

## TAXATION SECTION

Respectfully submits the following position on:

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SB 0100

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The Taxation Section is not the State Bar of Michigan itself, but rather a Section which members of the State Bar choose voluntarily to join, based on common professional interest.

The position expressed is that of the Taxation Section only and is not the position of the State Bar of Michigan.

To date, the State Bar does not have a position on this matter.

The total membership of the Taxation Section is 1,385.

The position was adopted after an electronic discussion and vote. The number of members in the decision-making body is 14. The number who voted in favor to this position was 9. The number who voted opposed to this position was 0.

**TAXATION SECTION**

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 Western Michigan University Thomas M.  
 Cooley Law School  
 111 Commerce Ave SW  
 Grand Rapids, MI 49503

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March 11, 2015

Dear Senator Brandenburg:

On behalf of the Taxation Section of the State Bar of Michigan,<sup>1</sup> we submit this letter in support of SB 100. For more than five years, it has been the Taxation Section's formal, stated position that taxpayers should be entitled to have their tax appeals heard in a court of law on a pre-deprivation basis, thus eliminating the Court of Claims prepayment requirement. In addition, we believe that the jurisdictional requirements to appeal the quasi-judicial Tax Tribunal, or the Court of Claims should be comparable.

On August 27, 2009, the Taxation Section adopted a formal policy position in support of this concept. That position was based on the fundamental stated objective of the State Bar of Michigan: to protect the public. To deny taxpayers the right to appeal to a court of law, without payment of the contested tax, undermines the principled objectives of fundamental fairness, due process and equal access to the courts.

We have carefully reviewed procedures and structures in other states, along with model acts and the state's Judicial Task Force. In 2010, the Taxation Section submitted recommendations to the Business Crossroads that we believed would provide Michigan with the most fair, efficient, and equitable tax resolution process in the country. Included was our recommendation to remove the Court of Claims prepayment requirement.

In practice, many taxpayers that are erroneously assessed are relegated to having their tax appeals heard in a venue that is not a court of law. Michigan's Revised Judicature Act governs the Court of Claims, and matters filed at the Court of Claims are subject to the rules, procedures and policies of Michigan Circuit Courts.

In connection with SB 100, we have studied the draft bill and compared it with our knowledge and experience with tax litigation processes in Michigan and other states. Based on our review, including the efforts of our Past Chairs Advisory Group, it is our opinion that this issue, which disadvantages those who are unable to pay, is of major significance to improving the tax resolution process in Michigan. The Taxation Section reaffirms its commitment to the elimination of the prepayment requirement in the Court of Claims.

<sup>1</sup>The Chair of the Taxation Section, Marjorie B. Gell, did not participate in any discussion or voting regarding the Taxation Section's position on SB 100.

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**TAXATION SECTION**

Additionally, SB 100 includes a change for the appeal period to the Tax Tribunal (from 35 to 60 days). The Taxation Section has not previously taken a position on this issue. Based on the experience of the Section, we recommend that you consider a consistent appeal period for appeals to either the Tax Tribunal or the Court of Claims, and advocate that SB 100 be modified to extend the appeal period for the Tax Tribunal to 90 days. There are no valid legal or policy reasons to prescribe different appeal periods depending upon whether a case is to be filed in the Tax Tribunal or the Court of Claims. The use of different appeal periods for each venue can, and does, create unnecessary confusion. The longer deadline for the Court of Claims may cause cases to be filed in that venue simply due to the time needed to prepare or other non-substantive reasons. As these two forums share concurrent jurisdiction over non-property tax matters, a more consistent approach would be to establish identical appeal deadlines.

The members of the Taxation Section Council are available to meet with you and your colleagues in the Legislature to discuss other practical and technical aspects of procedural tax appeal reform at your convenience.

Sincerely,

Michael Antovski Vice Chair Taxation Section	Alex Domenicucci Treasurer Taxation Section	Carolee Kvoriak Smith Secretary Taxation Section	Lynn Gandhi Ex-Officio Taxation Section
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