



REPORT OF
THE
STATE AUDITOR

Tax Conferee Section
Department of Revenue

Performance Audit
June 2001

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This report contains the results of a performance audit of the Department of Revenue Tax Conferee Section. The audit was conducted pursuant to Section 2-3-103, C.R.S., which authorizes the State Auditor to conduct audits of all departments, institutions, and agencies of state government. The report presents our findings, conclusions, and recommendations, and the responses of the Department of Revenue.

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**STATE OF COLORADO
OFFICE OF THE STATE AUDITOR**

REPORT SUMMARY

**J. DAVID BARBA, CPA
State Auditor**

**Tax Conferee Section
Department of Revenue
June 2001**

Authority, Purpose, and Scope

This performance audit of the Department of Revenue Tax Conferee Section was conducted under the authority of Section 2-3-102, C.R.S., which authorizes the Office of the State Auditor to conduct audits of all departments, institutions, and agencies of state government. We conducted the audit in accordance with generally accepted auditing standards. The purpose of the audit was to evaluate Tax Conferee Section operations and service. We gathered information in the report through interviews, document reviews, surveys, and analysis of data. Audit work was performed between November 2000 and March 2001.

This report contains findings and seven recommendations to help the Department of Revenue improve operations and services provided to its customers. We acknowledge the efforts and assistance extended by taxpayer representatives, Department of Revenue staff, and the other state revenue departments that participated in our survey.

The following summary provides highlights of the comments, recommendations, and responses contained in this report.

Background

Colorado is 1 of 18 states that uses the same state department to both administer tax collection and resolve state tax protests. The Executive Director of the Department of Revenue or his delegate is authorized to compromise or settle any tax dispute prior to or after referring the case to the State Attorney General. Colorado statutes provide that to protest a tax assessment or the denial of a refund, taxpayers must request a formal hearing before the Executive Director.

In practice, the majority of tax disputes are settled by pre-hearing negotiations with a tax professional from the Department's Protest Resolution or Conferee Sections. The Protest Resolution Section reviews the protests and audit files for mathematical and technical correctness and resolves disagreements over assessments or billings. Protests that are not settled at this level are referred to the Conferee Section.

For further information on this report, contact the Office of the State Auditor at (303) 866-2051.

SUMMARY

The Conferee Section reviews, evaluates, negotiates, and takes final agency action on tax disputes for all state taxes administered by the Department and acts as trustee for the cities, counties, and special district sales and use taxes. Conferees hold an informal conference with taxpayers and negotiate, draft, and execute settlement agreements between the Department and taxpayers to resolve disputes prior to litigation. They also coordinate the Department's participation in formal hearings and litigation with the Office of the Attorney General (AG) for the disputes that are not settled.

As of the end of Fiscal Year 2000 there were 791 active protested tax liabilities in the Conferee inventory, ranging from a minimum age of 23 days to a maximum of 15 years. Each taxpayer's case may contain one or more liabilities.

Case Management

We reviewed the Conferee Section's practices regarding case resolution. We found that the number of liabilities in the Conferee inventory has increased from 458 in June 1994 to 753 in October 2000, and the length of time cases spend in the Conferee tax dispute process has increased. Our analysis indicates that the time it takes to close a case has increased in the last three years from an average of 1.2 years in Fiscal Year 1998 to 3 years in Fiscal Year 2000.

Taxpayer representatives were interviewed. All volunteered their concerns about the inordinate amount of time it takes to resolve a case. Basically, taxpayers must "Pay to Play" because the delayed protest requires them to accept the expense and uncertainty of the process. The term "Pay to Play" is used by taxpayer representatives because to protest an assessment, taxpayers must either (1) pay the tax under protest and claim a refund, thus losing the use of money for an indeterminate amount of time; although, interest is paid to the taxpayer by the State if the protest is eventually upheld; or (2) protest the tax and for an indeterminate amount of time accrue penalties and interest that must be paid if the protest is not eventually upheld.

Overall, we found that the Department lacks systems and controls for managing conferee cases. The Department has a database that includes information on such characteristics as dollar amount, tax type, dates of case activity, and status of liabilities. However, this information is not consistently defined or utilized by the conferees when entering or retrieving data.

In addition to basic systems problems there are no benchmarks for case resolution. We identified two areas where establishing deadlines for case resolution would result in significant improvement. Interestingly, most of the resolution time is spent waiting for the first informal conference. The average time between the receipt into the Conferee Section to the first informal conference was 2.8 years. As of June 30, 2000, about 92 percent of the time that cases have spent in the Conferee Section is waiting for the first informal conference to take place. Also striking is the fact that while it takes close to three years to get to the first

informal conference, cases settle shortly thereafter. In fact, almost three-fourths of the cases settle within three months of the first informal conference. However, the Department has not established deadlines for scheduling the first informal conference with taxpayers.

In addition to the lack of deadlines for informal conferences, there are no time frames for completion of the Executive Director's final determination. Following a formal hearing, the Executive Director is required by statute to render a determination in a "reasonable time." Our review of Executive Director determinations made in Fiscal Years 1995 through 2000 shows an average time of 251 days from formal hearing to determination. The 251 days the Department took to make determinations rival the average time some states we surveyed report taking for their entire process, from protest to resolution. Section 39-21-103 (8) C.R.S., does not define a "reasonable time" for determinations, and neither does the Department of Revenue. Consequently, delays are unpredictable depending on the workload of the individual Director at any given time.

Some cases cannot be settled by the Conferee process or the Executive Director's formal hearing process in an administrative setting. Eleven out of 426 cases (2.6 percent) received in inventory, Fiscal Years 1998 through 2000, eventually went to court because taxpayers and the Department could not agree on interpretations of a tax law. Taxpayer representatives report long delays (averaging 2.1 years) in the Conferee's inventory awaiting formal hearing and Director's determination. Taxpayers wait for determination so that administrative remedies can be exhausted prior to seeking legal clarification from the courts. Other states offer methods for expediting the exhausting of administrative remedies. However, Colorado tax laws do not allow taxpayers to bypass and expedite the exhausting of administrative remedies, even if the Department agrees it is the most appropriate course of action. **We believe that the Department could resolve more cases in less time by requiring the scheduling of the first informal conference within 90 days of assignment to the Conferee Section, establishing a statutory 60-day deadline for Director's determinations, developing methods to expedite the exhausting of administrative remedies, and recommending statutory amendments to the General Assembly as necessary.**

Management of Suspended Cases

We also noted problems with management of suspended cases. Our review of case files showed cases are suspended for a variety of reasons. Most states we surveyed define and limit the reasons for suspending resolution activity and require supervisor approval and, under certain circumstances, written taxpayer agreement. However, the Department has not defined or limited allowable reasons for suspending protest resolution activity and does not require supervisory approval or taxpayer agreement before a conferee decides to suspend resolution activities. **The Department should reduce delays by defining and limiting reasons for suspensions, documenting taxpayer agreement for certain suspensions, and requiring supervisory approval for all suspensions.**

Supervisory Review

We found that there is little supervisory review. The only time the Chief Conferee is required to give written approval is after a conferee has already agreed to a settlement greater than \$500,000. Consequently, Conferee management is not required to monitor and document consideration of the factors affecting decisions made during the informal conference process or to verify the quality of decisions after cases are settled and closed. Among the tax protests we reviewed was a case with a \$12 million settlement/compromise dated February 2001 that had no evidence of a supervisory review. The IRS and most states we surveyed have a management review process addressing all their tax protest cases. **The Department should improve accountability through verification, monitoring, and supervisory review.**

Delegation

Although past deputy directors handled most of the formal hearings, when the deputy director position became vacant in August 1997, those FTE resources were reallocated to other work and for special projects. The 1999 Department reorganization eliminated the deputy position, the only position to which the Executive Director is statutorily authorized to delegate income tax hearings over \$200. About 47 percent of cases and 21 percent of the liabilities in the Conferee inventory as of June 30, 2000, are income tax protests over \$200. None of the states responding to our survey reported using the Director of the Department to hold formal hearings.

Increasing the Department's formal hearing capacity by expanding delegation options can help reduce the size and age of the Conferee Section's protest inventory. However, the Director's delegation authority is currently limited by statute to gift tax, sales and use tax, and income tax cases \$200 or less to staff within the department (Section 39-21-103, C.R.S.). **The Department should offer more tax policy guidance to taxpayers and auditors, thus reducing delays in the resolution of some cases by: allowing the Executive Director to delegate income tax protests over \$200 to qualified staff within the Department, considering the hiring of temporary hearing officers from outside the Department, and recommending statutory amendments to the General Assembly as necessary.**

Resource Allocation

Taxpayer representatives we interviewed all reported that non-case duties of conferees and their supervisor reduced resources for protest resolution and increased delays. One Conferee position that had been vacant since January 1, 1995, was eliminated July 1, 1997. Conferee time records show that resources have been further reduced because about 65 percent of Chief Conferee time has been allocated to legislative liaison activities since the position was filled in March 1997, and all conferees (including supervisors and temporary conferees) have allocated about 59 percent of their time to casework, 20 percent to other

projects (including the Tax Initiative), 17 percent to functioning as legislative liaisons, and 4 percent to answering tax questions from Fiscal Years 1996 through 2000. Excluding the Chief Conferee, conferees spent 80.5 percent of their time on case work in Fiscal Year 2000.

On the basis of the production of the current temporary conferee, we estimate that three temporary employees (including the current temporary conferee) would be needed for about three years to eliminate the backlog and to match the number of cases resolved each year with the annual inflow of new cases. It is important to note that if workload subsequently increases and adequate resources are not in place, delays will increase once more. However, the Department does not have a contingency plan/policies for matching conferee resources to the fluctuating tax protest workload (catch up/stay caught up) or a benchmark that can establish the need for extra resources. Because of the importance to the State and the Department, resolving Conferee cases should be a priority. **Consequently, the Department should allocate a greater proportion of current conferee resources to casework and supervision and plan to temporarily allocate internal resources to clean up the backlog of cases as necessary.**

A summary of our recommendations and the Department's responses can be found in the Recommendation Locator on pages 7 through 9 of this report.

RECOMMENDATION LOCATOR

Rec. No.	Page No.	Recommendation Summary	Agency Addressed	Agency Response	Implementation Date
1	25	The Department of Revenue should improve case management by:	Department of Revenue		
		a. Adopting a policy requiring the first informal conference to take place within 90 days after the assignment of a case to the Conferee Section.		a. Agree	10/01/01
		b. Defining 60 days as a “reasonable time” for Director’s determination and recommending statutory amendments to the General Assembly.		b. Disagree	—
		c. Identifying cases most likely to be settled in court and developing an expedited process for exhausting administrative remedies and recommending statutory amendments to the General Assembly as necessary.		c. Partially Agree	10/01/01
		d. Improving systems for monitoring cases.		d. Agree	10/01/01
2	29	The Department of Revenue should:	Department of Revenue		
		a. Adopt policies defining and limiting reasons for suspending case resolution activities and require prior written supervisory authorization.		a. Agree	10/01/01
		b. Document taxpayer authorization for suspending settlement activity pending Director’s determination or court ruling by developing a written agreement requiring authorization by the taxpayer and the Chief Conferee.		b. Agree	10/01/01

RECOMMENDATION LOCATOR

Rec. No.	Page No.	Recommendation Summary	Agency Addressed	Agency Response	Implementation Date
3	30	<p>The Department of Revenue should strengthen its tax protest settlement accountability monitoring and verification review by:</p> <ul style="list-style-type: none"> a. Requiring supervisors to monitor the appropriateness of factors considered for settlement of cases in progress. b. Requiring written supervisory approval for every settlement proposal prior to case closing. c. Randomly selecting closed cases from each conferee for quality review every year. d. Ensuring compliance with its internal control policy or change the policy. 	Department of Revenue	<ul style="list-style-type: none"> a. Agree b. Partially Agree c. Agree d. Agree 	<ul style="list-style-type: none"> 10/01/01 10/01/01 4/01/02 10/01/01
4	32	Cases that have not settled within 90 days of the first informal conference should be reviewed by the Chief Conferee to determine if a consultation with an AG attorney is needed.	Department of Revenue	Agree	10/01/01

RECOMMENDATION LOCATOR

Rec. No.	Page No.	Recommendation Summary	Agency Addressed	Agency Response	Implementation Date
5	34	<p>The Department of Revenue should increase formal hearing delegation options and the capacity to reduce the age and size of tax protest case backlogs by:</p> <p>a. Recommending statutory amendments that would allow the Executive Director to delegate income tax hearings over \$200 to qualified staff in the Department.</p> <p>b. Consider allowing the hiring of temporary hearing officers from outside the Department, while retaining the Executive Director's approval for all delegated decisions. Recommend statutory amendments to the General Assembly as necessary.</p>	Department of Revenue	<p>a. Disagree</p> <p>b. Disagree</p>	—
6	36	<p>The Department of Revenue should allocate a greater proportion of current conferee resources to casework by:</p> <p>a. Separating the Chief Conferee position and duties from the legislative liaison/support position.</p> <p>b. Limiting and continuing to track conferee resources allocated to non-case work.</p>	Department of Revenue	<p>a. Agree</p> <p>b. Agree</p>	10/01/01
7	37	<p>The Department of Revenue should assign additional temporary internal resources until the Conferee inventory reaches a level that allows the first informal hearing to take place within 90 days and develop a plan for allocating temporary resources whenever the Department finds that informal conferences cannot be held within 90 days.</p>	Department of Revenue	Agree	10/01/01

Description of Tax Conferee Section

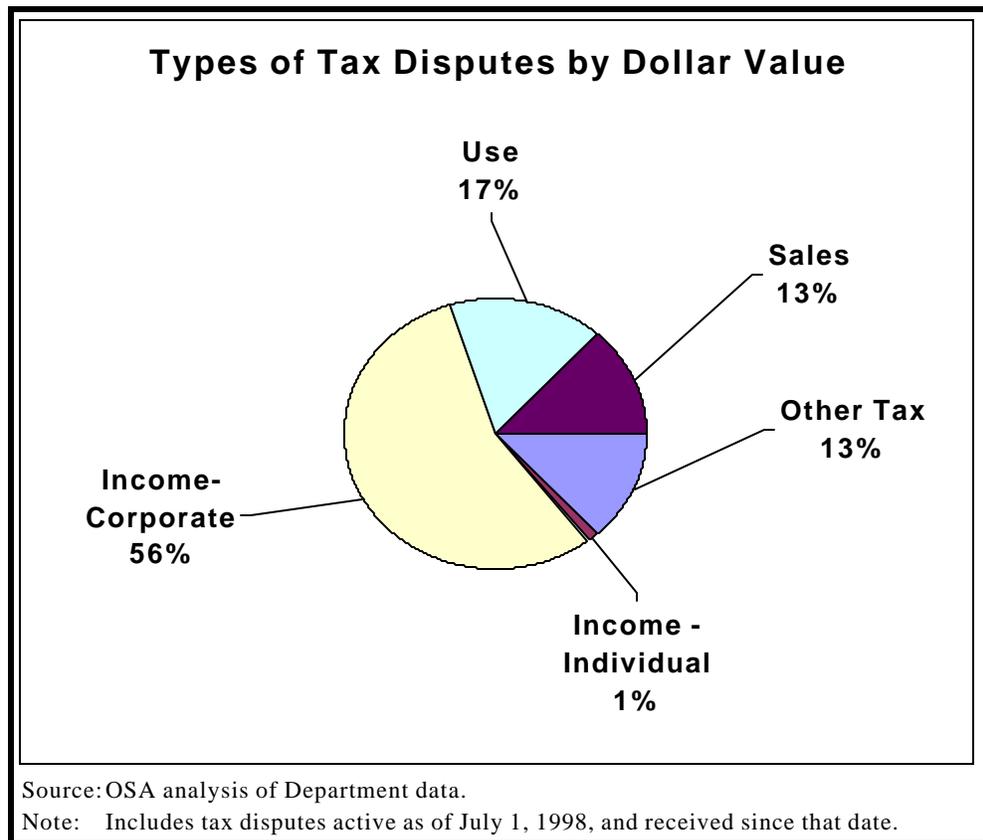
Introduction

The Colorado Department of Revenue (Department) is the state agency charged with the responsibility of collecting tax, gaming, vehicle registration, and driver's licensing revenues. The Department collected about \$8.5 billion in revenues for the State in Fiscal Year 2000.

The primary focus of the Department is to promote voluntary compliance with the Colorado tax code. This focus is reflected in the Department's mission:

...to provide exceptional service in an effective, innovative and fair manner that instills public confidence while fulfilling our duties to collect revenue, license qualified persons and enforce the laws in an atmosphere that promotes dynamic solutions through meaningful employee involvement.

The Tax Conferee Section resolves tax cases being disputed by taxpayers and represents the Department on tax litigation. Pursuant to Section 39-21-106 (1), C.R.S., the Executive Director of the Department is authorized to compromise civil tax cases through a formal hearing or an informal conference. The Conferee Section is responsible for handling a variety of tax disputes as shown:



The Chief Conferee supervises the Conferee Section and also serves as the Department's Legislative Liaison. Cases are assigned to conferees who specialize in various types of tax. While each case may have several tax liabilities being protested, all of the issues in a case are assigned to the same conferee. Individual liabilities in a case may be settled independently of the others. Upon resolution of all of the issues within a taxpayer's dispute, the case is considered closed.

As of June 30, 2000, the active protested tax liabilities in the Tax Conferee Section inventory totaled about \$129 million.

Colorado is 1 of 18 states that uses the same state department to both administer tax collection and resolve state tax protests. Nationally, state tax appeal systems can be divided into three general categories:

- Systems that have judicial courts dedicated to the review of state tax appeals.

- Systems that have independent, executive branch appeal agencies (such as administrative tax courts, tribunals, or commissions) dedicated to hearing state tax appeals.
- Systems that use the state tax collection agency (Commissions or Departments) in the review of tax appeals.

As part of this audit we surveyed practices in 17 states like Colorado, whose tax protests are processed entirely within their tax collecting agency/department. We received responses to our survey from 15 states. These included Alabama, Arkansas, Alaska, Florida, Georgia, Maine, Nebraska, North Dakota, Rhode Island, South Dakota, Tennessee, Texas, Vermont, Virginia, and West Virginia.

We also analyzed Conferee Section records and interviewed taxpayer representatives and Department staff.

Taxpayer Protest Processing

Introduction

The Department of Revenue's philosophy to "encourage voluntary compliance with the tax laws in a manner which inspires the highest degree of public confidence" is displayed on the Internet and includes a commitment that:

Administration of taxes should be both reasonable and vigorous. It should be conducted with as little delay as possible and with great courtesy and consideration.

The Department of Revenue Executive Director or his delegate is authorized by statute to compromise and/or settle tax protests. The tax protest process (Appendix A) can be initiated by taxpayers or their representatives, following the receipt of a "Notice of Deficiency" or a "Notice of Refund" from the Department. This notice contains a proposed assessment indicating that either a refund is due or that additional tax is owed by the taxpayer. If taxpayers disagree with one or more of the assessed liabilities they can dispute the liability by filing a protest within 30 days. A taxpayer protest may include multiple tax liabilities within a single case.

The majority of protests enter a process that begins in the Department's Protest Resolution Section. This section resolves protests based primarily on factual questions. Liabilities stay in the Protest section an average of about 107 days. Some cases will not be resolved in the Protest section, because the dispute is based on differing interpretations of tax laws. These cases go to the Conferee Section where they are settled administratively by informal conference or scheduled for formal hearing before the Department's Executive Director. If the Director's determination favors the Department, the taxpayer can appeal the decision to the courts.

The Department's Tax Conferee Section (Conferee Section) has been delegated the authority to handle taxpayer protests of audit adjustments and denials for tax refunds. The Conferee Section reviews, evaluates, negotiates, and takes final agency action on tax disputes for all state taxes administered by the Department and acts as a trustee for the statutory cities, counties, and special district sales and use taxes. The issues that are commonly protested which may be sent to the Conferee are listed in Appendix B. Conferees negotiate, draft, and execute settlement agreements between the taxpayer and the Department to resolve tax disputes. According to the Department, many factors must be considered.

These include:

- Statutes, regulations, past practices, and policies of the Department.
- Court decisions regarding like or similar liabilities.
- Arguments raised by the taxpayer.
- Prior taxpayer audits.
- Ability of taxpayer to pay.
- Precedent value of the issue.
- Attorney General opinions.
- Hazards of litigation including the costs versus the benefits and chances of winning.
- Conferee's budget appropriation for legal expenses.

Conferees also coordinate the Department's participation in formal hearings and litigation with the Office of the Attorney General for disputes that are not settled.

The Conferee Section receives an average of 391 protested liabilities per year, resolving and closing an average of 354 per year from 1994 through October 2000. Consequently, the number of taxpayer disputes in the Conferee inventory has generally been increasing, as shown in the following chart:

Tax Protest Liabilities in Conferee Inventory				
Calendar Year	Beginning Inventory	No. of Liabilities Received	No. of Liabilities Resolved	Ending Inventory
1994	458	335	335	458
1995	458	470	403	525
1996	525	481	382	624
1997	624	361	367	618
1998	618	500	333	785
1999	785	307	352	740
2000*	740	216	244	753**
Source: JBC Staff.				
*Prorated as of October 2000.				
**DOR is unable to accurately update to year-end because of their transition to a new database.				

Joint Budget Committee (JBC) staff reported concerns about the age, number and management of unresolved cases in the Conferee Section's inventory, and the dollar value of the tax compromises, during the Fiscal Year 2000 budget hearing. This was followed by a Department internal audit. However, many of the same concerns were raised again during the JBC's Fiscal Year 2001 budget hearing.

Opportunities for Improving Services

The Department reported during budget hearings that "the age of the inventory can produce greater negative impacts than the size of the inventory. As long as the inventory of cases can be turned over in a reasonable period of time, the size is not an issue."

In order to identify the concerns of taxpayers, we sought comments from members of legal and accounting firms with long-term, frequent experience representing taxpayers in the Conferee process. These taxpayer representatives all made positive comments about the current conferees and supervisors. However, the taxpayer representatives were also unanimous in characterizing the length of time it takes to resolve protests as the worst thing about the Conferee Section.

In response to concerns about delays the Department responded to the JBC that they:

...established an objective to reduce the inventory to only 80 percent of the cases with an age of 12 months or less. The objective then is to continue to maintain the inventory at that level.

We focused our review on the ways the Department's tax protest process affects taxpayers and on ways to help the Department achieve its objective. We identified opportunities for the Department to reduce taxpayer uncertainty and expense, improve case management, and strengthen accountability. Overall, we found that the Department should:

- Establish case resolution deadlines and improve case monitoring.
- Adopt policies and procedures regarding suspension of active cases.
- Strengthen the supervisory review process.
- Plan for attorney review earlier in the settlement process.

- Increase delegation of formal hearings.
- Reallocate Conferee resources.
- Plan for temporary reallocation of Department resources.

Age of Inventory Is a Continuing Concern

Our analysis indicated that as of the end of Fiscal Year 2000 there were 791 active liabilities in the conferee inventory, ranging from a minimum age of 23 days to a maximum of 15 years. According to Conferee staff, the age of a tax protest can influence the ability to collect taxes due the State. For example, a 1991 protested case was not resolved until 1998. The proposed assessment in this case was \$250,000 and ultimately nothing was paid because the business filed for bankruptcy in 1995.

To reduce the backlog and the number of old cases in the inventory, the Department has an aggressive policy to close the oldest protests first. However, an unintended effect of this policy is that most liabilities which were categorized as less than one year old as of December 1998 were categorized as being two to five years old by September 2000. This is shown in the following chart:

Age of Tax Protest Liabilities in Conferee Inventory		
Age	Number of Protest Liabilities* as of December 1998	Number of Protest Liabilities* as of September 2000**
Less than 1 year old	416	145
2 to 5 years	285	564
6 to 10 years	76	43
More than 10 years	8	1
Total Liabilities in Inventory	785	753**
Source: JBC Staff.		
*Liability refers to a protest of a specific tax. Case represents a taxpayer per tax year; each case may contain several liabilities.		
**DOR is unable to accurately update to year-end because of their transition to a new database.		

Experienced taxpayer representatives and/or their colleagues in other states reported that Colorado's tax protest resolution process is much longer than the resolution process in other states.

We surveyed practices in the other 17 states like Colorado, whose tax protests are processed entirely within their tax collecting agency/department. We received responses to our survey from 15 states:

- Nine of the fifteen states reported an average time from receipt of a tax protest to resolution of less than one year.
- All 15 states reported an average time from receipt of a tax protest to resolution from one to two years.

Our review of other states' practices offers opportunities for reducing the amount of time to complete the resolution process in Colorado. Practices in other states are discussed in more detail throughout this report.

Taxpayers Must “Pay to Play”

Taxpayer representatives report that problems for taxpayers caused by tax protest resolution delays include:

- Poor impression by taxpayers of the Department of Revenue and State Government.
- Loss of necessary information by taxpayers because documents get lost.
- Difficulty in finding new information if it is needed.
- Clients and taxpayer representatives relocate.
- Department auditors, conferees, and other employees leave.

Basically, taxpayers must “Pay to Play” because the delayed protest requires them to accept the expense and uncertainty of the process. The term “Pay to Play” is used by taxpayer representatives because, to protest assessments, taxpayers must either:

- Pay the tax under protest and claim a refund, thus losing the use of money for an indeterminate amount of time, although, interest is paid to the taxpayer by the State if the protest is eventually upheld; or
- Protest the tax and, for an indeterminate amount of time, accrue penalties and interest that must be paid if the protest is not eventually upheld.

Interest calculated as required by Section 39-21-110.5 (2) C.R.S., is prime plus 3 percent from the date the tax is due. The rate is established annually. For example, effective January 1, 2000, prime was 8 percent; thus, the statutory interest rate for Calendar Year 2000 totaled 11 percent.

Case Management Needs Improvement

Overall, we found that the Department lacks systems and controls for managing Conferee cases. The Department has a database that includes information on such characteristics as dollar amount, tax type, dates of case activity, and status of liabilities. However, this information is not consistently defined or utilized by the conferees when entering or retrieving data. Therefore, it is ineffectively used as a reporting tool. Records, such as the date of the informal conference, should be clarified in the database system to better track data and monitor cases and deadlines.

In addition to basic systems problems, we found that there are no benchmarks for case resolution. We identified two areas where establishing deadlines for case resolution would result in significant improvement. These are deadlines for the informal conference and for the Director determination. Further, we discuss the opportunities for expediting cases where administrative resolution is not likely.

Deadlines for the Informal Conference Need To Be Established

The resolution of a case assigned to the Conferee Section begins with an informal conference between a conferee and usually an accountant or attorney representing a taxpayer. The informal conference is defined by the Department as follows:

Upon receipt of a request for a formal hearing, the Conferee's office schedules an informal conference with the taxpayer or his authorized representative. The purpose of this conference is to discuss the procedures to be followed in the administrative hearing, to clarify the relevant liabilities, facts and law, and if possible to settle the matters in dispute. The informal conference does not waive any of the taxpayer's right to an administrative hearing [formal hearing] should all issues not be resolved.

We reviewed all 109 cases that had a first informal conference in Fiscal Year 2000. Interestingly, most of the resolution time is spent waiting for the first informal conference.

The average time between the receipt into the Conferee Section and the first informal conference was 2.8 years. As of June 30, 2000, about 92 percent of the time these cases have spent in the Conferee Section is waiting for the first informal conference to take place.

Also striking is the fact that while it takes close to three years to get to the first informal conference, cases typically settle shortly thereafter. In fact, almost three-fourths of the cases settle within three months of the first informal conference.

Many other government entities have deadlines to move cases along within a reasonable time frame:

- Four out of nine states whose tax protest process took one year or less have deadlines for scheduling or for having the first informal conference.
- In Colorado Administrative Law Judges (ALJ) are required by statute to schedule workers' compensation hearings within 80 to 100 days of application for hearing. Department of Human Services and Department of Health Care Policy and Financing hearings are required within 90 days of application for disputes over the denial of or changes in benefits, such as food stamps, Colorado Works, and Medicaid. Department of Regulatory Agencies' hearings are required to be scheduled within 90 days of application for professional licensing disputes.

However, the Department has not established deadlines for scheduling the first informal conference with taxpayers.

Deadlines for Executive Director's Determination Need To Be Established

In addition to the lack of deadlines for informal conferences, there are no time frames for completion of the Executive Director's final determination. Following a formal hearing, the Executive Director,

“shall make a final determination within a reasonable time,”

as required by Section 39-21-103 (8), C.R.S. Our review of Executive Director determinations made in Fiscal Years 1995 through 2000 shows an average time of 251 days from formal hearing to determination and a minimum elapsed time of 19 days to a maximum of about 2 years. The time the Department took to render decisions varied widely from year to year, as shown in the following table.

Time Lines for Director Determinations Fiscal Years 1995 to 2000		
Fiscal Year	Average Number of Days From Formal Hearing to Director Determination	Number of Formal Hearings
1995	267	7
1996	102	3
1997	723	2
1998	340	11
1999	92	7
2000	88	3

Source: OSA analysis of Department data.

The average time the Department took to make hearing determinations rivals the time some states we surveyed take to process most of their cases from protest to resolution: Florida 175 days, Maine 270 days, Tennessee 210 days, and Virginia 180 days. It should be noted that there is marked improvement in timeliness since 1998.

The length of time to render decisions contributes to Colorado's reputation for being extremely slow. In three appeal cases taxpayers complained to the district court about delayed Department determinations. Delays also increase uncertainty for taxpayers, who in some cases have the interest clock running against them.

Administrative Law Judges (ALJs) conduct hearings for a variety of state agencies and have statutory requirements for rendering decisions after hearings. For example, ALJs conduct hearings for the:

- Department of Human Services, where decisions must be rendered within 20 days for public assistance and food stamp benefits decisions and 60 days for foster care, day care, and subsidized adoptions rulings.
- Department of Regulatory Agencies, where decisions must be rendered within 60 days for professional license rulings.

- Department of Health Care Policy and Financing, where decisions must be rendered within 20 days for Medicaid recipients and within 60 days for Medicaid-provider rulings.
- Department of Labor and Employment, where decisions must be rendered within 30 days for Workers' Compensation cases.

However, Section 39-21-103 (8) C.R.S., does not define a "reasonable time" for determinations, and neither does the Department of Revenue. Consequently, delays are unpredictable depending on the workload and on the individual director at any given time.

Expedite Cases Requiring Legal Interpretation

Some issues cannot be settled by the conferee process or the Executive Director's formal hearing process in an administrative setting. Eleven cases, representing approximately 2.6 percent of the 426 cases received in inventory from Fiscal Year 1998 through 2000, eventually went to court because taxpayers and the Department could not agree on interpretations of a tax law.

Taxpayer representatives report that unnecessarily long delays can occur for cases in the Conferee Section's inventory awaiting formal hearing and Director's determination. Taxpayers wait for determination so that administrative remedies can be exhausted prior to seeking legal clarification from the courts. Reported problems resulting from these delays include:

- Retailers may not have collected sales tax but could be liable later.
- If the outstanding liability is material, it must be recorded on the taxpayer's financial statements for years.
- A burden is created for taxpayers and the Department when other cases are backlogged in the Conferee Section's inventory awaiting resolution of a previous similar case that is in formal hearing or before the courts.

We reviewed all 33 cases that went to formal hearing and exhausted their administrative remedies by receiving a Director's determination from Calendar Year 1995 through Calendar Year 2000. We found the longest time from receipt of protest into the Conferee Section to Director's decision was 6.4 years, with an average time of 2.1 years as shown in the following table:

Average Time to Exhaust Administrative Remedies Fiscal Year 1995 to 2000		
Fiscal Year	Number of Formal Hearings	Years to Exhaust Administrative Remedies *
1995	7	1.8
1996	3	1.5
1997	2	3.9
1998	11	2.2
1999	7	1.8
2000	3	2.9
Average		2.1
Minimum-Maximum		.5 years - 6.4 years
Source: OSA analysis of Department data.		
*From the receipt of liability into the Conferee Section to the date of Director determination.		

We followed up with the nine states surveyed that reported resolving cases in an average of less than one year from receipt of protest to resolution about delays related to exhausting administrative remedies.

- Six out of nine states have time lines that expedite the entire resolution process, thus minimizing delays.
- Five out of nine states have developed procedures for the taxpayer to bypass the administrative process by going directly to court (two of the nine states have both time lines and the option to bypass administrative remedies with narrow exceptions).

However, Colorado tax laws do not allow taxpayers to bypass and expedite the exhausting of administrative remedies, even if the Department agrees it is the most appropriate course of action. Previous court rulings on Colorado tax statutes concluded:

- Section [39-21-103, C.R.S.,] affords the taxpayer a plain, speedy and adequate remedy. (Liebhardt v. Dept. of Revenue, 123 Colo. 369, 229 P.2d 655, 1951)
- The general rule is that failure to exhaust administrative remedies prior to seeking judicial relief is a jurisdictional defect. This is especially true in cases involving tax matters. (Kendal v. Cason, 791 P.2d 1227 Colo. App. 1990).

More cases could be resolved in less time by requiring the scheduling of the first informal conference within 90 days of assignment to the Conferee Section (this will require a temporary reallocation of internal resources as discussed later in this report); establishing a statutory “reasonable time” deadline for Director’s determinations which would allow the dispute process to be resolved within the two-year average reported by all the states surveyed; and expediting the exhausting of administrative remedies in cases that are most likely to go to court. Decisions about how to proceed should be based on discussions with the taxpayer, review by an attorney, recommendation from the Chief Conferee for the case to go court to clarify tax law, and approval of the Executive Director.

Recommendation No. 1:

The Department of Revenue should improve case management by:

- a. Adopting a policy requiring the first informal conference to take place within 90 days after the assignment of a case to the Conferee Section.
- b. Defining 60 days as a “reasonable time” for Director’s determination and recommending amendment of Section 39-21-103, C.R.S., to the General Assembly.
- c. Developing an expedited process for exhausting administrative remedies and recommending statutory amendments to the General Assembly as necessary.
- d. Improving systems for monitoring cases.

Department of Revenue Response:

- a. Agree: The Department will adopt a policy requiring the first informal conference to take place within 90 days after the assignment of a case to the Conferee Section. The Section will monitor the time standard and may adjust (shorten or lengthen) based on practical experience and caseload. Benefits of the time frame will include an indicator when additional resources are needed to reduce increases in inventory due to uncontrollable fluctuations. Planned implementation 10/01/01.
- b. Disagree. There are several reasons why the Executive Director should not be constrained to issue decisions on tax appeals within a specified period:

- Some cases require considerable discussion and research, and a time constraint could lead to a decision that is not well researched or well reasoned.
 - The State cannot appeal a decision of the Executive Director in favor of the taxpayer. As a result, it is important that the Executive Director be certain about every decision in favor of the taxpayer.
 - A case (call it case A) similar to the case (call it case B) before the Executive Director might be pending in a judicial court, and the case A decision could influence the Director's decision on case B.
 - While there may have been a problem with tardy Executive Director decisions in the past, the problem does not exist today.
- c. Partially agree: Theoretically, the Department can see the benefit. We believe utilization will be minimal; however, the Department would like to explore this option through research and contact with other states. This will allow the Section to evaluate how this type of option would effect existing resources and how this would improve case management. Planned implementation 10/01/01.
- d. Agree: The case tracking system is continuing to be improved. Date of informal conference with accompanying aging reports based on that date will be added to the system as resources become available. This feature will allow the Section manager to monitor compliance with the time line established. Planned implementation 10/01/01.
-

Adopt Policies and Procedures Regarding Case Suspension

Our analysis of closed cases indicates that the time it takes to close liabilities has increased in the last three years from an average of 1.2 years in Fiscal Year 1998 to 3 years in Fiscal Year 2000. The average age of active liabilities in the inventory as of June 30, 2000, is 1.9 years. Some delays result when conferees suspend resolution activity for a case. In order to determine reasons for suspensions that could contribute to delays, we reviewed 30 of the 109 cases which had informal conferences in Fiscal Year 2000. The case records showed a variety of reasons for suspending resolution activity as follows:

- Documentation/Negotiation: Waiting for taxpayer documentation and/or information; negotiating the terms of a settlement agreement with the taxpayer.
- Hearing/Litigation: Cases are scheduled for formal hearing, awaiting a Director decision, or docketed in court.
- Pending another case: The liabilities a taxpayer is disputing are similar to a case concurrently in formal hearing or litigation; resolution is delayed to avoid duplicate proceedings and to use the resultant decision as guidance in the settlement.
- Error/Logistics: Postponement of resolution activity due to such things as employee turnover, miscommunications, and loss of documents.
- Re-audit: The IRS or Department is involved in auditing the taxpayer again for the same tax years.
- First in, first out: Newer cases wait in line; case resolution is not actively pursued until older cases are settled.
- Concurrent closure: Holding resolved liabilities open until all the taxpayer's liabilities have been settled.
- Issue clarification: Conferee Section clarifies the Department's position with other internal divisions or the local government involved in the case.

However, the Department has not defined or limited allowable reasons for suspending resolution activity and does not require supervisory approval before a conferee decides to suspend resolution activities.

Ways that states responding to our survey manage suspension of resolution activity include:

- Twelve out of fifteen states define and limit by policy or statute the reasons for suspending the resolution of a case. Suspension of resolution activity is commonly allowed for cases similar to those in hearings or in court, i.e., for those where interpretation of law is a requirement for resolution.
- Twelve out of fifteen states require supervisor/management authorization for suspension of case resolution activity, usually in writing.

Taxpayer Agreement Is Not Documented

Suspensions of resolution activity pending determinations and court rulings are not distinguished from other delays and remain active cases in the Conferee inventory. From Fiscal Year 1998 through 2000 resolution activity on 19 inventoried cases was suspended pending either a formal hearing and Director determination, or a court ruling on a similar case. The suspensions range from two to nine years with the average being about 3.1 years.

Each of the surveyed states with similar dispute processes to Colorado and the IRS allow delays pending completion of a litigation decision on a related case. All nine of the survey states with an average protest-to-resolution time of less than one year allow the suspension of case resolution activity pending litigation of similar cases, at taxpayer request. However, six states and the IRS require written documentation showing agreement between the taxpayer and the Department to suspend settlement activity pending litigation of similar cases.

The Department allows suspension of similar case activity pending a Director's determination or a court ruling to be:

- Initiated by a conferee but does not require taxpayer or Chief Conferee authorization.
- Granted by a conferee based on a verbal request from a taxpayer.

Consequently, taxpayer agreement and supervisor authorization to suspend and delay a case is not required or documented, even though delays may adversely affect settlements. However, the Department's voluntary tax disclosure program requires a written agreement with taxpayers documenting the understanding of relevant facts by both parties.

The Department could reduce delays by defining and limiting reasons for suspensions, documenting taxpayer agreement for certain suspensions, and requiring supervisory approval for all suspensions.

Recommendation No. 2:

The Department of Revenue should:

- a. Adopt policies defining and limiting reasons for suspending case resolution activities and require prior written supervisory authorization.
- b. Document taxpayer authorization for suspending settlement activity pending Director's determination or court ruling by developing a written agreement requiring authorization by the taxpayer and the Chief Conferee.

Department of Revenue Response:

- a. Agree. The Section will define guidelines for suspending case resolution activities. The supervisor will date and initial the reasons for suspension on a form that will be placed in the file. Benefits will include consistency in suspending case activity. Planned implementation 10/01/01.
- b. Agree: A form will be developed for signature by the taxpayer and the Chief Conferee authorizing suspension of the settlement activity pending Director's Determination or court action. Benefits will include reduction in miscommunication between the Department and the taxpayer regarding delay in case resolution. Planned implementation 10/01/01.

Supervisory Review Could Be Strengthened

We found that there is little supervisory review. The only time the Chief Conferee is required to give written approval is after a conferee has already agreed to a settlement greater than \$500,000. Consequently, Conferee management is not required to monitor and document consideration of the "many factors insuring proper decisions" during the informal conference process or to verify the quality of decisions after cases are settled and closed.

- Internal Revenue Service (IRS) Appeal Division supervisors perform reviews on active cases and approve the settlement agreements prior to the close of each case. Additionally, the IRS's new Appeals Quality Measurement System requires

specially selected appeals officers to review randomly selected closed cases nationwide.

- 10 of the 15 states surveyed have a management review process addressing all their tax protest cases. 4 of the 10 states review active cases during the dispute resolution process.

A Department internal audit recommended in January 2000 that “Conferees should require written approval from the Chief Conferee or another supervisor prior to the final settlement for cases involving large dollar settlement reductions.” The Department agreed to determine appropriate dollar amounts (greater than \$500,000) and to institute multiple approval levels.

We reviewed 13 cases closed by the Department's director with a settlement adjustment over \$500,000. None of the cases had evidence of supervisory or management review. In fact, one of these cases dated February 2001 had a \$12 million adjustment/compromise.

The Department could improve accountability through verification, monitoring, and supervisory review.

Recommendation No. 3:

The Department of Revenue should strengthen its tax protest settlement accountability monitoring and verification review by:

- a. Requiring supervisors to monitor the appropriateness of factors considered for settlement of cases in progress.
- b. Requiring written supervisory approval for every settlement proposal prior to case closing.
- c. Randomly selecting closed cases from each conferee for quality review every year.
- d. Ensuring compliance with its internal control policy or change the policy.

Department of Revenue Response:

- a. Agree. Factors considered for settlement of cases are informally monitored by the Chief Conferee. The Section will develop a process to document the consideration. Planned implementation 10/01/01.
- b. Partially agree: The Department will establish a threshold above which a written supervisory approval will be required before the case closing. The threshold should be sufficiently high enough to allow conferees to negotiate settlements on small dollar amounts while providing supervisory approval of substantive issues and significant dollar amounts. Planned implementation 10/01/01.
- c. Agree: The section will conduct a quality review annually in April. This will coincide with the performance evaluation deadline to incorporate the review findings into the annual performance evaluations. Planned implementation 04/01/02.
- d. Agree: The conferees discuss cases with the Chief Conferee. Progress on casework is monitored and settlement criteria is discussed and reviewed. Monitoring will improve as a result of recommendation number six. Formal documentation of the process will be included in the case files as previously indicated. Planned implementation 10/01/01.

AG Review Could Help Expedite Settlement

Cases that go to the Conferee Section are disputes based primarily on differing interpretations of tax laws by the taxpayer and the Department. Attorneys have described these cases as “close calls.” Taxpayer representatives report that about 10 percent of their cases:

- Will need to be resolved by a formal hearing, Director's determination, or court ruling.
- Will require similar cases to be resolved by the Director's determination or court ruling before they can go forward.

During Fiscal Years 1998 through 2000, 21 cases went to formal hearing and took an average of 2.3 years from receipt of protest in the Conferee Section to Director's determination.

Conferee criteria for the evaluation of case settlement include:

- The cost and benefit of litigation (chances of winning).
- The legal precedent setting value of the case liabilities protested.
- Attorney General opinions.

Currently attorneys who must represent the Conferee Section at formal hearings and the Department in court usually do not see the case file until the case is set for formal hearing. Then statute allows them as little as 30 days to evaluate the case and prepare a defense. Until 1996 there was more involvement between the Attorney General's Office and the Conferee Section throughout the process. The resolution of some cases that had been delayed in inventory were settled after the attorney reviewed the case files in preparation for a formal hearing. For example, a case protested in November 1994 was scheduled for formal hearing in September 1997. However, when the attorney reviewed the case in preparation for formal hearing, six out of eight of the liabilities in the case were settled before the hearing.

The Department has not provided resources for pre-hearing case consultation or established the conditions under which such resources could be used most efficiently to reduce delays and expedite resolution.

Consultation between the Chief Conferee and AG attorney earlier in the tax protest resolution process could reduce delays. They could determine the potential cost benefit of litigation and if the precedent-setting value of the liabilities being protested warrant increased settlement effort or timely scheduling of a formal hearing.

Recommendation No. 4:

The Department of Revenue should ensure that cases which have not settled within 90 days of the first informal conference are reviewed by the Chief Conferee to determine if a consultation with an AG attorney is needed.

Department of Revenue Response:

Agree: The Chief Conferee will review cases pending settlement after the first 90 days of the informal conference to determine if the delay warrants a consultation with the Attorney General. Benefits could include the expediting of the file to a formal hearing. Planned implementation 10/01/01.

Increased Delegation of Formal Hearings Is Needed

The dispute resolution process begins when a taxpayer files a protest asking for a formal hearing. The process usually involves both the Tax Protest Resolution Section and the Conferee Section and can continue to formal hearing with the Executive Director or a delegate. The Executive Director's determination can become tax policy. The protest concludes if the Director rules for the taxpayer. If the ruling is for the Department, the taxpayer can continue the protest through the judicial process, which yields a ruling interpreting tax laws.

Conferee protest settlements apply to those specific cases and do not clarify tax policy or law. Formal hearings, determinations, and court rulings clarify tax policy and tax law, which is applied to:

- Future cases offering guidance to taxpayers and tax auditors, thus reducing potential tax protests.
- Similar cases already delayed in the conferee inventory, thus expediting their resolution and reducing backlog.

Although past deputy directors handled most of the formal hearings, when the deputy director position became vacant in August 1997, those FTE resources were reallocated to other work and for special projects. The 1999 Department reorganization eliminated the deputy position, the only position to which the Executive Director is statutorily authorized to delegate income tax hearings over \$200. About 47 percent of cases and 21 percent of the liabilities in the Conferee inventory as of June 30, 2000, are income tax protests over \$200.

Colorado is the only state responding to our survey that reported using the Director of the Department to hold formal hearings. In every other state formal hearings are delegated.

In 8 of the 15 states the Director retains the right to approve the resulting rulings and control tax policy. Eleven out of fifteen states responding to our survey that conduct formal hearings report:

- In 7 out of the 11 states formal hearings are conducted by an ALJ.
- In 4 out of 11 states formal hearings are conducted by a hearing officer within the Department.

Increasing the Department's formal hearing capacity by expanding delegation options can help reduce the size and age of the Conferee Section's protest inventory. For example, West Virginia reports increasing formal hearing capacity by delegating to a contract ALJ hired to reduce the volume and age of its protest backlog. West Virginia no longer has a backlog of cases and asserts "the key issue to address the backlog is to set cases for formal hearing."

Conferee staff report a reluctance to recommend cases for formal hearing because of the demands that could be placed on the Executive Director's time resources. This reduced capacity for hearings can delay resolution of cases and increase the inventory backlog.

However, the Director's delegation authority is currently limited by statute to gift tax, sales and use tax, and income tax cases \$200 or less to staff within the Department (Section 39-21-103, C.R.S.).

The Department could offer more tax policy guidance to taxpayers and auditors, thus reducing delays to the resolution of some cases by allowing the Executive Director to delegate income tax protests over \$200 to qualified staff within the Department. In addition, the Department should consider the hiring of temporary hearing officers from outside the Department as necessary.

Recommendation No. 5:

The Department of Revenue should increase formal hearing delegation options and capacity to reduce the age and size of tax protest case backlogs by:

- a. Recommending amendments to Section 39-21-103, C.R.S., that would allow the Executive Director to delegate income tax hearings to qualified staff in the Department.

- b. Consider allowing the hiring of temporary hearing officers from outside the Department, while retaining the Executive Director's approval for all delegated decisions. Recommend statutory amendments to the General Assembly as necessary.

Department of Revenue Response:

- a. Disagree. Under current statutes, the Governor has, by virtue of his appointment of the executive director of the Department of Revenue, direct control over the individual who makes decisions about tax cases. If any of this authority is diluted through the delegation of such decision making, the Governor has given up some of his authority. Ultimately, it is the Governor's decision as to the acceptability of such a statutory change.
- b. Disagree. Once again, delegation of this responsibility to temporary hearing officers could erode the Governor's authority.

Allocation of Conferee Resources Needs To Be Evaluated

Taxpayer representatives we interviewed all reported that non-case duties of conferees and their supervisor reduced resources for protest resolution and increased delays. The Chief Conferee position was vacant from September 1996 to March 1997 and one conferee position, which had been vacant since January 1, 1995, was eliminated in July 1, 1997. Conferee time records show that resources have been further reduced because about 65 percent of Chief Conferee time has been allocated to legislative liaison activities since the position was filled in March 1997, and all conferees (including supervisors and temporary conferees) have allocated about 59 percent of their time to casework, 20 percent to other projects, including the Tax Initiative, 17 percent to functioning as legislative liaisons, and 4 percent to answering tax questions from Fiscal Years 1996 through 2000. Excluding the Chief Conferee, conferees spent 80.5 percent of their time on casework in Fiscal Year 2000 including the temporary who devoted 93 percent of their time to casework in Fiscal Year 2000.

We followed up with the nine states surveyed that reported resolving cases in an average of less than one year from receipt of protest to resolution as to whether conferees had other duties. Five out of nine states report that their conferees spent at least 90 percent of their time processing tax protests.

Allocating a greater proportion of current conferee resources to casework and supervision could help reduce the age and quantity of cases and reduce delays and costs to taxpayers.

Recommendation No. 6:

The Department of Revenue should allocate a greater proportion of current conferee resources to casework by:

- a. Separating the Chief Conferee position and duties from the legislative liaison/support position.
- b. Limiting and continuing to track conferee resources allocated to non-casework.

Department of Revenue Response:

- a. Agree: The Chief Conferee will no longer serve as the Department's legislative liaison. Devoting more time to managing the section will facilitate faster implementation of the OSA recommendations and will allow for improved monitoring of case activity. Planned implementation 10/01/01.
 - b. Agree: Non-casework is tracked weekly through approval of employee time keeping. Limiting the amount of time on non case work will be accomplished by referring questions from internal and external sources to other appropriate sections within the Department for research and by limiting time spent on special projects. Planned implementation 10/01/01.
-

Current Resources Will Continue the Backlog

As discussed previously, the inventory has not been significantly reduced. Most cases that were less than one year old in 1998 were categorized as being two to five years old in September 2000, thus continuing the delay of taxpayer protest resolution.

The Conferee inventory fluctuates and the Section has no control over the complexity or volume of tax protests it receives each year:

- Complexity depends on the nature of tax laws legislated each year by Colorado, by other states with Colorado businesses, by the federal government, and by foreign nations with Colorado businesses.

- Volume of protests received depends on the number of businesses and individuals affected by new legislation and judicial rulings.

The amount and quality of conferee resources that can be applied to the fluctuating tax protest workload is limited by budget considerations, staff turnover, and the availability of staff experienced in tax law.

A Department employee temporarily placed in the Conferee Section in November 1999 to assist the Section averages 93 percent of time on casework. The production of the temporary conferee was used to estimate the additional temporary resources needed to reduce the age and volume of the inventory.

On the basis of the production of the current temporary conferee, each temporary full-time employee (FTE) can be expected to reduce the inventory by approximately 2.6 cases (on average this represents 6.8 tax liabilities) per month. The current inventory consists of 305 active cases (not including the active cases in litigation), and an inflow of 9.8 cases per month is expected based on Fiscal Year 2000 numbers. Under these circumstances we estimate that three temporary employees (including the current temporary conferee) would be needed for about three years to eliminate the backlog and to match the number of cases resolved each year with the annual inflow of new cases.

It is important to note that if workload subsequently increases and adequate resources are not in place, delays will increase once more. However, the Department does not have:

- A contingency plan/policies for matching conferee resources to the fluctuating tax protest workload (catch up/stay caught up).
- A benchmark that can establish the need for extra resources.

Because of the importance to the State and the Department, resolving Conferee Section cases should be a priority. The Department should temporarily allocate internal resources to clean up the backlog of cases.

Recommendation No. 7:

The Department of Revenue should assign additional temporary internal resources until the Conferee Section inventory reaches a level that allows the first informal hearing to take place within 90 days and develop a plan for allocating temporary resources whenever the Department finds that informal conferences cannot be held within 90 days.

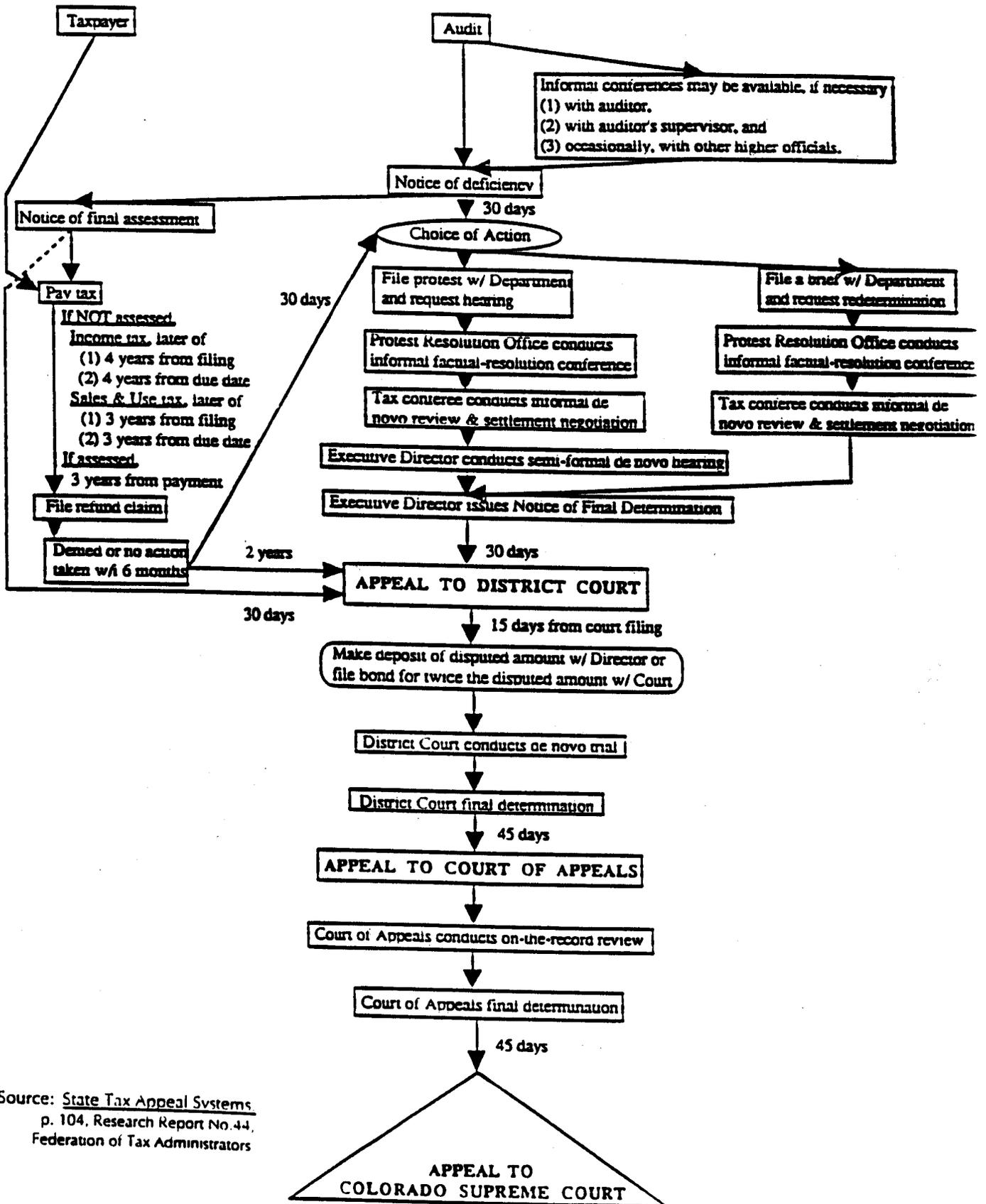
Department of Revenue Response:

Agree: Utilizing temporary resources will benefit the Section in several ways:

- Help reduce the inventory to a more manageable level.
 - By providing an opportunity for the Section manager to evaluate their performance before considering them for a permanent assignment.
 - Training new employees could be significantly reduced if new hires come from the pool of employees temporarily assigned to the Conferee Section. Planned implementation 10/01/01.
-

**COLORADO
DEPARTMENT OF REVENUE**

**Appendix A
Tax Protest Process**



Source: State Tax Appeal Systems
p. 104, Research Report No. 44,
Federation of Tax Administrators

Department of Revenue

Issues Commonly Protested Which May Be Sent to the Conferee

Corporate Income Tax

1. Directly allocable income.
2. Foreign source income computation. Various elements of this computation including income to exclude or include. The federal tax rate for the denominator. And the idea that it should be computed at all.
3. Inclusion of the Foreign Sales Corporation (FSC) in the combined group.
4. The combined report.
5. The entities to include or exclude.
6. Two year rule.
7. Tests for combination.
8. Enterprise Zone Credits.
9. Nexus.
10. Penalty.
11. Many other topics arise which are too numerous to list.

Major Tax

1. Manufacturing machinery exemption.
2. Definition of food.
3. Tangible personal property vs. realty.
4. Software.
5. Contractors Rule.
6. Taxable Freight.
7. Penalty and penalty interest.
8. Disputes concerning transactions that the taxpayer considers to be exempt.
9. Enterprise zone manufacturing exemptions.
10. Services verses sale of tangible personal property.
11. Manufacturing aids.
12. Nexus.
13. Contract labor vs. employee.
14. Sample technique.
15. Many other topics arise which are too numerous to list.

Source. Department of Revenue

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