

Practitioner Perspectives on the State of Minnesota's Tax Administration

EXECUTIVE SUMMARY

This Issue Brief presents the findings of an MCFE survey of Minnesota tax practitioners regarding the condition of Minnesota's state tax administration and current procedural protections for taxpayers. The survey was motivated by three issues: 1) some critical tax administrative functions have not undergone an external evaluation; 2) since the last major reform effort in state tax administration the Minnesota Department of Revenue has experienced many organizational changes; and 3) the state's tax community has expressed concerns about some aspects of the Department's administrative practices, some of which appear to have been validated by recent court decisions.

The survey collected 124 organizational and individual perspectives on the current state of state tax administration, the adequacy of current taxpayer supports, and the merits of nearly 30 potential new or enhanced procedural protections that have precedence either at the national level or in other states.

Key Findings:

Survey respondents directed their strongest praise regarding Minnesota state tax administration toward what might be described as administrators' "first line" of communication with taxpayers on basic compliance matters. Recent Departmental investments in information products, services, and compliance resources have been generally well received and ably serve routine and common compliance matters.

Respondents' primary criticism regarding the general state of tax administration concerns an environment of ambiguity and uncertainty regarding more complex interpretive tax topics and administrative processes that makes voluntary compliance difficult. Three primary issues triggered this frustration:

- The Department's unwillingness to promulgate new regulations with input from the tax community (relying instead on fact sheets and publication of some revenue notices),
- Concerns about the knowledge base and interpretive consistency within the Department, and
- A reluctance on the part of the Department to provide actionable verbal or written guidance on these more complex interpretive issues.

A second area of criticism revolved around what might be called "fair treatment" concerns. Lengthy procedural delays – especially in appeals and refunds – was most often cited, but respondents identified other case-specific circumstances across the spectrum of tax compliance activities in which they felt norms of fair and just treatment had been violated.

While respondents expressed moderate to strong support for nearly 30 new and enhanced procedural protections to address "fair treatment" concerns, a majority of respondents agreed that the existing protections could be improved by improving trust and dialogue with the Department.

We conclude Minnesota's basic state-level tax administration infrastructure is sound, and recent Departmental investments in taxpayer communication and understanding have been very beneficial and yielded positive returns. As a result the state provides a good foundation for compliance in routine and commonplace tax situations and circumstances affecting the majority of Minnesota taxpayers. However, an opportunity for improvement exists in activities and processes pertaining to more sophisticated and complex areas of tax law. Specifically, Minnesota must improve interpretive consistency and provide more reliable, actionable guidance on these matters, which are critical for both voluntary compliance and business planning. A key enabling condition will be the Department's ability to attract and retain necessary talent, which has been a chronic challenge for over a decade. With respect to ensuring fair treatment and appropriate taxpayer protections, better communication between the Department and taxpayers is vital but should not preclude new statutory protections in the form of enhancements to Minnesota's existing

Taxpayer Bill of Rights – an effort which must include the Department’s direct involvement and participation.

INTRODUCTION

More than 90 percent of all revenue collected at the state, local and national levels in the United States comes in voluntarily, not through enforced collections. That means modern tax administration is largely about supporting voluntary compliance, a service function as distinguished from an enforcement function.

“An Introduction to State Tax Administration” Andrew Sidamon-Eristoff, *State Tax Notes*, November 2, 2009

The Minnesota Department of Revenue’s Vision Statement captures a simple and compelling idea: “everyone reports, pays, and receives the right amount: no more, no less.” The simplicity of that vision contrasts starkly with the sheer number and complexity of the administrative practices, processes, and procedures required to make that vision a reality.

Tax administration involves a broad continuum of activities that range from providing basic taxpayer guidance to criminal enforcement. But as the above quote from the *State Tax Notes* article indicates, at its core, modern state tax administration is a service function that supports voluntary compliance with state tax laws. As a result, core service industry concepts like “customer support” and “responsive service” have just as much relevance in tax administration as they do in any other service business.

How well does the Minnesota Department of Revenue deliver on this customer service ideal? Are the many administrative functions performed in fair, consistent, and transparent ways that properly support voluntary compliance? This Issue Brief highlights the findings of a MCFE survey of state tax practitioners conducted in the late summer of 2016 assessing the state of state tax administration and procedural protections for taxpayers.

Three issues provided the motivation for conducting this survey:

1. Some critical tax administrative functions have not undergone an external evaluation

In 2006, the Office of the Legislative Auditor’s (OLA) Program Evaluation Division issued a report on tax compliance¹ noting its purpose was “to assess how well the Department of Revenue helps ensure individuals and businesses pay the correct amount of Minnesota tax.” The evaluation focused on 1) programs in place to identify and audit taxpayers who may have underpaid their taxes; 2) education and assistance services to help taxpayers meet their tax obligations; and 3) success in collecting delinquent tax payments.

The overarching context for this study was quantifying and closing the “tax gap” – the difference between the amount of taxes the state collected and the amount of taxes actually owed. Because of the demands such a study represented, the OLA reported they were not able to include several important aspects of tax compliance efforts in their evaluation. According to the report, key omitted administrative activities included:

- An analysis of data on the use of penalties
- An assessment of the extent and results of taxpayer appeals
- The quality of income or sales tax audits undertaken by the Department
- How tax laws could be revised to improve taxpayers’ ability to comply or the Department’s ability to enforce

While these administrative activities are indirectly related to tax gap concerns, they are profoundly and directly related to taxpayer perceptions of fairness, consistency, equity, predictability, and transparency in tax administration and ultimately the degree, cost, and quality of voluntary compliance in the state.

¹ *Tax Compliance*, Office of the Legislative Auditor, Program Evaluation Division, March 2006.

2. Since the last major reform effort in state tax administration, the Department has experienced many organizational changes.

Under the leadership of then-Revenue Commissioner John James, in 1990 Minnesota implemented some of the most significant initiatives and reforms in state tax administration in state history including the establishment of a Minnesota Taxpayer Bill of Rights (TBOR). Much has changed with respect to state tax administration over the intervening 25 years.

Departmental staffing and the use of departmental resources has changed and evolved. Although Minnesota has significantly more business and individual taxpayers today than in 1990, there are 10% fewer departmental employees supporting the state tax infrastructure on which those taxpayers depend. Moreover, a major repurposing of departmental staff resources took place during this period, heavily influenced by continuing lawmaker interest in “compliance initiatives” – efforts to obtain more money out of the existing tax system without raising taxes. For example, according to the 2006 OLA report, from 2000 to 2005 departmental tax compliance and collection expenditures increased by 40% while all other departmental spending *declined* by 30%. High auditor turnover rates and the loss of experienced professionals to the private sector – first flagged by the OLA study ten years ago – persist today. And simple demographic trends are now impacting the Department in a powerful way as highly experienced and knowledgeable staff and managers retire in increasing numbers.

Faced with these challenges, the Department is making an effort to try to accomplish more with less. It has reorganized itself around tax type divisions and invested heavily in “plain language” initiatives, taxpayer guidance tools and publications, website improvements, compliance classes, and related information initiatives. This effort is intended to make tax administration as clear and taxpayer-friendly as possible and therefore to reduce taxpayers’ need for and level of direct contact with the Department itself. However, the net impact of all these organizational changes over the last 25 years on procedural matters like fairness, understandability, and efficiency in voluntary compliance is important to ascertain.

3. Minnesota’s tax community has expressed concerns about several aspects of DOR administrative practices, some of which appear to have been validated by recent court decisions.

Policymakers enacted Minnesota’s 1990 TBOR provisions to provide substantive rights to taxpayers to protect them from potential unfair and unjust treatment and enable them to challenge questionable and capricious government action. In recent years, tax practitioners have expressed some concerns about various Departmental practices and procedures throughout the continuum of tax compliance activities leading to calls to update and expand Minnesota’s TBOR as well as for stronger enforcement mechanisms for these protections.² During the 2016 legislative session, legislators introduced bills that included, or later incorporated, several measures strengthening taxpayers’ procedural protections.

“Fair treatment,” at some level, will always be in the eye of the beholder. However, interpretive issues are still rooted in law, and recent Minnesota Tax Court and Supreme Court rulings provide evidence that at least some of the concerns about administrative practices have merit:

- In an October 14 decision denying the Department’s motion for summary judgment, the Minnesota Tax Court concluded that there was a potential factual dispute because the Department’s counsel “willfully withheld” evidence in a case concerning the proper valuation of a gas transmission pipeline. The Court concluded that the Department’s administrative rule-based motion could not prevail on summary judgment due to potential factual issues, as the Court reasoned it was not bound by administrative rule for determining a company’s value. The Court was troubled by the Department taking a position in litigation that strictly applied the rule in this case, which was

² “A Call For Expansion and Enforcement of Minnesota’s Current “Taxpayer Bill of Rights”, Jerry Geis, *Fiscal Focus*, November-December 2015, Minnesota Center for Fiscal Excellence.

inconsistent with a prior position. Reminding the Department that administrative rules should be applied “in a consistent and equitable manner” the Court concluded, “it is difficult to understand how taking directly contrary positions in consecutive cases advances these transparency and consistency goals.”³

- In an August 31 ruling on a case involving whether a taxpayer’s sale of industrial dryers constituted an improvement to real property or a retail sale, the Minnesota Supreme Court affirmed a Tax Court ruling they were retail sales, and concluded that the Department’s position in the litigation was not substantially justified and therefore upheld the award of attorney’s fees, under the Minnesota Equal Access to Justice Act, to the business plaintiff. The Supreme Court concluded, “a position that misreads or overlooks statutes and relevant precedent by our court is not “substantially justified” by a “reasonable basis in law and fact.” The Court acknowledged that it was the Department’s position that differentiating between retail sales and improvements to real property is an inherently complex area of law, and that this interpretation was reasonable.⁴
- In a November 2014 ruling concerning a dispute over disallowed charitable contributions to a music center rooted in the argument the center had failed to provide timely letters acknowledging the contribution, the Minnesota Tax Court determined that the music center had adequately acknowledged the charitable contributions. In an August 2016 ruling, the Minnesota Supreme Court concluded the Tax Court did not abuse its discretion in refusing to consider certain evidence of a computational error because that evidence was not relevant to the legal issue of adequate substantiation presented by the parties.⁵

A high quality system of voluntary compliance requires taxpayers to have faith that they will be treated fairly during any tax dispute. The calls for expanding and enhancing Minnesota’s TBOR combined with the courts’ recent expressions of frustration regarding treatment of taxpayers indicate the foundation of partnership, cooperation, and trust necessary for effective voluntary compliance has developed cracks.

PRACTITIONER SURVEY: BACKGROUND

Developed in consultation with MCFE members and other tax experts, we conducted our practitioner survey over a six-week period in late summer 2016. Survey recipients included MCFE members, the Minnesota Society of CPAs, and the Minnesota tax bar. As a “voluntary response sample” survey (rather than a “random sample” survey), those affected by the issues the survey explored were likely more motivated to respond, which implicitly entails a bias in the responses. Therefore, although the survey collected experiences, perspective, and feedback from a wide variety of tax practitioners, the results cannot be used to generate conclusions about the attitudes and perspectives of the Minnesota tax practitioner population as a whole.

It is also important to note that most respondents appear to have completed the survey on an “organizational” basis, so for larger firms an individual survey response generally reflected the collective input of many tax practitioners. As a result, the findings may be skewed toward the experiences of smaller firms and practitioners since a response from a “sole proprietor” CPA carries the same relative weight as a response from a Fortune 500 company with dozens of tax practitioners.

We designed the survey to collect practitioners’ perspective in three general areas:

- The current state of state tax administration
- The adequacy of current taxpayer supports

³ *CenterPoint Energy Resources Corp. v. Commissioner of Revenue.*

⁴ *Commissioner of Revenue v. Dahmes Stainless, Inc.*

⁵ *Michael and Jean Antonello, v. Commissioner of Revenue*

- The merits of nearly 30 potential new or enhanced procedural protections that have precedence either at the national level or in other states

We received 124 responses to our survey. It is difficult to estimate a response rate based on the total population of tax practitioners because of the overlap in distribution and the number of individual responses representing the collective input of practitioners in a larger organization. Timing issues likely depressed the number of responses – both the late summer distribution of the survey itself and the September 15 federal filing deadline, which means that our survey period fell during one of the busiest times of the year for practitioners. As Table 1 shows, survey responses reflected a respectable cross-section of the practitioner community with respect to both organization type and size.

Table 1: Descriptive Information Regarding Survey Respondents

Employment Status	Share of Total	Size of Organization/ Typical Client Size	Share of Total
In-house practitioner	25.8%	Under 10 employees	21.7%
Primarily serving clients	74.2%	10 – 50 employees	28.3%
		51-500 employees	20.0%
		Over 500 employees	30.0%

PRACTITIONER SURVEY RESULTS: CURRENT STATE OF STATE TAX ADMINISTRATION

As the accompanying tables show, respondents generally ranked the current condition of administrative practices and protections “good to fair” (better than “3” on a five-point scale from “excellent” to “very poor”). Based on the percentage responding either “poor” or “very poor,” sales and use tax is the tax of greatest concern while administrative rulemaking and obtaining information and guidance from the Department are the administrative processes in need of most attention.

Table 2: Practitioners’ Assessment of the Current Condition of Administrative Practices / Taxpayer Procedural Protections, for Selected State and Local Taxes

State/Local Tax Area	Excellent	Good	Fair	Poor	Very Poor	Average Rating	% of Participants Responding
Corporate income tax	2.2%	42.2%	47.8%	2.2%	5.6%	2.67	72.6%
Estate tax	5.9%	47.1%	35.3%	8.8%	2.9%	2.56	27.4%
Excise taxes	8.7%	30.4%	52.2%	8.7%	--	2.61	18.5%
Individual income tax	4.8%	32.5%	39.8%	14.5%	8.4%	2.89	66.9%
Property taxes	2.0%	28.6%	46.9%	18.4%	4.1%	2.94	39.5%
Sales and use taxes	6.0%	25.3%	41.0%	21.7%	6.0%	2.96	66.9%

Note: Rating scale is: 1 = Excellent; 2 = Good; 3 = Fair; 4 = Poor; 5 = Very Poor

Table 3: Practitioners’ Assessment of the Current Condition of Administrative Practices / Taxpayer Procedural Protections, for Selected Tax Issues or Processes

Tax Issue/ Process	Excellent	Good	Fair	Poor	Very Poor	Average Rating	% of Participants Responding
Administrative rule-making processes	1.3%	16.9%	45.5%	18.2%	18.2%	3.35	62.1%
Appeals processes	2.7%	28.0%	41.3%	20.0%	8.0%	3.03	60.5%
Audit processes	1.0%	27.6%	41.8%	22.4%	7.1%	3.07	79.0%
Collection processes	2.9%	18.8%	58.0%	13.0%	7.2%	3.03	55.6%

Tax Issue/ Process	Excellent	Good	Fair	Poor	Very Poor	Average Rating	% of Participants Responding
Enforcement and penalties	2.3%	17.2%	55.2%	17.2%	8.0%	3.11	70.2%
Liability determination (third party, vendor)	2.5%	30.0%	37.5%	17.5%	12.5%	3.08	32.3%
Obtaining guidance & information from DOR	6.0%	29.0%	32.0%	19.0%	14.0%	3.06	80.6%
Tax Court processes	9.4%	53.1%	28.1%	6.3%	3.1%	2.41	25.8%

Note: Rating scale is: 1 = Excellent; 2 = Good; 3 = Fair; 4 = Poor; 5 = Very Poor

Many respondents supplied short answer explanations or examples that provide important insights into their ratings on these issues. The primary theme of critics regarding the general condition of state tax administration was frustration regarding an environment of ambiguity and uncertainty within state tax administrative processes making voluntary compliance more difficult. The areas of concern most frequently cited were sales and use taxes and corporate franchise tax. The causes for these concerns were linked to three primary issues (listed in order of frequency of comment):

- **Lack of Rulemaking** – The unwillingness to promulgate new regulations with direct input from the tax community and the use and reliance instead on revenue notices (which as many noted looks like law but isn't) was the most cited concern. While revenue notices offer a less expensive, less cumbersome, more efficient way to provide guidance on administrative interpretation than formal administrative rulemaking, respondents commented the infrequency of their publication and the lack of clarity/interpretive ambiguity within the revenue notices themselves makes them a poor surrogate. Many respondents cited the recent notice on Minnesota residency as a prime example. Some respondents saw the reliance on revenue notices as a means to allow the Department to functionally implement its own tax policy.
- **Knowledge base / consistency within the Department** – Perhaps reflecting the continuing recruitment and retention challenges the OLA report captured a decade ago, respondents expressed considerable concern regarding the experience, training, and knowledge base within the Department, primarily in the sales tax auditing area. Respondents asserted auditors often do not understand statutory language, misapply that language, and in some cases misinterpret the Department's own guidance. Several respondents also reported a disturbing lack of consistency among both auditors and appeals officers with the result that pursuing administrative resolutions is akin to (in the words of one respondent) "drawing straws."
- **General taxpayer communication** – Several respondents expressed frustration with the reluctance of staff to go beyond recitation of "fact sheets" and provide meaningful and applicable verbal or written guidance on more complex interpretive issues (like sales apportionment).

The other primary source of criticism revolved around what might be called "fair treatment" concerns. The most commonly cited concern was lengthy procedural delays – especially in appeals and refunds which several respondents noted can drag out three years or more. It is difficult to summarize other responses that fell into this category of comment since they typically center on case-specific circumstances or very specific situations across the tax compliance spectrum in which respondents felt norms of fair and just treatment were violated. In a general sense, these respondents were concerned with:

- retroactive assessments⁶

⁶ Imposed in instances where a subsequent audit finds an issue that an earlier audit did not identify. Instead of imposing the additional tax liability from the time of the subsequent audit, the Department can impose the liability retroactively to the time of the first audit.

- ignoring Tax Court precedents; or
- imposing negligence penalties without a basis for determination of negligence.

Such concerns are typically the basis for the practitioner community’s support for TBOR enhancements.

Survey respondents primarily directed their strongest praise regarding Minnesota state tax administration at what might be described as its “first line” of communication with taxpayers on administrative issues and compliance matters. The Department’s investments in this area (described earlier) appear to be paying dividends. Many respondents were very complementary of the Department’s website both with respect to its ease of navigation and the information provided. Several noted very positive experiences with the Office of the Taxpayer Rights Advocate and with getting basic questions answered promptly. And in contrast to the criticisms offered by some practitioners (or perhaps as evidence of the inconsistency of practitioner experiences with Revenue staff) some respondents gave high marks with respect to staff responsiveness, general knowledge, and the overall quality of specific administrative processes such as appeals.

Our survey did note differences in some respects between respondents either working for or with companies with 50 or fewer employees and those working for or with companies with 51 or more employees. Larger companies are noticeably more likely to have filed an administrative appeal regarding a tax issue or to have appeared before the state’s Tax Court. Attitudinal differences are also apparent, both with regard to tax areas and specific issues or procedures. Tax practitioners associated with smaller companies are generally more pleased with the state of the corporate and individual income taxes than their counterparts in larger companies. Conversely, practitioners associated with larger companies rate the current condition of administrative practices and taxpayer procedural protections much less favorably than their small company counterparts – most notably with regard to administrative rulemaking, but also concerning audit and collection processes, enforcement and penalties, and Departmental guidance.

PRACTITIONER SURVEY RESULTS: ADEQUACY OF CURRENT TAXPAYER SUPPORTS

Respondents were also asked to evaluate specific taxpayer supports which the Department provides on several dimensions. The tables below present the results. (Note: for each item the rating scale is: 1 = Excellent; 2 = Good; 3 = Fair; 4 = Poor; 5 = Very Poor)

Table 4: Practitioners’ Assessment of On-line Information Sheets and Instruction Booklets

	Excellent	Good	Fair	Poor	Very Poor	Average Rating	% of Participants Responding
Clarity	5.2%	62.5%	29.2%	3.1%	--	2.30	77.4%
Timeliness	5.5%	56.0%	29.7%	8.8%	--	2.42	73.4%
Completeness/Coverage	6.3%	53.1%	30.2%	10.4%	--	2.45	77.4%
Usefulness/Reliability	5.2%	57.3%	24.0%	12.5%	1.0%	2.47	77.4%

Table 5: Practitioners’ Assessment of Revenue Notices

	Excellent	Good	Fair	Poor	Very Poor	Average Rating	% of Participants Responding
Clarity	1.1%	38.0%	48.9%	6.5%	5.4%	2.77	74.2%
Timeliness	--	28.7%	50.6%	14.9%	5.7%	2.98	70.2%
Completeness/Coverage	--	36.3%	46.2%	9.9%	7.7%	2.89	73.4%
Usefulness/Reliability	1.1%	41.8%	39.6%	9.9%	7.7%	2.81	73.4%

Table 6: Practitioners' Assessment of Sales and Use Industry Guides

	Excellent	Good	Fair	Poor	Very Poor	Average Rating	% of Participants Responding
Clarity	10.3%	45.6%	30.9%	13.2%	--	2.47	54.8%
Timeliness	9.2%	40.0%	41.5%	9.2%	--	2.51	52.4%
Completeness/Coverage	11.8%	38.2%	36.8%	13.2%	--	2.51	54.8%
Usefulness/Reliability	13.2%	42.6%	33.8%	10.3%	--	2.41	54.8%

Table 7: Practitioners' Assessment of Departmental Rules

	Excellent	Good	Fair	Poor	Very Poor	Average Rating	% of Participants Responding
Clarity	--	38.7%	48.4%	6.5%	6.5%	2.81	50.0%
Timeliness	--	26.7%	51.7%	16.7%	5.0%	3.00	48.4%
Completeness/Coverage	--	35.5%	45.2%	11.3%	8.1%	2.92	50.0%
Usefulness/Reliability	--	33.9%	45.2%	12.9%	8.1%	2.95	50.0%

Table 8: Practitioners' Assessment of the Usefulness of the Office of the Taxpayer Rights Advocate

Excellent	Good	Fair	Poor	Very Poor	Average Rating	% of Participants Responding
18.2%	54.5%	27.3%	--	--	2.09	17.7%

Table 9: Practitioners' Assessment of Engagement and Dialogue With Agency Staff

	Excellent	Good	Fair	Poor	Very Poor	Average Rating	% of Participants Responding
Clarity	7.6%	46.7%	28.3%	12.0%	5.4%	2.61	74.2%
Timeliness	11.0%	38.5%	27.5%	17.6%	5.5%	2.68	73.4%
Completeness/Coverage	8.8%	42.9%	29.7%	13.2%	5.5%	2.64	73.4%
Usefulness/Reliability	8.9%	43.3%	24.4%	16.7%	6.7%	2.69	72.6%

The results again appear to confirm that the basic portfolio of information products and resources the Department provides serves basic compliance needs well. Overall evaluations of web-based resources, instruction booklets and sales and use tax industry guides range from good to excellent for a majority of respondents. Descriptive information accompanying these rankings often confirmed their usefulness and helpfulness. While slightly less than 1 in 5 survey respondents have interacted with the Office of the Taxpayer Rights Advocate, those that have engaged the Office have had very positive experiences.

However, several respondents commented these products and services – as important as they are – by their nature have inherent limitations because they cannot cover all the subjects and real world circumstances practitioners face. They therefore cannot be a substitute for more specific guidance in circumstances in which interpretive issues are particularly complex. Especially in areas like the sales and use tax, DOR's informational, educational, and other support products of a more general nature are likely unable to address the full array and complexity of situations and circumstances that frequently arise in tax compliance today.

Evaluations of taxpayer supports targeting these more challenging compliance situations were less positive. The results suggest many practitioners do find revenue notices helpful – substantial majorities rank them

“fair to good” across all characteristics. However, specific comments accompanying these rankings were overwhelmingly critical expressing concerns about 1) their use as a surrogate for administrative rulemaking; 2) infrequency of publication; 3) vagueness and lack of actionability; and, 4) inconsistency with statutory language. It is likely the discrepancy between the rankings and accompanying comments is at least partially related to the complexity of compliance circumstances to which the notice is intended to offer guidance.

Both the responses and supplementary comments regarding engagement and dialogue with agency staff offered a mixed bag. Some used words like “timely” and “professional”; others “defensive” and “unresponsive.” One shared theme between those who gave good and bad marks in engagement and dialogue was the difficulty in getting actionable direction and advice. Several respondents expressed frustration with the reticence to “make a call” and an unwillingness to offer clear, implementable guidance. The inability to access Departmental attorneys and the perception that they are internal counsel to the Department and its interests rather than resources for the customer/taxpayer was a comment offered by multiple respondents.

PRACTITIONER SURVEY RESULTS: THE MERITS OF NEW AND ENHANCED PROCEDURAL PROTECTIONS

In light of the current condition of Minnesota’s state tax administration, do existing procedural protections for taxpayers need an upgrade? As the table below shows, for the half of survey respondents offering perspective on this issue, the answer is definitely yes. 90% of those responding to the question strongly or somewhat agreed that existing protections need an upgrade, and over 80% felt existing protections need stronger enforcement mechanisms.

Table 10: Level of Agreement on Statements Regarding Minnesota's Existing Procedural Protections for Taxpayers ("Taxpayer Bill of Rights")

Statement	Strongly Agree	Somewhat Agree	Somewhat Disagree	Strongly Disagree	% of Participants Responding
The existing protections need an upgrade	44.1%	45.8%	8.5%	1.7%	47.6%
The existing protections need stronger enforcement mechanisms and remedies	33.9%	50.8%	10.2%	5.1%	47.6%
A significant amount of any needed improvement in the existing protections could be accomplished by improving trust and dialogue with the Department and avoiding the need for statutory remedies	31.3%	48.4%	14.1%	6.3%	51.6%
The quality of dialogue with the Department has declined over the last decade	33.3%	33.3%	27.0%	6.3%	50.8%

At the same time, a majority of respondents also believe that better communication and dialogue with the Department regarding tax administration could mitigate the need for such measures. The perception that the quality of dialogue with the Department has declined over the last ten years – shared by two-thirds of respondents – is likely influencing respondents’ support for TBOR enhancements. This is a critical issue, and it would be worthwhile for stakeholders to explore the causes of this perception. One hypothesis to consider is that the compliance initiatives and push for closing “tax gaps” prevalent during the first decade of this century not only drove an over-allocation of resources to the enforcement end of the tax compliance continuum but also fostered a departmental culture which substitutes a “we versus them” mentality for the preferred customer service perspective.

What specific statutory remedies do practitioners feel may be appropriate? Our survey asked tax practitioners about some 30 provisions that have precedence either in other states or at the federal level⁷ The following table presents the results. Average rating scores for each recommendation exclude respondents answering “don’t know” and non-respondents so that the scores reflect the thinking of those with sufficient experience regarding the topic to form an opinion about the merit of the idea.

Table 11: Practitioners’ Assessment of Potential TBOR Recommendations

(Note: for each item the ranking scale is: 1 = Very Important; 2 = Moderately Important; 3 = Not Very Important; 4 = Shouldn’t Be Done)

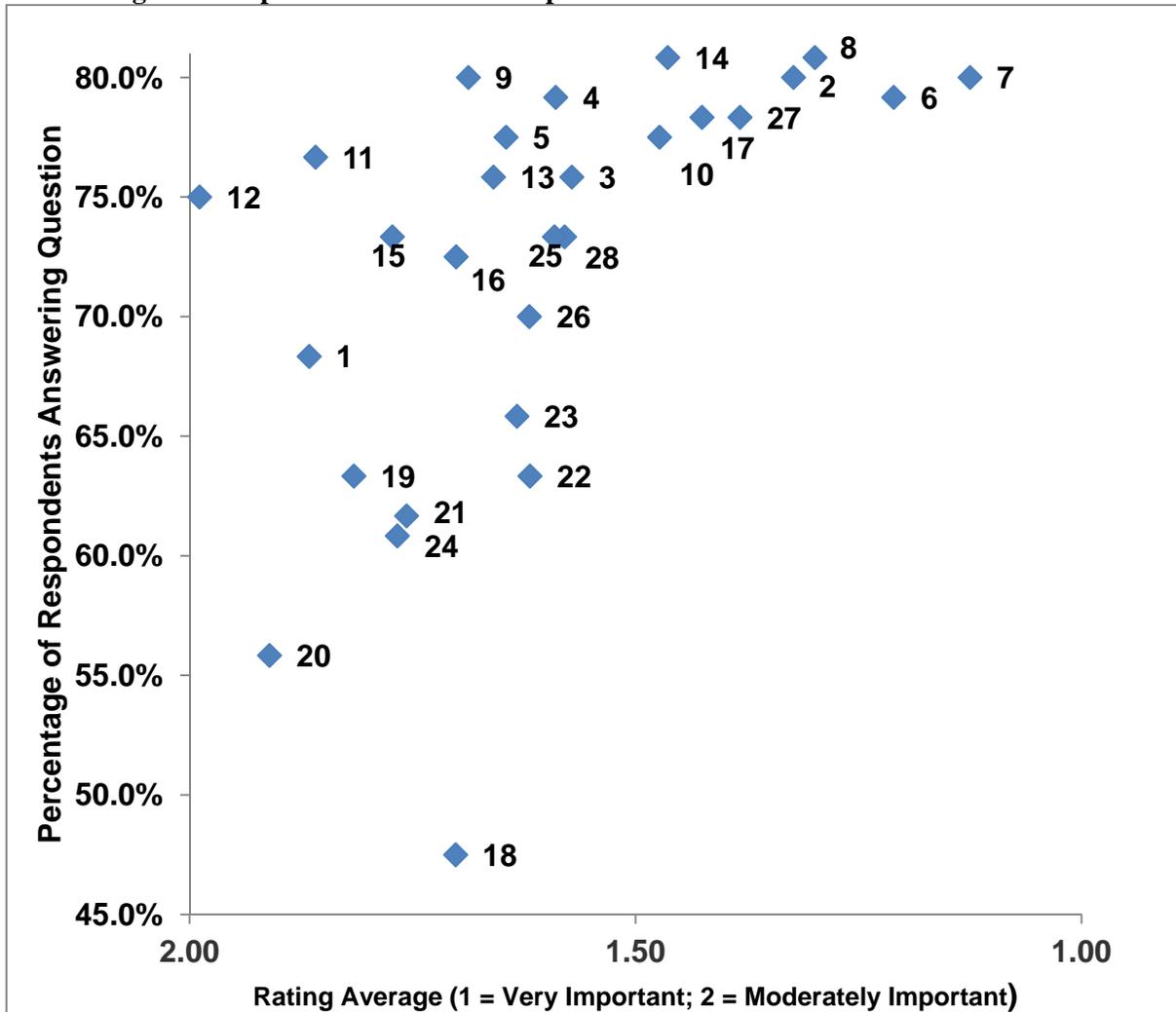
Potential Recommendation	Average Rating	% of Participants Responding	Top Ten
1. Identify and consolidate in a separate statute a core group of taxpayer rights like those propounded by the IRS at the federal level	1.87	68.3%	
2. Require DOR employees be instructed in all taxpayer rights and protections	1.32	80.0%	Yes
3. Prohibit DOR from making a sales tax assessment in the course of a current audit of a taxpayer's returns if no such assessment was made in a prior audit in which the current practice was clearly reviewed or if changed in accordance with written guidance by the Department	1.57	75.8%	Yes
4. Require the DOR to provide written information on what records constitute the minimum requirements for record-keeping	1.59	79.2%	Yes
5. Require auditors to recommend any changes to record-keeping processes in writing	1.65	77.5%	
6. Require auditors to provide a written narrative explaining the reasons for a tax assessment	1.21	79.2%	Yes
7. Guarantee taxpayers the right to discuss the auditor's proposed assessment if there is a disagreement regarding the findings	1.13	80.0%	Yes
8. Provide taxpayers the right to meet with a supervisor and/or DOR attorney to resolve a matter if the initiating DOR auditor is unable or unwilling to do so	1.30	80.8%	Yes
9. Guarantee appeals be deemed timely if electronically transmitted by midnight, Central Time, of the due date for filing	1.69	80.0%	
10. Require DOR to suspend imposition of interest against a taxpayer if DOR has not acted upon an appeal or audit within an established acceptable period of time	1.43	78.3%	Yes
11. Establish a private letter ruling program	1.86	76.7%	
12. Require redacted settlement summaries to be published for administrative appeals with a summary of the DOR's position, the taxpayer's position, and how the dispute was settled	1.99	75.0%	
13. Provide taxpayers the right to make voluntary tax payments that are to be applied to taxes for periods the taxpayer specifies in a manner conforming to the IRS position on designation of payments	1.66	75.8%	
14. Prohibit DOR officers and employees from using personal e-mail accounts to conduct official business	1.46	80.8%	Yes
15. Increase the criminal penalties and civil damages associated with the unauthorized disclosure or inspection of tax return information	1.77	73.3%	
16. Increase the civil damages associated with improper DOR collection	1.70	72.5%	

⁷ List of provisions was taken from Geis article (see footnote 2) and modified by our survey review committee.

Potential Recommendation	Average Rating	% of Participants Responding	Top Ten
activities			
17. Codify, in law, the DOR's position that if the income tax statute of limitations is open on the Federal level, the period for the taxpayer to file income tax refund claims is also open	1.47	77.5%	Yes
18. Conform the 15-day deadline for filing post-trial motions in the Tax Court to the 30-day deadline for filing post-trial motions in the District Court	1.70	47.5%	
19. Increase the limit for seeking relief in the Tax Court's Small Claims Division from \$5,000 to \$15,000, as is the case in the Conciliation Court	1.82	63.3%	
20. Clarify that a "responsible person" may file a claim for a refund as long as his or her claim has not been the subject of an administrative or tax court appeal	1.91	55.8%	
21. Clarify that the time for the appeal to the Minnesota Tax Court is the "notice date" designated by the Commissioner on the order for assessment	1.76	61.7%	
22. Clarify that a taxpayer appealing to the Tax Court be able to introduce evidence to show compliance with the "mailbox rule" in a situation when the taxpayer sent the envelope via U.S. Mail but was not subsequently postmarked	1.62	63.3%	
23. Establish a right to a collection due process hearing that is parallel to those in the Internal Revenue Code that applies when the DOR files a notice of tax lien or issues a notice of intent to levy upon the taxpayer	1.63	65.8%	
24. Establish a Collection Appeals Program similar to what is provided for in Federal law (i.e., without judicial appeal), for termination or proposed termination of an installment agreement, or modification or proposed modification of an installment agreement	1.77	60.8%	
25. Require DOR to deliver personal assessments for secondary liability (such as officer liability or fiduciary liability) to the taxpayer by certified mail, similar to the Federal procedure	1.58	73.3%	
26. Provide that the period for filing income and sales tax refund claims be two years from payment instead of the existing one-year period from an order for assessment	1.62	70.0%	
27. Require the DOR to include detailed information about the basis for penalties as well as the penalty calculation in a manner similar to federal provisions	1.38	78.3%	Yes
28. Require the DOR, by statute, to require that supervisors approve, in writing, all discretionary penalties the department imposes, in a manner similar to federal provisions	1.59	73.3%	

Perhaps unsurprisingly, there is moderate to strong support for every recommendation. To provide one perspective on thinking about priorities, we cross-referenced the ratings with the number of respondents for each recommendation with the result appearing on the accompanying scatter plot (Figure 1). Recommendations in the upper right area of the scatter plot score high on both number of respondents and importance; those on the lower left signify lower levels of respondent relevance and "interest." (The "importance" axis along the horizontal only ranges from very important to moderately important to make it easier to distinguish between the points.) Table 11 above identifies the ten recommendations that earned the highest combined response rates and importance levels.

Figure 1: Importance Level and Response Rates for Potential Recommendations



Even in pursuing provisions such as these, the importance of enhanced communication and understanding between taxpayers and administrators is important. To illustrate, the Department has noted that it already has policies and procedures in place addressing seven of the top ten recommendations listed in Table 11. Clearly there is a disconnect here between the tax community and the Department and further detail, refinements, definitional precision, or context is needed to satisfy taxpayers. If efforts to adopt an enhanced set of TBOR provisions do not involve the Department, any new taxpayer protections may end up featuring the same frustrating interpretive ambiguity and uncertainty that exists in the administrative activities which these provisions are intended to address.

CONCLUSION

Any survey will have inherent limitations in assessing the condition of tax administration. The large number and diversity of individual processes, procedures, and activities comprising the topic (any one of which can influence opinion about “the system” as a whole) combined with the subjectivity and diversity surrounding each taxpayer’s experiences makes objective, definitive judgments about the state of state tax administration difficult. Nevertheless, we believe some general conclusions can be drawn from the survey findings:

- **Minnesota’s basic tax administration infrastructure is sound, and recent Departmental investments in taxpayer communication and understanding have been very beneficial and yielded positive returns.** Minnesota has long received high marks in a national benchmarking study on basic tax administrative infrastructure⁸. The Department has supplemented those past efforts with ongoing investments in a wide variety of taxpayer education and communication initiatives. Together, these provide a solid foundation for basic tax compliance in routine and commonplace situations and circumstances affecting the majority of Minnesota taxpayers.
- **A primary area of voluntary compliance frustration – and a focus for improvement – occurs in activities related to the more sophisticated and complex areas of tax law.** In modern day tax compliance, where someone is or where something happens is a vitally important and often challenging issue in determining tax liability. This is especially relevant for larger businesses with multi-state or multinational operations. Issues like nexus, sourcing, allocation, transfer pricing and combination all have big implications for voluntary compliance. Reliable information, interpretive consistency, and actionable guidance on these matters are critical for both voluntary compliance and business planning. Our survey findings indicate that practitioners associated with large companies have a noticeably less favorable view of many administrative practices, which may be explained at least somewhat by a corollary finding that large companies are more likely to have gone through an appeals process and a Tax Court trial. All this suggests that managing complex and sophisticated areas of state tax law is an area in which Minnesota tax compliance needs some work.
- **Administrative issues that were a concern over a decade ago remain a concern today.** Attracting and retaining talent has been a chronic administrative challenge for over a decade and accelerating numbers of Baby Boomer retirements will likely exacerbate the challenge. Adding to the problem are rigid state human resources rules relating to job classification and compensation that are largely tone deaf to market forces. How and to what extent such talent-related issues negatively affect voluntary compliance – and what can be done about them – is an administrative issue that deserves far more attention than it currently receives.
- **Improved communication is vital but should not preclude new statutory protections in the form of enhancements to Minnesota’s existing Taxpayer Bill of Rights.** Respondents offered strong support for the idea that better dialogue with the Department on administrative matters could mitigate the need for statutory remedies but also provided high levels of support for possible TBOR enhancements. It seems reasonable to conclude tax practitioners envision strengthening TBOR as a joint effort to advance the customer service dimensions of state tax administration. Supporting and participating in this endeavor would allow the Department to take credit for an important advancement in fair, efficient, and high quality tax administration as was done 25 years ago.

We also conclude there is more at stake in addressing these issues than the full realization of the vision that “everyone reports, pays, and receives the right amount: no more, no less.” There are important secondary benefits with respect to public attitudes and trust in government. Public resentment, skepticism, and

⁸ *The Best And Worst Of State Tax Administration*, Council on State Taxation, Washington DC, December, 2013

cynicism toward government undoubtedly is based on how individuals are treated in those relatively rare moments when they must deal with government and its processes on a very direct level. In this respect, TBOR is no different from the many other efforts state government is already pursuing to improve customer service and responsiveness across all its other service deliveries and programs.

APPENDIX: MINNESOTA DEPARTMENT OF REVENUE RESPONSE

At our request, the Minnesota Department of Revenue has provided commentary in response to this Issue Brief. Their response follows on the following two pages.



600 North Robert St.
St. Paul, MN 55146

November 30, 2016

Minnesota Center for Fiscal Excellence
85 East 7th Place, Suite 250
Saint Paul, Minnesota 55101-2143

At the Minnesota Department of Revenue, our mission is, "Working together to fund Minnesota's future." The most important part of that statement, to us, is the word "together." We cannot do this work alone, and we rely on our customers – and the tax professionals who work with them – to help fulfill our mission.

Our customers range from first-time income tax filers to Fortune 100 companies, and from start-up businesses to city and county governments. Almost 3 million individual income tax customers file returns with us each year, and over 150,000 businesses collect and remit sales tax. We work to address the needs of our diverse and broad set of customers through investments in a wide variety of initiatives. We are committed to finding innovative ways to implement the revenue system with transparency, fairness, and a focus on doing our best for the people of our state.

Over recent years, we have learned from our business customers, in particular, about their needs. We have made changes based on comments and suggestions we received both informally and formally – from listening sessions convened in 2010 and 2013, to targeted surveys, town halls, and more.

Using that feedback and focusing our resources as efficiently as possible means providing customers with readily available guidance and tools to meet their obligations under the law. Examples include plain language communication, fact sheets and industry guides, and classes for our business tax filers. As we have implemented these improvements, we continue to focus on excellent customer service.

For example, we established quality assurance teams to conduct post-audit surveys to measure our successes and to find potential improvements and training opportunities. Those surveys indicate that 95% of our customers feel they were treated fairly in an audit and 89% agree that the auditor appropriately educated them about the audit process and the laws that applied to their business. Our Corporate Tax Division recently implemented a voluntary survey at the end of phone calls and, in the first three months, 87% of the customers we heard from gave the service they received the highest rating.

Timely responses are important to taxpayers in administrative appeals and we have dedicated resources to reduce the number of appeals over 2 years old from over 140 in 2011 to 15 today. Fewer than 4% of administrative appeal orders are appealed to Tax Court each year. The rest are resolved within the department, avoiding costly litigation.

We use technology to improve customer service with efforts like the Audit Room. This electronic file transfer system allows taxpayers going through an audit to exchange documents more efficiently, at times that are more convenient for the customer.

We have heard from members of the business community who have observed the positive effects of these changes. For example, Avalara recently ranked our website the best state website for small businesses seeking sales tax information, highlighting our FAQ section and our useful information for sales tax filers. We also receive positive comments from customers about the industry guides and fact sheets that give businesses the information they need to satisfy their tax obligations.

We have also heard the desire for more guidance on Minnesota's business tax laws – particularly for large, complex organizations in the state – and have already begun working to increase the number of revenue notices we issue, and are considering how best to dedicate more resources toward rulemaking.

In addition to all of these improvements and our continued focus on customer service, we know there is more to do. To that end, we appreciate the Minnesota Center for Fiscal Excellence's survey and panel discussion about opportunities to provide additional services and to communicate with our business customers.

We appreciate the chance to hear directly from our customers, and we look forward to continuing this dialogue. In that spirit, the department will hold a business customer listening session in December to help us better understand our business customers' needs and identify ways to enhance communications, services, and our working relationships.

Please continue to share your ideas and suggestions with us. If you have feedback during an audit, please contact the supervisor identified on the initial audit letter. If you receive a survey from us, please share your ideas. We value your responses and use them to improve our services. You can also find contact information for each of our divisions on our website (revenue.state.mn.us). There is always someone to take your call and help answer your questions. And finally, please feel free to reach out to me as we work together to fund Minnesota's future.

Sincerely,



Cynthia Bauerly
Commissioner

Minnesota Department of Revenue