



S.4009 (Budget)/A.3009 (Budget), Part V

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BILL S.4009 (Budget)/A.3009 (Budget), Part V
SUBJECT State Appeals of Tax Tribunal Decisions
DATE February 13, 2023
OPPOSE

The Business Council opposes this Executive Budget provision that would allow the Department of Taxation and Finance to appeal decisions of the Tax Appeals Tribunal to the state courts. We believe it will erode the purpose and effect of the Tax Tribunal by subjecting taxpayers to significant, additional litigation costs. Importantly, it would dissuade individual and business taxpayers from challenging the Department on issues of legitimate dispute, and put pressure on taxpayers to settle tax matters where the uncapped litigation costs will far outweigh the tax amount at issue.

Under current law, decisions rendered by the Tribunal are final and binding on the Department; i.e., there is no right of appeal. Taxpayers who are not satisfied with the decision of the Tribunal have the right to appeal the Tribunal's decision by instituting a proceeding pursuant to Article 78 of the Civil Practice Law and Rules (CPLR) to the Appellate Division, Third Department of the State Supreme Court.

The Business Council has been a strong supporter of the Tribunal. It provides a straightforward, timely, relatively low cost mechanism for the review of controversies between the Tax Department and business and individual taxpayers.

The Tribunal was established to operate in a “user friendly” fashion – with modified rules of evidence, an emphasis on developing stipulations of facts, and the ability of taxpayers to represent themselves or to use their accountants to represent them without the need for legal representation.

If the Department has the ability to appeal Tribunal decisions to the state courts, it would effectively end self-representation or representation by a CPA. Further, in most instances, the Department will be able to devote significantly greater legal resources than the taxpayer, giving it significant additional leverage to push petitioners toward an adverse settlement.

Given that the Department already prevails in the vast majority of cases brought to the Tribunal, it is unclear why they should be provided with “another bite at the apple.” Likewise, since the Division of Tax Appeals/Tax Tribunal is part of the Department of Taxation and Finance, we do not believe it is appropriate to allow one division of a department to appeal (to a judicial court) a decision by another division of the same department.

Further, in recent years, we have seen the Administration include legislative proposals, including in the Executive Budget, to address recent adverse Tribunal decisions, providing an opportunity for the state to address statutory ambiguities.

Under this legislation, we would expect the Department to seek judicial review on virtually every case they lose before the Tribunal. This outcome will impose significant, additional litigation cost on taxpayers, especially small business and individual taxpayers.

For these reasons, The Business Council opposes approval of S.4009/A.3009, Part V.