divorced from the other functions of the Department.

The combination of adjudicatory, executive, and legislative functions exhibited by the State Tax Commission is typical of the pattern existing in other administrative agencies in New York and in other American jurisdictions. In light of this widespread practice, it is necessary to examine in more detail the reasons that might justify or fail to justify this pattern with respect to tax appeals.

In brief, the argument that is put forward proceeds as follows. Independent adjudication provides the norm for deciding legal controversies in our system of government. Deviations from

that norm require special justifications. Such justifications have been developed to defend the combination of functions in certain types administrative agencies, but those justifications are without force in the context of the determination of tax appeals. Consequently the norm of independent adjudication ought to prevail.

#### A. The Model of Independent Adjudication

The standard mechanism for determining the rights and obligations of individuals in our legal system is adjudication by independent courts of law. Ordinarily, adjudication is thought of as a process in which a court decides a concrete controversy by impartially applying pre-existing and impersonal rules. A court does not apply its own judgment of the merits, but utilizes more general judgments that have already been made and which have been embodied in the applicable rules of law. Modern students of jurisprudence may find this orthodox view unrealistic but there is little doubt that it describes the deep seated expectations of most litigants and lawyers concerning the task of courts of law.

To be sure, it is generally recognized that there is an inevitable legislative and therefore minimally discretionary aspect to adjudication under the common law. But even common law adjudication is ordinarily severely constrained by well established precedents and it is only the exceptional and novel case in which judicial creativity plays a major role. Thus, common law policy-making by courts is, in Holmes' phrase, "confined from molar to molecular motions."<sup>1</sup> Such adjudication, therefore, is not inconsistent with the general conception of the role of courts as involving the application of established rules and standards.

The wide support for this view is probably a product of a conviction that the coercive power of legal authority ought to be applied only when the individuals who are subject to it can be presumed to have advance warning. In this way, both liberty and security from arbitrary government action are promoted. The insistence on government action through a priori, general, and known rules, lies at the heart of our traditional concept of the "rule of law."

This standard view of adjudication conceives of courts as acting within objectively defined limits. Notions of the character or worth of the particular litigants or some judicially defined idea of the general welfare outside of those limits are improper considerations for a court. The independence of the judiciary, by reducing the likelihood that these factors will intrude into judicial decisionmaking, is thus a critical element of the concept of fair adjudication.

#### **B. Distinguishing Administrative Adjudication**

The combination of functions in administrative agencies is clearly in conflict with the standard model of independent adjudication. This departure from the norm has, however, been defended on the grounds that the tasks committed to administrative agencies are significantly different from those expected of courts of law.

Defenders of the combination of functions in administrative agencies have largely relied on the functional differences between agencies and courts. A court exists to apply static, predetermined rules. In contrast, an administrative agency is an action-oriented entity, created to achieve certain goals often only broadly defined

in statute. Unlike a court, the agency is charged with reshaping the world to accomplish its legislative goal. This mission requires the agency constantly to make new decisions of policy within the broad boundaries suggested by the governing legislation. These particular policy decisions are purposely left to the discretion of the agency which is assumed to be more capable in this regard than a legislature. In addition, these policymaking powers are to be exercised in whatever form is most likely to advance the agency's general purpose. They cannot be confined to executive decisions and legislation but, when appropriate, ought to extend to the agency's adjudication as well. Consequently, adjudication should be under the control of the policymakers--that is, the agency heads.

These special needs of administrative agencies, which are supposed to justify a departure from the standard model, are sometimes illustrated by an analogy to the management of a business enterprise. Certainly it would be unnatural in designing a business organization to divide it between two entirely independent departments: one having responsibility for setting business policy and the other having responsibility for the application of that policy in specific instances. This organizational scheme would clearly be an inefficient way of achieving the business's goals.<sup>2</sup>

Nonetheless, it is exactly this "inefficient" structure that has been chosen for the conduct of most "public business" insofar as it directly controls individual activity. The desire for effective government is subordinated to a general distrust of governmental power. The safety and security of restricting government by

the rule of law is preferred to whatever social benefits might be attained by implementing policy on a case-by-case bases, without warning, in the course of making governmental decisions concerning individual behavior.<sup>3</sup> Notwithstanding the now well-established exception of administrative agencies, this is still the norm in American government. Departures from it--such as those inherent in the New York State Tax Commission--ought to bear the burden of showing in each case that they are justified.

### C. Possible Justifications for the New York State Tax Appeals System

The literature that defends the combination of functions in administrative agencies suggests how to evaluate whether that special burden of justification has been carried. In general, it must be shown that the maintenance of adjudication under the control of the agency heads is necessary for the agency effectively to discharge its policymaking functions. In particular, three conditions must be satisfied. First, the area of law being administered must require frequent policy decisions that cannot be implemented by ordinary legislation. Second, those policy decisions must demand case-by-case formulation so that they could not be adequately addressed by prospective and general rules. Third, the necessary case-by-case policymaking must be undertaken by the same agency to which the other aspects of policy-creation and implementation have been committed and cannot be competently performed by an independent board or tribunal. Only if these three conditions are satisfied can a case be made for vesting the adjudicatory function in the same persons who are responsible for supervising the affairs of

the administrative agency. But satisfying these three conditions will not, by itself, be sufficient to justify such an arrangement. It is also necessary to show that the need for combining the adjudicatory and supervisory functions is so acute that it outweighs the risk of injury that is always inherent in abandoning the ordinary adherence to the separation of powers. These factors are now examined in the context of the New York tax appeals system.

First, is the administration of the tax laws of New York the kind of governmental activity which requires constant and detailed policymaking? This would be the case if the subject matter to be regulated were so elusive that general rules made in advance by the Legislature could not adequately achieve their principal goals.<sup>4</sup> Unlike such general legislative objectives as discouraging "unfair and deceptive practices," promoting "fair competition," or serving "the public interest and convenience,"<sup>5</sup> the goals of the tax system have been traditionally regarded as achievable through precise formulation by legislation. Certainly the actions of the New York Legislature, which has set forth its tax policies in a lengthy and detailed code of legislation, are consistent with this view.<sup>6</sup>

Second, even assuming a need exists for the State Tax Commission to make some discretionary policy decisions, vesting adjudicatory power in it can only be justified if there is a need for that policy to be made on a case-by-case basis, instead of through the use of prospective rules. Perhaps in some areas of regulation such policymaking by general rule may not be effective, for example, if the subject matter being regulated is prone to substantial and frequent changes so that a fixed policy prescription designed for one

set of circumstances cannot be relied upon to meet the overall objective in a different situation. In addition to rapidly changing circumstances, some areas of administrative jurisdiction may be so varied and complex that policy must be enunciated somewhat differently in each case--a state of affairs that favors policymaking by adjudication.<sup>7</sup>

The subject matter of policymaking in the tax field is extremely varied. It is far from clear, however, that the kinds of fact situations which are usually present in contested tax determinations are so different that they call for truly novel policy decisions rather than the application of established policy to new circumstances. Moreover, as the length and detail of the New York tax law indicates, the Legislature has responded to the complexity of fact situations by addressing the subject with great particularity.

Furthermore, even in the kinds of circumstances described for which adjudication has been claimed to be a particularly appropriate policymaking vehicle, the rulemaking process may still be workable. A leading commentator has argued that the flexibility of regulation by prior rule has been seriously underestimated:

A rule can be written in the form of a set of facts and an answer, and the rule can specifically provide that all the words used in the rule are to be evaluated against the single set of facts. A rule can do anything an adjudicatory opinion can do. . . . An adjudicatory opinion can never say anything that cannot be said as well or better in a rule.

Third, even if substantial policy decisions must be made in a continuing, discretionary way on a flexible case-by-case basis, a further need must be demonstrated. Such flexible policy formation

might also be developed in decisions made by a tribunal that is independent of the agency that has responsibility for prosecuting the cases. Consequently, the propriety of uniting all functions in one agency must depend on an argument that this policymaking must be in the same hands as those who otherwise make policy through rulemaking and enforcement decisions. Divided policymaking is common in those areas of law in which rules are promulgated by the Legislature and also, in a subordinate and limited way, by the independent common law courts. Divided policymaking also exists with respect to tax policy, insofar as interstitial policy decisions are made by the United State Tax Court and other federal courts deciding tax matters.<sup>9</sup> To justify retention of the adjudicatory function in the State Tax Commission, it is necessary to argue that policymaking by an independent tribunal would create unacceptable problems of coordination.<sup>10</sup> But the examples given of federal tax adjudication as well as those of other agencies in which cases are decided by independent boards show that this need not be the result.<sup>11</sup>

A somewhat different defense of uniting adjudicative with legislative and executive policymaking in the area of tax appeals might be based on the claim that an independent adjudicator would lack the technical competence to make such policy determinations intelligently. Although this position might be plausible with respect to a system that transfers adjudication from the agency to the common law courts, it is unconvincing if the independent tribunal contemplated would itself be limited to determination of tax issues and its members would be specially qualified in that field.

Finally, the need to retain adjudication in the primary agency is sometimes based on the desirability of using the process of decisionmaking in individual cases to inform the agency's other activities.<sup>12</sup> The experience of adjudication is deemed invaluable in allowing agency heads to understand the concrete impact of their actions. This argument is also unpersuasive with regard to tax appeal adjudication. Whatever information the agency acquires from adjudication could be as easily acquired from its participation in the same matters as an advocate and from the decisions rendered by the independent review agency.

This brief discussion reveals that none of the needs that would justify a departure from ordinary principles seems particularly acute in the field of tax appeals. The benefits that do accrue must be balanced against the risks associated with such a departure. Among these risks is the possibility that the combination of functions will lead to decisions influenced not merely by impersonal policy considerations, but also by such entirely extraneous factors as those discussed in this Report.

Additionally, the very intrusion of new policymaking considerations in adjudication imposes costs on taxpayers in the form of surprise, uncertainty, and retroactivity. In fact, it should be clear that the special needs discussed which, under certain circumstances, might justify such policy-oriented adjudication amount exactly to a defense, in these circumstances, of surprise, uncertainty and retroactivity.<sup>13</sup> But these needs should be great indeed before they are met in ways so alien to our legal tradition. Surely, no one would suggest that the imposition of criminal sanctions

should follow this model, although a plausible case might be made that society would benefit from a criminal law policy that was flexible, individualized, and coordinated with other law enforcement activities.<sup>14</sup> While stability, generality, and predictability are important values in all areas of law, it has been suggested that the requirements of economic planners make them particularly critical in the field of taxation. This fact should arguably lead to requiring even stronger justification for ad hoc policymaking in tax administration.<sup>15</sup>

In sum, the reasons that are claimed to justify the combination of functions in other administrative agencies are, in the case of the State Tax Commission, insufficient to overcome the presumption in favor of impersonal, a priori rules applied by an independent and impartial tribunal.<sup>16</sup> Even in the absence of any showing of actual bias, this discussion points in the direction of changing the current structure.

## NOTES TO APPENDIX II

1. Southern Pacific Co. v. Jensen, 244 U.S. 205, 221 (1917).
2. James M. Landis put the point this way: "If in private life we were to organize a unit for the operation of an industry it would scarcely follow Montesquieu's lines", quoted in J. FREEDMAN, CRISIS AND LEGITIMACY: THE ADMINISTRATIVE PROCESS IN AMERICAN GOVERNMENT 172-76 (1978).
3. "The known certaintie of the law is the safetie of all." E. COKE, INSTITUTES OF THE LAWS OF ENGLAND 395 (1633).
4. See K. DAVIS, DISCRETIONARY JUSTICE: A PRELIMINARY INQUIRY 20-21, 48 (1976).
5. See Stewart, note 54 supra, Chapter III at 1699; cf. Cohen & Rabin, note 57 supra, Chapter III at 691, 696.
6. N.Y. Tax Law SS1-1519.
7. See S.E.C. v. Chenery Corp., 332 U.S. 194, 202-03 (1943); Baker, Policy by Rule or Ad Hoc Approach--Which Should It Be? 22 Law & Contemp. Prob. 658, 661 (1957).
8. Davis, note 4 supra, Appendix II at 64 (emphasis in original). See also id. at 65-66. The Chenery case, note 7 supra, Appendix II, which endorsed agency policymaking by adjudication also noted that: "The function of filling the interstices of the Act should be performed, as much as possible, through quasi-legislative promulgation of rules to be applied in the future." 332 U.S. at 202.
9. Cf. Dobson v. Commissioner, 320 U.S. 489, 498-502 (1945).
10. Committee on Administrative Procedure, Administrative Procedure in Government Agencies S. Doc. No. 8, 77th Cong., 1st Sess. 57-59 (1941).
11. See Auerbach, note 54 supra, Chapter III at 239.
12. See Fuchs, Agency Development of Policy Through Rule-Making, 59 N.W.U.L. Rev. 78, 789-90 (1965); Cohen & Rabin, note 57 supra, Chapter III at 715-16, 725; Baker, note 7 supra, Appendix II at 661.
13. See Lorch, note 54 supra, Chapter III at 49; Baker, note 7 supra, Appendix II at 662; Cohen & Rabin, note 57 supra, Chapter III at 714; Fuchs, note 12 supra, Appendix II at 793; S.E.C. v. Chenery Corp., 332 U.S. 194, 203 (1947).
14. See Stewart, note 54 supra, Chapter III at 1699.
15. See L. Wright, note 60 supra, Chapter III at 43.
16. See Chapter III at 17-25.

S B

403

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of \_\_\_\_\_ 5-DAY NOTICE  
IN ACCORDANCE WITH UNIFORM RULE 23

FURTHER:

\*\*FISCAL NOTE(S) ATTACHED \_\_\_\_\_ \*\*  
IN ACCORDANCE WITH AS 24.08.035  
(see below)

2/10/88 DATE TURNED INTO OFFICE \_\_\_\_\_  
Mr. President: \_\_\_\_\_  
Finance \_\_\_\_\_ Committee considered SB 403

prohibiting the sale of alcoholic beverages in plastic containers; efd.

and recommended:

- replace with CS \_\_\_\_\_  same title
- attached amendment(s) and  new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- further referral to \_\_\_\_\_
- letter of intent adopted and attached

\*\* Committee  attached or  adopted fiscal note(s)  
 zero  fiscal impact

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

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Committee Backup Attached

\_\_\_\_\_  
Chairman signature and recommendation

Introduced: 2/10/88  
Referred: Finance

5-1785A

1 IN THE SENATE

BY BINKLEY

2 SENATE BILL NO. 403

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act prohibiting the sale of alcoholic beverages  
7 in plastic containers; and providing for an effective  
8 date."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 \* Section 1. AS 04.16 is amended by adding a new section to read:

11 Sec. 04.16.105. PROHIBITION ON PLASTIC CONTAINERS. A person may  
12 not sell alcoholic beverages in plastic containers.

13 \* Sec. 2. This Act takes effect July 1, 1988.

**ALASKA STATE LEGISLATURE**

. . 15th Legislature . . 2nd . Session

SENATE . BILL . . . . . NO. 403 . .

By . BINKLEY . . . . .

"An Act prohibiting the sale of alcoholic beverages in plastic containers; and providing for an effective date."

Introduced in the Senate .2/10. . . . ., 19 88. . . .

**HISTORY IN THE SENATE**

1988		Read first time and referred to Committee on										
2	10	<b>FINANCE</b> Reported back with recommendation that										
		Read second time and										
		Read third time and										
		<table border="0"> <tr> <td>PASSED</td> <td>Effective Date</td> </tr> <tr> <td>Yeas</td> <td>Yeas</td> </tr> <tr> <td>Nays</td> <td>Nays</td> </tr> <tr> <td>Excused</td> <td>Excused</td> </tr> <tr> <td>Absent</td> <td>Absent</td> </tr> </table>	PASSED	Effective Date	Yeas	Yeas	Nays	Nays	Excused	Excused	Absent	Absent
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		Reconsideration Reconsideration not taken up										
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Absent	Absent											
		Reported correctly engrossed Signed by President Sent to House										
SECRETARY OF THE SENATE												

**HISTORY IN THE HOUSE**

19		Read first time and referred to Committee on										
		Reported back with recommendation that										
		Read second time and										
		Read third time and										
		<table border="0"> <tr> <td>PASSED</td> <td>Effective Date</td> </tr> <tr> <td>Yeas</td> <td>Yeas</td> </tr> <tr> <td>Nays</td> <td>Nays</td> </tr> <tr> <td>Excused</td> <td>Excused</td> </tr> <tr> <td>Absent</td> <td>Absent</td> </tr> </table>	PASSED	Effective Date	Yeas	Yeas	Nays	Nays	Excused	Excused	Absent	Absent
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		Reported correctly engrossed Signed by Speaker Returned to Senate										
CHIEF CLERK OF THE HOUSE												

**HISTORY IN THE SENATE**

19		Received from House
		To enrolling
		Reported correctly enrolled
		Sent to Governor
		..... by Governor
		Chapter No. ....
		Filed with Lt. Governor

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: An Act Prohibiting Sale of  
Alcoholic Beverages in Plastic Cont.  
Sponsor: Senator Binkley  
Requestor: Senate Finance

Agency Affected: Revenue  
BRU: Alcoholic Beverage Control Board  
Components: Operating

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
<b>OPERATING</b>						
PERSONAL SERVICES	-	-	-	-	-	-
TRAVEL	-	-	-	-	-	-
CONTRACTUAL	-	-	-	-	-	-
SUPPLIES	-	-	-	-	-	-
EQUIPMENT	-	-	-	-	-	-
LANDS & STRUCTURES	-	-	-	-	-	-
GRANTS, CLAIMS	-	-	-	-	-	-
MISCELLANEOUS	-	-	-	-	-	-
<b>TOTAL OPERATING</b>	-	-	-	-	-	-
<b>CAPITAL</b>	-	-	-	-	-	-
<b>REVENUE</b>	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-	-	-	-	-	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	-	-	-	-	-
<b>TOTAL</b>	-	-	-	-	-	-

POSITIONS:

FULL-TIME	-	-	-	-	-	-
PART-TIME	-	-	-	-	-	-
TEMPORARY	-	-	-	-	-	-

ANALYSIS: (Attach a separate page if necessary)

Prepared By: Patrick L. Sharrock, Director Phone: 277-8638  
Division: Alcoholic Beverage Control Board Date: February 18, 1988

Approved by Commissioner: Hugh Malone Date: February 18, 1988  
Agency: Department of Revenue

Distribution (by preparer):  
Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)

FEB 23 1988

SB

4044

SENATE COMMITTEE REPORT

FURTHER

3/21/88

DATE TURNED INTO OFFICE \_\_\_\_\_

Mr. President:

FINANCE Committee considered SB 404

transportation and municipal regulation and taxation of alcoholic beverages

and recommended

replace with \_\_\_\_\_ CS \_\_\_\_\_ )  same title  
 or adopt \_\_\_\_\_ CS \_\_\_\_\_ )  new title

attached amendment(s) and

do pass

do not pass

no recommendation

individual recommendations

further referral to \_\_\_\_\_

letter of intent adopted \_\_\_\_\_

Committee  attached or  adopted fiscal note(s)  
 new  updated or  previous  
 zero  fiscal impact

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

\_\_\_\_\_  
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\_\_\_\_\_  
Chairman signature and recommendation

Committee Backup attached

SENATE COMMITTEE REPORT

5-17236

FIRST COMMITTEE OF REFERRAL

(b)

Date of 3/10/88 5-DAY NOTICE  
IN ACCORDANCE WITH UNIFORM RULE 23

FURTHER: Finance

\*\*FISCAL NOTE(S) ATTACHED yes \*\*  
IN ACCORDANCE WITH AS 24.08.035  
(see below)

2/10/83

DATE TURNED INTO OFFICE 3/18/88

Mr. President:

C&RA Committee considered SB 404

transportation and municipal regulation and taxation of alcoholic beverages.

and recommended:

replace with CS for SB 404 (CRA)  same title  
 attached amendment(s) and  new title

do pass

do not pass

no recommendation

individual recommendations

further referral to \_\_\_\_\_

letter of intent adopted and attached

*OFot*

\*\* Committee  attached or  adopted fiscal note(s)  
 zero  fiscal impact

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

1 Tim Kelly  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2 Mike Szymanski - do not pass  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Arthur Stuparukki Do Pass  
Chairman signature and recommendation

Committee Backup Attached

# Alaska State Legislature

ARLISS STURGULEWSKI, Chairman  
TIM KELLY, Vice Chairman  
RICK HALFORD  
MIKE SZYMANSKI  
FRED ZHAROFF



P. O. BOX V  
JUNEAU, ALASKA 99811  
(907) 465-4989

## Senate Community and Regional Affairs Committee

March 3, 1988

TO: Senate Community and Regional Affairs Committee Members

FROM: Senate C&RA Staff *MSA*

RE: SB 404 - "An Act relating to transportation and municipal regulation and taxation of alcoholic beverages"

SB 404 changes three aspects of the law dealing with the transportation, importation, and taxation of alcohol.

Section 1 requires alcohol transported on a common carrier (more than two gallons of wine or beer or more than one gallon of distilled spirits) to be clearly labeled as alcohol.

Section 2 allows municipalities to regulate the importation of alcohol into their communities.

Section 3 would allow a community to impose a sales and use tax on alcoholic beverages if the municipality has banned the sale of alcohol.

This bill has zero fiscal notes from the Departments of Revenue and the Department of Public Safety. The Department of Community and Regional Affairs has not submitted a fiscal note but has indicated the bill will have no financial impact upon it.

A representative from the Department of Revenue will be at the meeting. Public Safety has indicated they will not be able to be at the meeting but has submitted a position paper supporting the bill.

BILL NO: SB 404

DATE: 3/2/88

TITLE: "An Act relating to transportation and municipal regulation and taxation of alcoholic beverages."

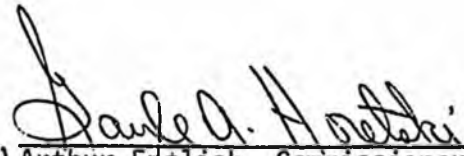
CONTACT: Col. Robert E. Jent

DEPARTMENT OF PUBLIC SAFETY  
PAPER /

Movement of alcoholic beverages by common carrier to "dry" rural communities is often made in unlabeled containers making identification difficult for law enforcement authorities.

Passage of this legislation will assist in maintaining a stricter control of alcoholic beverages being transported to local option villages.

The Department of Public Safety supports this legislation.

*for*   
Arthur English, Commissioner  
Department of Public Safety

FISCAL NOTE

REQUEST

Revision Date: \_\_\_\_\_  
Title: "An Act relating to . . . alcoholic beverages."  
Sponsor: Sen. Brinkley  
Requestor: Senate C&RA

Agency Affected: Public Safety  
BRU: Alaska State Troopers  
Components: Detachments and VPSO Contract/Support

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY88	FY89	FY90	FY91	FY92	FY93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUNDS						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact is anticipated.

Prepared by: Francis C. Allan  
Division: Alaska State Troopers

Phone: 269-5691  
Date: 3/2/88

Approved by Commissioner: *D. H. H. Dep. Comm.*  
Agency: Public Safety

Date: 3-2-88

Distribution: (by preparer):  
Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)

Original sponsor: Binkley

BY THE COMMUNITY AND REGIONAL  
AFFAIRS COMMITTEE

1 IN THE SENATE

2 CS FOR SENATE BILL NO. 404 (C&RA)  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 FIFTEENTH LEGISLATURE - SECOND SESSION  
5 A BILL

6 For an Act entitled: "An Act relating to transportation and municipal  
7 regulation and taxation of alcoholic beverages."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 \* Section 1. AS 04.16 is amended by adding a new section to read:

10 Sec. 04.16.125. TRANSPORTATION OF ALCOHOLIC BEVERAGES BY COMMON  
11 CARRIER. (a) A person may not use a common carrier to transport  
12 alcoholic beverages into an area that has restricted the sale of  
13 alcoholic beverages under AS 04.11.490, 04.11.492, or 04.11.500 unless  
14 the shipping container holding the alcoholic beverages is clearly  
15 labeled as containing alcoholic beverages.

16 (b) This section does not apply to a person transporting less  
17 than two gallons of wine or malt beverages, or less than one gallon of  
18 distilled spirits.

19 (c) In this section, "common carrier" means a motor vehicle,  
20 watercraft, aircraft, or railroad car available for public hire to  
21 transport freight.

22 \* Sec. 2. AS 04.21.010(a) is amended to read:

23 (a) A municipality may adopt ordinances governing the importa-  
24 tion, barter, sale, and consumption of alcoholic beverages within the  
25 municipality [AS NECESSARY FOR THE ORDERLY CONDUCT OF THE BUSINESS OF  
26 SELLING ALCOHOLIC BEVERAGES WITHIN THE MUNICIPALITY] and may ban  
27 possession of alcoholic beverages under AS 04.11.498(d) or (e). An  
28 ordinance adopted under this section may not be inconsistent with this  
29 title or regulations adopted under this title.

S

1 \* Sec. 3. AS 04.21.010(c) is amended to read:

2 (c) A municipality may not impose taxes on alcoholic beverages  
3 except a

4 (1) property tax [TAXES] on alcoholic beverage inventories;

5 (2) sales tax [TAXES] on alcoholic beverage sales if sales  
6 taxes are imposed on other sales within the municipality; [AND]

7 (3) sales tax [TAXES] on alcoholic beverage sales that were  
8 in effect before July 1, 1985; and

9 (4) sales and use tax on alcoholic beverages if the sale of  
10 alcoholic beverages within the municipality has been prohibited under  
11 AS 04.11.490.

1 IN THE SENATE

BY BINKLEY

2 SENATE BILL NO. 404

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to transportation and municipal  
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8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 \* Section 1. AS 04.16 is amended by adding a new section to read:

10 Sec. 04.16.125. TRANSPORTATION OF ALCOHOLIC BEVERAGES BY COMMON  
11 CARRIER. (a) A person may not use a common carrier to transport  
12 alcoholic beverages unless the alcoholic beverages and any shipping  
13 container holding them are clearly labeled and readily identifiable as  
14 alcoholic beverages or as containing alcoholic beverages.

15 (b) This section does not apply to a person transporting less  
16 than two gallons of wine or malt beverages, or less than one gallon of  
17 distilled spirits.

18 (c) In this section, "common carrier" means a motor vehicle,  
19 boat, aircraft, or railroad car available for public hire to transport  
20 freight.

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8 (4) sales and use tax on alcoholic beverages if the sale of  
9 alcoholic beverages within the municipality has been prohibited under  
10 AS 04.11.490.

FISCAL NOTE

REQUEST:

Revision Date:  
Title: "An Act relating to transportation  
and muncipal regulation and taxation of  
alcoholic beverages."  
Sponsor: Senator Birkley  
Requestor: Senate Finance

Agency Affected: Revenue  
BRU: ABC BOARD  
Components: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
OPERATING						
PERSONAL SERVICES	-	-	-	-	-	-
TRAVEL	-	-	-	-	-	-
CONTRACTUAL	-	-	-	-	-	-
SUPPLIES	-	-	-	-	-	-
EQUIPMENT	-	-	-	-	-	-
LANDS & STRUCTURES	-	-	-	-	-	-
GRANTS, CLAIMS	-	-	-	-	-	-
MISCELLANEOUS	-	-	-	-	-	-
TOTAL OPERATING	-	-	-	-	-	-
CAPITAL	-	-	-	-	-	-
REVENUE	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-	-	-	-	-	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	-	-	-	-	-
TOTAL	-	-	-	-	-	-

POSITIONS:

FULL-TIME	-	-	-	-	-	-
PART-TIME	-	-	-	-	-	-
TEMPORARY	-	-	-	-	-	-

ANALYSIS: (Attach a separate page if necessary)

Prepared By: Patrick L. Sharrock, Director Phone: 277-8638  
Division: Alcoholic Beverage Control Division Date: 03/02/88

Approved by Commissioner: Hugh Malone Date: 03/02/88  
Agency: Department of Revenue

Distribution (by preparer):  
Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)



**ALASKA STATE LEGISLATURE**

**.15th..** Legislature .. **2nd.** Session

SENATE... **BILL**..... NO. **404**..

By .. **BLNKLEY**.....

"An Act relating to transportation and municipal regulation and taxation of alcoholic beverages."

Introduced in the Senate .... **2/10**....., 19 **.88**..

**HISTORY IN THE SENATE**

19 88

Read first time and referred to Committee on

2 23

*C&RA referral added*

2 10

**FINANCE**

Reported back with recommendation that

3 21

*CRA's referral w/5, 2 drops, I do not pass, H.N. to fix*

Read second time and

Read third time and

**PASSED**                      Effective Date  
Yeas                              Yeas  
Nays                              Nays  
Excused                        Excused  
Absent                            Absent

Reconsideration  
Reconsideration not taken up

**PASSED**                      Effective Date  
Yeas                              Yeas  
Nays                              Nays  
Excused                        Excused  
Absent                            Absent

Reported correctly engrossed  
Signed by President  
Sent to House

SECRETARY OF THE SENATE

**HISTORY IN THE HOUSE**

19

Read first time and referred to Committee on

Reported back with recommendation that

Read second time and

Read third time and

**PASSED**                      Effective Date  
Yeas                              Yeas  
Nays                              Nays  
Excused                        Excused  
Absent                            Absent

Reconsideration  
Reconsideration not taken up

**PASSED**                      Effective Date  
Yeas                              Yeas  
Nays                              Nays  
Excused                        Excused  
Absent                            Absent

Reported correctly engrossed  
Signed by Speaker  
Returned to Senate

CHIEF CLERK OF THE HOUSE

**HISTORY IN THE SENATE**

19

Received from House

To enrolling

Reported correctly enrolled

Sent to Governor

..... by Governor

Chapter No. ....

Filed with Lt. Governor

STATE OF ALASKA  
THE LEGISLATURE

P.O. Box V  
Juneau, Alaska 99811

SENATE SECRETARY'S OFFICE

TO Finance

REMARKS: Please give Page  
SB 404 to bring to  
Carol. C&RA referral  
added. Thanks

FROM Carol DATE 2/2-3

2/24/88  
S (CURE)  
then File

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: An Act relating to transportation and municipal regulation/taxation of alcoholic beverages.  
Sponsor: Senator Binkley  
Requestor: Senate Finance

Agency Affected: Revenue  
BRU: Alcoholic Beverage Control Board  
Components: Operating

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
<b>OPERATING</b>						
PERSONAL SERVICES	-	-	-	-	-	-
TRAVEL	-	-	-	-	-	-
CONTRACTUAL	-	-	-	-	-	-
SUPPLIES	-	-	-	-	-	-
EQUIPMENT	-	-	-	-	-	-
LANDS & STRUCTURES	-	-	-	-	-	-
GRANTS, CLAIMS	-	-	-	-	-	-
MISCELLANEOUS	-	-	-	-	-	-
<b>TOTAL OPERATING</b>	-	-	-	-	-	-
<b>CAPITAL</b>	-	-	-	-	-	-
<b>REVENUE</b>	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-	-	-	-	-	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	-	-	-	-	-
<b>TOTAL</b>	-	-	-	-	-	-

POSITIONS:

FULL-TIME	-	-	-	-	-	-
PART-TIME	-	-	-	-	-	-
TEMPORARY	-	-	-	-	-	-

SB 404  
L-101 Bill File

ANALYSIS: (Attach a separate page if necessary)

Prepared By: Patrick L. Sharrock, Director Phone: 277-8638  
Division: Alcoholic Beverage Control Board Date: February 18, 1988  
Approved by Commissioner: Hugh Malone Date: February 18, 1988  
Agency: Department of Revenue

Distribution (by preparer):  
Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)

FEB 24 1988