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Tax Litigation

Settlement Spree: Indiana Cuts Tax Appeals by 86 Percent

A swift change in state policy is sweeping hundreds of cases off the previously clunky Indiana Department of Revenue docket and speeding up tax protests and appeals.

In just one year, the DOR dropped its Indiana Tax Court appeals by 86 percent, slashing them to only 20 cases, and decreasing DOR attorneys' workload from more than 100 appellate cases down to 10. In that same time, the agency also decreased its pending protests by nearly 40 percent, while increasing net DOR revenue by more than \$10 million.

The secret? Widely available settlement opportunities and an expedited protest process to shuttle disputes about amounts toward compromise and disputes about legal interpretation to litigation.

"The DOR had an approach which was we would litigate every dispute regardless of the complexity or dollar amount and sort of let the wheels of the court process play out to get a resolution," DOR Commissioner Adam Krupp told Bloomberg Tax. "Frankly I was just shocked at the number of appeals from our administrative protest process that were in the Tax Court."

Policy Shift: Toward Settlement After appointment by Gov. Eric Holcomb (R) in January 2017, Krupp said one of the first things he did was send a letter to every single attorney on each tax case and invited them into settlement talks. This, practitioners say, was a large swing from previous administrations.

"When an administration is looking to settle disputes, that is unquestionably good for my clients," Mark Richards, an Indianapolis-based partner with Ice Miller LLP, told Bloomberg Tax. "Saves time, saves money, prevents distractions. But there are still instances where reasonable people will disagree and we can't resolve a dispute."

The DOR also made it possible to settle at any point in the protest process, whereas previous policy required taxpayers to wait possibly months before settlement talks could begin. This allows parties to approach each other whenever there's common ground.

"If somebody knows they owe something and we agree, in most cases we will be able to resolve that with something reasonable for both sides," Krupp said. "The process with more correspondence is a new approach. It really drastically reduced the docket."

Despite increased settlement, none of the practitioners interviewed said the department was being more lenient per se—it was still fighting the big cases the DOR thinks it could win. Krupp said the department hasn't been taking a more lenient approach—but it has been attempting to resolve matters, such as residency disputes, in a consistent way through settlement.

Policy Shift: Toward Speed To expedite decision-making, the office also has a goal of slashing the amount of time protests take—something the business community commended over previous policy.

"It's not like these guys now have decided to be totally taxpayer friendly, as much as taxpayer reasonable," Bill Waltz, Indiana Chamber of Commerce vice president of taxation and public finance, told Bloomberg Tax. "The previous administration was of a different mentality. The department was, for whatever reasons, just dragging this on all the way through the tax court."

As of July 2017, the department started tracking protests and aiming to have them docketed internally, assigned a hearing officer, have a hearing, and issue a letter of finding within 110 days. So far, Krupp said the department is able to keep to this timeline for about 95 percent of its protests. Previously, cases on the DOR's docket languished for more than 300 days.

"I would hear from some businesses that they would have to go through the process with the DOR until they got to people who would listen," Waltz said. "And I think they've moved that listening further down the chain."

Policy Shift: Secondary Effects These shifts have a series of good, and some potentially negative, extraneous outcomes, practitioners and Krupp said.

For the DOR, the caseload reduction allows the staff attorneys more time to prepare for difficult cases and stronger briefs. The department now also has time to be more forward-thinking and is researching potential implications from federal tax changes—such as if the U.S. Supreme Court invalidates *Quill Corp. v. North Dakota*. The 1992 case prohibits states from imposing sales tax collection obligations on vendors lacking an in-state physical presence and currently is under attack in *South Dakota v. Wayfair*. Oral argument is scheduled for April 17, and practitioners expect the high court will issue a decision by late June.

However, the confidentiality that's baked into settlement could create some difficulties for business tax planning, Randal Kaltenmark, an Indianapolis-based

partner with Barnes & Thornburg LLP, told Bloomberg Tax.

“If everything is resolved by settlement, those are confidential settlements as they should be, but then you don’t have any body of law out there to guide the public,” Kaltenmark said. “Indiana not long ago made letters and findings public, but if the settlement is reached before the letters and findings are issued, you’re not going to know about it.”

Kaltenmark, Richards, and Waltz all said policies expediting disputes and opening settlement are good

steps toward saving taxpayers money. But speed can sometimes be an issue.

“I’m not hearing complaints about how long it takes, the opposite is in fact true now,” Kaltenmark said. “We now have to put the foot on the gas and clients need to be aware of that. But I think the stakeholders will adjust.”

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