

TAX SECTION

New York State Bar Association

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1 Liberty Plaza
New York City 10006
212/225-2440

JOHN A. CORRY
First Vice-Chair
1 Chase Manhattan Plaza
New York City 10005
212/530-4608

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Second Vice-Chair
299 Park Avenue
New York City 10171
212/371-9200

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New York City 10019
212/474-1588

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February 21, 1991

The Honorable Mario M. Cuomo
Governor of New York
The Capitol
Albany, New York 12224

Dear Governor Cuomo:

We write to express our objection to the recent decision of the Division of Tax Appeals, dictated by the budget crisis, to end the traditional policy of affording taxpayers the opportunity to have their civil tax trials heard in cities throughout the State convenient to their residences or places of business.

Effective April 1, 1991, all formal hearings before an Administrative Law Judge now will be conducted by the Division of Tax Appeals solely in Troy, New York. Previously, these hearings were held on a regular basis in Buffalo, Rochester, Albany (Troy) and New York City (Manhattan); on a periodic basis in Syracuse and Utica; and from time to time in Binghamton.

We appreciate the budgetary problems of New York State and the need for budget cuts of the type that mandated this change in policy. However, for the reasons set forth below, we believe that limiting formal hearings to Troy, New York, is ill- advised. We strongly urge that formal tax hearings continue to be heard in Troy, New York City, Buffalo, Rochester and

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Syracuse. If budget demands are compelling, the cost of continuing these hearing locations might be covered in whole or in part, as described below, through a user fee.

Problems with New Policy

More than two-thirds of the State's residents live or work in the five boroughs of New York City, or in the counties of Westchester, Nassau and Suffolk which are all within ninety minutes of New York City. When one also considers residents of New Jersey and Connecticut who work in the metropolitan New York City area and pay taxes to New York, the portion of all New York taxpayers represented by taxpayers living or working in the New York City metropolitan area increases to more than seventy-five percent. We suspect that more than eighty percent of the dollar amount of tax deficiencies arise from the population just described. Thus, the lack of hearings in Manhattan will adversely affect a very large group of taxpayers.

The decision to limit hearings to Troy also places a disproportionate burden on taxpayers residing in the western portions of the State because of the cost and inconvenience of travel from those areas to Troy. (It is far more convenient to arrange air travel to New York City than to Troy, so that those taxpayers might benefit from continuing to hold hearings in Manhattan as well as Troy; however, they would still be required to incur disproportionately high costs.)

From a taxpayer's perspective, a formal hearing typically requires oral testimony from the taxpayer and one or two witnesses. Additionally, a taxpayer will have his attorney and/or accountant present at the hearing. Thus, hearings in Troy will necessitate travel and, perhaps, overnight lodging costs for three or four persons. The additional cost to a taxpayer to conduct formal hearings in Troy may

approximate \$3,000 per case, or even higher stuns if air travel is involved. (Air travel expenditures most likely will be incurred by taxpayers in the western portions of the State regardless of whether hearings are held in Troy or New York City.) An Administrative Law Judge who presides over these hearings may hear an average of eight to ten cases per week. Therefore, a single week's hearing schedule in Troy would burden taxpayers with an additional \$20,000-\$25,000 per week to have their cases heard.

We note that the procedures for hearings in small claims cases remain unchanged. These informal hearings before a presiding officer will continue to be heard in local communities. In general, small claims hearings are only available where \$10,000 or less of tax liability (not including penalties or interest) for each twelve month period is at stake. The jurisdictional amount is increased to \$20,000 for sales and use tax controversies. Absent misconduct of a presiding officer, a small claims hearing determination is final and not subject to further appeal or review. Small claims hearings are elective by the taxpayer.

As a result of the cost and inconvenience of travel to Troy for a formal hearing, the practical effect of the new policy would be to force a taxpayer with a \$10,000 or less tax dispute to "elect" a small claims hearing and waive his or her rights to a formal hearing and the full appeal and review rights afforded by the Tax Law (including a right to review by the Tax Appeals Tribunal). We are troubled by this result. Also, we have given strong support over the years to the Tax Appeals Tribunal, and are concerned that its value would be diminished if it is not readily accessible to taxpayers.

Budgetary Constraints

We understand that the Division of Tax Appeals will realize a total budgetary savings of \$340,000 from its policy of conducting formal hearings solely in Troy. We also are informed that \$260,000 of this savings is attributable to the elimination of formal hearings in New York City (Manhattan) where the most substantial cost to the Division is the rental of a facility for the actual hearings. As an initial matter, we wonder if the "budgetary savings" to the State are somewhat illusory inasmuch as the tax auditors from the Department of Taxation and Finance now will have to travel to Troy from locations throughout the entire State to attend these hearings.

Second, if the problem is primarily the cost of space in Manhattan, we suggest that a search be made to determine if there are underutilized State facilities in New York City that could be made available at a lower cost for formal hearings. Also, the current real estate market in the City could provide an opportunity for extremely favorable leases to reduce rental costs both at existing facilities and other facilities.

If these approaches to reducing costs are not viable, we suggest imposing "user fees" to offset the additional costs and expenses to the Division of Tax Appeals of conducting formal hearings outside of Troy. Most courts, including the United States Tax Court, have fees imposed upon the filing of cases or petitions. For example, a \$100-\$400 filing fee could be imposed upon the filing of a petition for a formal hearing. We believe that there are more than one thousand petitions filed annually, so that the annual revenues raised by such a fee might approximate \$200,000-\$400,000. The filing fee could be waived or reduced for small cases or where there is an inability to pay.

We would be pleased to discuss this matter further with you or members of your staff.

Respectfully submitted,

James M. Peaslee
Chair

cc: Elizabeth Moore, Esq.
Counsel to the Governor
The Capitol
Albany, New York 12224

The Honorable Melvin H. Miller
Speaker of the Assembly
Assembly Legislative Office Building
Albany, New York 12248

The Honorable Saul Weprin
Chairman, New York State Assembly
Ways and Means Committee
Room 923, Legislative Office Building
Albany, New York 12247

The Honorable John C. Cochrane
Ranking Minority Member
New York State Assembly
Ways and Means Committee
Room 444, State Capitol
Albany, New York 12248

The Honorable Ralph Marino
President Pro-Tem/Majority Leader
Senate Legislative Office Building
Albany, New York 12247

The Honorable Tarky Lombardi, Jr.
Chairman, Senate Finance Committee
Room 913, Legislative Office Building
Albany, New York 12247

The Honorable Roy Goodman
Chairman, Senate Committee on
Investigations, Taxation and
Government Operations
Room 708, Legislative Office Building
Albany, New York 12247

The Honorable Donald Halperin
Ranking Minority Member
Senate Finance Committee
Room 918, Legislative Office Building
Albany, New York 12247

The Honorable James Wetzler
Commissioner of Taxation and Finance
Department of Taxation and Finance
Building 9, State Campus
Albany, New York 12227

William F. Collins, Esq.
Deputy Commissioner and Counsel
Department of Taxation and Finance
Building 9, State Campus
Albany, New York 12227

Terrence M. Boyle
Director, Law Bureau
Department of Taxation and Finance
Building 9, State Campus
Albany, New York 12227

The Honorable John P. Dugan
Tax Appeals Tribunal
Riverfront Professional Tower
500 Federal Street, Fifth Floor
Troy, New York 12180-2893