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ARIZONA TAX RESEARCH ASSOCIATION

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January 30, 2004

J. Elliott Hibbs
Director, Arizona Department of Revenue
1600 West Monroe, 9th Floor
Phoenix, AZ 85007

RE: *Unpublished Tax Cases*

Dear Director Hibbs:

I am writing on behalf of the Arizona Tax Research Association Tax Practitioner's Committee regarding the availability of unpublished tax cases at all levels of state government to the public. This is an important issue of concern to our members and we are sending you this letter with the hope that through our informal efforts, we can reach a solution.

Decisions involving interpretations of our taxing statutes help all of us, both government and public, to better comply with the law. Tax practitioners are confronted daily with questions relating to state taxes and want to give our clients the best advice possible. Having access to administrative and judicial decisions, even if non-binding, will help in giving that advice. If the overall goal of the Department is to assist in voluntary compliance with the law, the additional guidance given by these decisions will promote that goal. It is in this spirit that ATRA seeks your assistance in this matter.

I know that you recently stated that the Department plans to make a number of its Hearing Officer and Director Decisions available on its website. We think that is an excellent decision and very much in line with our proposals in this letter. Because we address tax decisions other than those authored by Department personnel, I am sending you the remainder of this letter as originally drafted prior to your announcement

As you know, there are hundreds of decisions issued annually that discuss and resolve issues of state sales, use, property and income taxation. They are issued by the Office of Administrative Hearings, the Department's Hearing Office, yourself as the Director, the Arizona Tax Court and the Arizona Court of Appeals to the extent its tax cases are memorandum decisions and not published. The Arizona Board of Tax Appeals also issues such decisions but they are available to the public and are published by Commerce Clearing House.

The problem resulting from the existence of all of these decisions is that they are either not available to the public or are very difficult to locate:

- Decisions from the OAH, Department's Hearing Office and Director are confidential and are not available to the public in any manner.
- Decisions from the Arizona Tax Court are available but it is a virtually impossible to sort out the meaningful decisions on substantive tax issues from the hundreds of cases and thousands of documents available from the court on line. Just reviewing one case can reveal the presence of maybe 10 or 15 minute entries. Typically, one of those is a ruling on the merits but there is no way to know which is which by looking at the court's records. And this assumes you know what cases are worth looking at. Many, if not the majority, of Tax Court cases involve matters which may not result in anything particularly significant or are settled and never get to a formal resolution. Thus, even if it were easy to quickly decipher the scores of court documents in a single case, there is no way to know which single cases have any value.
- Unpublished decisions from the Court of Appeals are easier to locate since there are not many of them. But it still takes a lot of the same type of searching and you have to personally go to the Court of Appeals to get those decisions.

In cases where the Department is a party to a tax controversy proceeding, the Department will have copies of these decisions. Given this fact, it would seem to be very possible for the Department to have a single repository of every single decision issued, perhaps in the General Counsel's office. What we are hoping to achieve is finding a way to share access to that repository and are prepared to commit private resources to accomplishing this task.

We understand that many of these decisions are confidential and that there are good reasons for confidentiality. The names of taxpayers and the amounts of tax at issue should not be public knowledge and practitioners do not care who the taxpayer was. In those situations, redacted versions of the decisions could be placed in the repository.

For years, the Phoenix City Auditor Department served as the independent tax hearing officer for Phoenix privilege license tax appeals. During its entire history, it would review every decision that it issued, redact the information considered confidential and make those redacted decisions available to the public. They were placed in a binder at the Maricopa County Law Library and I believe that those decisions, dating back to the late 1970s are still available today. My law firm has a copy of the decisions and issue index in its library. Yet, the City Auditor did this notwithstanding that the City of Phoenix had confidentiality rules very similar to the state rules. The redacting typically removed maybe one-half of one percent of the language of the ruling but left fully intact the discussion, analysis and conclusion on the tax issues raised in the appeal.

I was a Phoenix hearing officer and participated in that editing process and can personally attest that it took very little time to accomplish. I also can attest that I was never aware, both

during my time at Phoenix, as well as at any time before and after, that there was a single complaint by any taxpayer or anyone associated with the city as to this process. We also initiated a subscription program where we provided the same issue index and copies of the rulings that were available in the county law library to private practitioners. A number of law and accounting firms took advantage of this and were provided the updates at the same time we made them and provided them to the law library. I can personally attest that our subscribers were very happy with this service. I can also tell you as a practitioner that I have used these city rulings on many occasions to research numerous issues of interest to my clients.

Thus, confidentiality should not be a barrier to making such decisions available to the public and I am sure we could come up with some methodology to protect confidential information while still making the decisions available to the public.

ATRA would like to work with the Department to make all decisions available to the public. We have no specific ideas on how this might occur, but the Department appears to be the best place to start. If the exchange of information agreement with the Internal Revenue Service causes a problem on the income and estate tax cases, we can work with you to arrive at a compromise solution for those decisions.

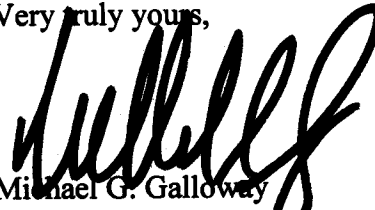
We realize this is not a new issue. It has been discussed, at least in the context of Director's Decisions, for a number of years. At one of our recent practitioner meetings with Frank Migray, he mentioned that one of his goals was to make Director's Decisions available on the Department's website. However, we believe that this issue doesn't just apply to Director's Decisions and that a global solution for all unpublished tax cases is needed. We also believe that any solution should be retroactive. To the extent that the statute of limitations for either an assessment or refund would be open for a taxpayer, past decisions are equally as important as future decisions.

If fine tuning of the confidentiality rules would be needed to accomplish this goal, ATRA is willing to work on legislation and with the Legislature. We are sending this letter solely on behalf of ATRA, but so far have also gained the support of the Arizona Society of Certified Public Accountants and the Arizona Association of Industries. We have not yet discussed the issue with the Arizona and Phoenix Chambers of Commerce but believe both of these organizations would also be supportive of this effort.

We truly appreciate any assistance you can help us in this endeavor, and we would be glad to meet with you for further discussion. Please feel free to call me at 602-230-5534.

J. Elliott Hibbs
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Very truly yours,

A handwritten signature in black ink, appearing to read "M. Galloway", written in a cursive style.

Michael G. Galloway
On behalf of the ATRA Tax Practitioners
Committee

MGG:ndb

cc: Kevin McCarthy
Barb Dickerson
Gale Garriott