

Office of  
LEGISLATIVE AUDITOR GENERAL  
State of Utah

REPORT NUMBER 2003-04

JUNE 2003



## **A Performance Audit of Allegations Against the Tax Commission**

Despite allegations made against the Tax Commission of poor tax notifications and adversarial treatment—as well as voluminous other complaints—we believe the Tax Commission is treating taxpayers fairly. For the most part, the group of citizens that brought forth allegations lacked both credibility and supporting evidence for their allegations. They lacked credibility because they misinterpreted laws, cited nonsensical arguments and appeared to be challenging taxes outright. Although the group promised supporting evidence in the form of “hundreds of cases” which they claimed would show Tax Commission mistreatment, they never produced the cases.

Nonetheless, we specifically reviewed the allegations that the Tax Commission does not provide the taxpayer with sufficient notification of delinquent taxes and that the Tax Commissioners are too adversarial when handling tax appeals.

1. We believe the allegation that the Tax Commission has an inadequate system of notifications is unfounded.
2. We also believe the allegation that the Tax Commissioners are too adversarial with appeals is largely unfounded.

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**Because the Tax Commission has broad tax administration powers, it is often a target of criticism.**

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**While this audit report shows that some criticism is unjustified, it identifies other concerns.**

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The Utah State Tax Commission (Tax Commission), with just over 800 employees, provides a vital function by overseeing tax laws, administering taxes and collecting various tax revenues for state and local governments in Utah. In 2002, the Tax Commission collected \$4.6 billion in state and local revenues to pay for many of the services enjoyed by Utah citizens. The Tax Commission operations are overseen by an executive director who is answerable to a bi-partisan panel of four tax commissioners appointed by the Governor.

Because of the broad tax administration powers given to the Tax Commission, and the varied citizen responses to tax laws, administration, auditing and collection, the Tax Commission is often the target of controversy. This audit report responds to some of this controversy, in the form of allegations made by a citizen group and by some Tax Commission employees.

### **Tax Commission Often Target of Criticism**

The duty the Tax Commission has to collect revenues in the form of taxes makes them one of the most controversial state agencies. By its very nature, potential controversy can be heightened when the Tax Commission proceeds to collect some delinquent taxes or conduct subsequent appeals hearings. This audit report shows that some criticism is unjustified, because we determined the Tax Commission seeks to fairly balance the rights of taxpaying citizens against the state's interest to collect revenue.

### **Tax Commission Given Broad Powers**

The **Utah Constitution** states that “there shall be a State Tax Commission consisting of four members, not more than two of whom shall belong to the same political party . . . . The State Tax Commission shall administer and supervise the tax laws of the State” (**Utah Constitution**, Article XII, Section 11(1) and (3)(a). See also *Utah Code* 59-1-210(5).).

Under their executive management plan pursuant to *Utah Code* 59-1-207, the Tax Commissioners enacted a rule which delegates full authority of the day-to-day management of the operations and business of

the agency to the executive director. In Rule 61-1A-16(C)(1) and (3), this delegation includes performing several tasks, such as:

- overseeing relationships with the customers of the Tax Commission, and
- managing all original tax assessments, adjustments to audit assessments, and collections actions.

### **Audit Scope & Objectives**

Overall, the objectives of this audit were to:

- Review allegations brought against the Tax Commission by a citizen group whose identity is protected.
- Review appropriateness of Tax Commission appeals procedures as they relate to citizen allegations.
- Respond to internal staff allegations of preferential treatment of some taxpayers being given by some Tax Commission management.

### **Citizen Group’s Allegations Are Unfounded**

Despite allegations made against the Tax Commission of poor tax notifications and adversarial treatment—as well as voluminous other complaints—we believe the Tax Commission is treating taxpayers fairly. For the most part, the group of citizens that brought forth allegations lacked both credibility and supporting evidence for their allegations. They lacked credibility because they misinterpreted laws, cited nonsensical arguments and appeared to be challenging taxes outright. Although the group promised supporting evidence in the form of “hundreds of cases” which they claimed would show Tax Commission mistreatment, they never produced the cases. Nonetheless, we specifically reviewed the allegations that the Tax Commission does not provide the taxpayer with sufficient notification of delinquent taxes and that the Tax Commissioners are too adversarial when handling tax appeals.

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**Audit objectives generally consisted of reviewing allegations made against the Tax Commission.**

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**Taxpayers appear to be treated fairly despite allegations from a citizen group to the contrary. This group lacked credibility and never produced supporting evidence.**

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- First, we believe the allegation that the Tax Commission has an inadequate system of notifications is unfounded. Through our audit review, we found no evidence of inadequate notification. In fact, the Tax Commission gives more notification than required by statute.
- Second, we reviewed whether the Tax Commission is too adversarial with appeals and also believe this allegation is largely unfounded. This conclusion is based on our review of the final disposition method used in taxpayer appeals over the last six years. This review showed that the vast majority of appeals (95 percent) are handled informally, prior to formal hearings which are, often times, adversarial. In our view, the Tax Commission gives ample opportunity for taxpayers to resolve concerns through several non-adjudicative appeal procedures, as well as a formal, quasi-judicial hearing for those who seek a more formal review. It is clear that the format of the formal hearing is allowed under statute and is, by its very nature, an adversarial process.

In the first section that follows, we show evidence why we believe the citizen group lacked credibility. Next, we show why allegations pertaining to taxpayer appeals are unfounded. In the final section, we discuss allegations from Tax Commission employees that some delinquent taxpayers were being given preferential treatment by certain members of Tax Commission management. Like the allegations from the citizen group, we conclude that these internal allegations are unsubstantiated.

### **Citizen Group Lacked Credibility and Had Allegations With No Basis**

Most of the allegations against the Tax Commission, brought forth by a group of citizens, have no basis in fact. In addition, the allegations were so numerous it would have been improbable for the audit team to review them all. Finally, it was clear to us that some allegations were simply frivolous. It appeared that some in the group seemed more intent on tax avoidance, through their misinterpretation of laws and use of nonsensical tactics, than on working with the Tax Commission toward tax resolution.

Because we were never provided with substantial evidence, even after several meetings, we questioned the credibility of some in the group who

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**There were so many allegations—many of which were frivolous—it would have been improbable to review them all.**

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ultimately severed ties with the audit team. They stated that our office lacked the independence to conduct an audit because we received a paycheck from the same source as the Tax Commission. To the contrary, our office maintains organizational independence from executive branch departments because we report directly to the Legislature. This section contains our evaluation of the citizen group and their allegations taken as a whole.

In this report, we refer collectively to the group of citizens requesting the audit as the “citizen group” (or “group”). References to the group can mean one or more individuals from the group. However, our conclusions about the group as a whole do not necessarily reflect our findings or opinions about each individual within the group.

For example, one individual seemed to have more credible arguments and was not attempting to avoid taxes. This individual claimed harassment from the Tax Commission. As we reviewed the case, we found a lengthy history of delinquent taxes, which we believe warranted collection efforts. This individual, at one time, admitted to likely needing to hire an accountant.

In the end, we simply were unable to investigate every complaint from every individual because the individuals did not want us to use their own cases. Still, we took the allegations very seriously and met with each member of the group in order to understand their concerns. We reviewed documents given to us by the group and reviewed Tax Commission policies and procedures. We also spent time reviewing applicable laws and visiting initial (informal) and formal hearings. As with any audit, we reviewed allegations according to risk, but would likely not have been able to respond to all allegations in any scenario.

### **Attorney General Responded On Behalf of Tax Commission**

This audit came about after a number of individuals separately approached a legislator with concerns about the Tax Commission. The legislator suggested that, together, they might consolidate their complaints. The resulting document given to the Legislative Audit Subcommittee was an extensive list of over fifty allegations, most against the Tax Commission, with some against the judicial branch of state government.

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**We were unable to investigate every case because the citizen group did not want us talking about their cases with the Tax Commission.**

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**The Attorney General said the allegations appear “to be based on legal theories that have routinely been found to be without merit and frivolous by both federal and state courts...”**

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We believe the Attorney General’s initial response to the allegations, on behalf of the Tax Commission, is accurate and informative. The response shows the legalistic nature of many of the allegations, which would have required a legal review, rather than an audit. Also, the following excerpts from the response provide a good backdrop for our general evaluation of the allegations:

The letter [of allegations] appears to be based upon legal theories that have routinely been found to be without merit and frivolous by both federal and state courts. . . . The letter reflects the increased growth in noncompliant taxpayers who belong to these fringe taxpayer groups. Such taxpayers are becoming more aggressive and more populous. They are increasingly deluging the courts with incoherent documents draining the resources of judges and court staff. Their actions continue to usurp valuable time from the Commissioners, the Divisions and the Utah Attorney General’s Office.

### **Citizen Group Making the Accusations Lacks Credibility**

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**Many in the citizen group lacked credibility and do not represent the average taxpayer who seeks to be tax compliant.**

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In our opinion, most of the individuals in the group do not represent the average taxpayer who is seeking to be compliant with tax laws. Instead, they were challenging the Tax Commission at every turn, with unusual legal theories and philosophies. So, it followed that the allegations themselves became suspect when the group’s credibility was called into question.

The group came to us with the understanding that their names would be kept confidential. Although we can relate some specific examples that demonstrate their lack of credibility, other examples might compromise the identity of the group members, so we have chosen, in some cases, to speak in general terms about the kind of arguments that many noncompliant taxpayers use.

**“Hundreds of Cases” Promised Never Materialized.** When we began to meet with the group, they assured us they had “hundreds of cases” that would substantiate their allegations. However, they never produced the promised cases. In fact, in a very bold twist, one member of the group said that, given our permission, the group could use their existing Internet and radio contacts to call for others to come forth with

similar complaints against the Tax Commission, at the request of the Legislative Auditor General. Clearly, this would have been inappropriate.

So instead, we were left with a lengthy list of allegations and no supporting evidence, except for their existing cases which we could not discuss with Tax Commission officials because members of the group did not want a confidentiality breach.

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**One member of the group admitted to not paying income tax. This member also does not recognize U.S. currency or checks as being legal.**

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**Citizen Group Had Nonsensical Arguments.** Quite simply, many of the individuals within this small group do not believe they need to pay income tax. One individual rationalizes not paying income tax because of the view it is unconstitutional. This view is held despite the fact that both the **United States Constitution** (16<sup>th</sup> Amendment) and the **Utah Constitution** (Article VIII, Section 4(2)) specifically allow for an income tax. This same individual told us that neither United States currency nor a check from a financial institution are legal tender for debts, although this individual admits to using both.

By and large, others who hold similar beliefs, as this group, use many unreasonable theories and arguments to evade taxes. Some of the common noncompliance strategies include:

- claiming they are not citizens of the United States because they do not live in the United States, but live independent as a sovereign nation unto themselves, and
- disputing their identity because their name was printed in all CAPITAL LETTERS on correspondence from taxing authorities.

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**Some in the group appear to be hiding their income in questionable trusts.**

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**Some in the Group Challenged Taxes Outright.** One citizen admitted to having never filed an income tax return and intended never to do so. Philosophically, this person did not agree with the income tax; rather, the person did not think personal income taxes needed to be paid because the company this person works for pays taxes and already does the community good by employing people. Others tried to avoid the income tax by hiding their income in questionable trusts and making frivolous arguments like those mentioned above.

**Citizen Group Accused Judiciary of Conflict of Interest.** Not only did the group accuse the Tax Commission of wrongdoing, but the judiciary as well. The courts were accused of colluding with the Tax Commission and having a conflict of interest because they “both have the

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Many of the allegations listed were deemed unjust because they were based on the citizen groups' mis-interpretation of laws.

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same boss and the same paymaster.” The citizen group also accuses the courts of “working hand in glove to violate taxpayers’ due process.” On its face, the argument seems unreasonable; the citizen group could provide us with no evidence to substantiate this claim.

### **Citizen Group Misinterpreted Laws**

Finally, many of the allegations depended on the group’s own interpretations of laws which, in many cases, were already ruled to be incorrect by the courts. For instance, they allege that the Tax Commission is “violating UCA [59]-10-513 by refusing to sign or give written declaration on any forms or records or assessments or notices.” *Utah Code* 59-10-513 says:

Except as the commission shall otherwise provide by rule, any return, declaration, statement, or other document required to be made under any provision of this chapter, or under rules promulgated hereunder, shall contain or be verified by a written declaration that it is made under the penalties of perjury.

The courts have made it clear that this wording applies only to returns to be made by taxpayers, not notices sent by the Tax Commission.

In some of the other numbered allegations, it was unclear how the cited reference related to the allegation. For instance, the citizens claim that the Tax Commission violated *Utah Code* 59-10-102 and 59-10-103 by “not requiring a verified and certified assessment from the IRS before proceeding against Utahns.” These sections have no relevance to that claim. However, noncompliant taxpayers frequently try to use this argument to escape paying state taxes when they file a fraudulent zero return with the Internal Revenue Service. They try to argue that because they have filed a zero return (fraudulently as it is) with the IRS, their state tax is zero because the state personal income tax is derived from calculations in the federal tax.

To put it simply, after making their list of allegations, the group did not substantiate any of their claims. Not only did they fail to produce cases illustrating their claims, but they made interpretations of the law inconsistent with the way courts have ruled.

## **Audit Review Was Improbable Due to Limits Imposed by Group**

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**For many reasons, we informed legislative leadership that we would be distancing our office from the citizen group. Many of their allegations required legal interpretations, not an audit review.**

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For the reasons enumerated above, we informed both the Speaker of the House and the President of the Senate that we would distance ourselves from the specific cases of the citizen group. In addition to the group lacking credibility and being unable to provide evidence substantiating their claims, we determined that a fair evaluation was not possible and that many of their allegations required legal interpretation and review, not an audit review. Finally, after we began to distance ourselves from the citizen group, they made accusations about our office. They left our final interview saying that any further contact would come from them. No further contact was ever made.

**Group Did Not Want Specifics Revealed to Tax Commission.** At one point, the group told us not to ask the Tax Commission about the merits of their specific arguments because the arguments would identify them. So, confronted with this requirement, we were unsure how to perform a fair review without addressing the specific arguments with the Tax Commission. In fact, it would violate our audit standards to disallow the auditee the opportunity to review specific concerns.

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**Members of the group did not want us to discuss their cases with the Tax Commission.**

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**Group Said Auditor General Could Not Be Impartial.** Next, during one of our several meetings with the group, we were accused of not being able to be impartial because we, like the Tax Commission, get paid by the state. As mentioned previously, the group also accused the state courts of having a conflict of interest and of colluding with the Tax Commission because they “both have the same boss and the same paymaster.” Yet the group could provide no evidence to substantiate their claim. In our opinion, these kinds of general allegations against government only cast further doubt on the group’s credibility.

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**The group said our office could not be impartial because we receive salary from the same source as the Tax Commission. They failed to understand our organizational independence.**

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With respect specifically to our office’s ability to be impartial, we again note that the Office of the Legislative Auditor General maintains organizational independence from the entities we audit. Our office is within the legislative branch and we report only to the Legislature. This organizational independence allows us to make objective evaluations of departments and programs and provide the Legislature with objective information. In addition to organizational independence, we adhere to generally accepted audit standards and ethics codes which require us to carry out audits in an objective manner.

So, in the end, the group told us they would contact us if they wanted to meet again, which they never did. Despite the group’s lack of evidence and questionable credibility, we still reviewed Tax Commission operations for fairness to the taxpayer and compliance with laws in the areas of taxpayer notifications and taxpayer appeals in response to allegations of a lack of notifications and overly adversarial appeals procedures. Our audit findings dispute these two allegations, one of which is detailed in the next section of this report.

## **Tax Commission Appeals Are Not Overly Adversarial**

By virtue of the vast non-adversarial and informal appeals procedures used, the Tax Commission does not appear overly adversarial as generally alleged by the citizen group. The group claims the Tax Commission conducts appeals employing an overly adversarial and intimidating system. Admittedly, the commission hearing rooms do resemble courtrooms and trial-like procedures are used at formal hearings. However, over the past six years, an average of only 5 percent of the appeals brought before the commissioners went to the level of “formal hearing”—where proceedings are court-like and potentially contentious. Our analysis shows that the commissioners rely mostly on informal processes such as division conferences, telephone status conference calls, mediation and initial (informal) hearings to resolve appeals. Furthermore, based on our observations and discussions with commissioners, it is our opinion that their attitudes are very inclined toward the informal processes, while they still seek to maintain all legal appeal rights of taxpayers. Therefore, in our opinion, it is unlikely that the average tax appellant would experience adversarial treatment.

### **Taxpayers Have Appeal Rights**

*Utah Code* 59-1-501 states that “any taxpayer may file a request for agency action, petitioning the commission for redetermination of a deficiency.” While most appeals are handled through less formal means, such as a face-to-face division conference, telephone conference calls, mediation or an initial hearing, some appeals are handled in the adjudicative setting of a formal hearing. Authority to conduct adjudicative proceedings is statutorily granted to the Tax Commission. These proceedings are conducted under the legal standards set by the

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**In appeals, the Tax Commissioners rely mostly on non-adjudicative procedures. So, it is not likely the average tax appellant would experience adversarial treatment, as alleged.**

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**Utah law allows any taxpayer the right to appeal a tax case before the four Tax Commissioners and ultimately appeal to the state courts.**

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Utah Administrative Procedures Act (*Utah Code* 63-46b) and Utah Administrative Rules R861-1A-20 to R861-1A-33.

### **Tax Commission Uses Many Informal Processes to Resolve Tax Appeals Issues**

In response to allegations of intimidation and over-adjudication in the hearing process, we examined the opportunities taxpayers have to resolve concerns before, during, and after the hearing process. There are several levels of recourse and appeal, which increase in level of formality, as the formal hearing is reached. First, a taxpayer who is audited can, at any time, discuss his or her case with a Tax Commission auditor whether or not an official appeal has been submitted. Next, a taxpayer can appeal through the following non-adjudicative, informal processes:

- division conferences,
- telephone status conference calls with an administrative law judge,
- mediation, and
- initial hearings, which are less formal than the “formal hearing.”

Formal hearings, on the other hand, are meant to be very structured and organized, and—by their very nature—are more adversarial because of the presence of legal counsel and other court-like techniques. Ultimately, taxpayers can take their case to state court if they are not satisfied with a formal hearing opinion issued by the Tax Commissioners.

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**Statistics show that only 5% of appeals reach the formal hearing. Most appeals are handled by other less-formal procedures.**

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**Most Appeal Dispositions Come Through Informal Means.** Our analysis of available case dispositions shows that most of the work at the commission-level is likely not adversarial because it occurs before the formal hearing. In fact, on average over the past six years, only 5 percent of appeals before the commissioners were resolved using the quasi-judicial formal hearing. The majority of appeals—excluding defaults, dismissals and miscellaneous dispositions—were resolved informally. On average, 52 percent of appeals were disposed using either an initial hearing decision, or through a commission-ordered approval, which utilizes agreements made in a division conference, telephone conference call, or mediation settlement agreement.

Figure 1 shows the many levels a taxpayer can use to appeal a tax assessment. Note that use of the different levels will not surrender their right to a formal hearing.

**Figure 1. Taxpayers Have Many Opportunities to Resolve Tax Appeal Issues.** Generally, formality increases with each step.

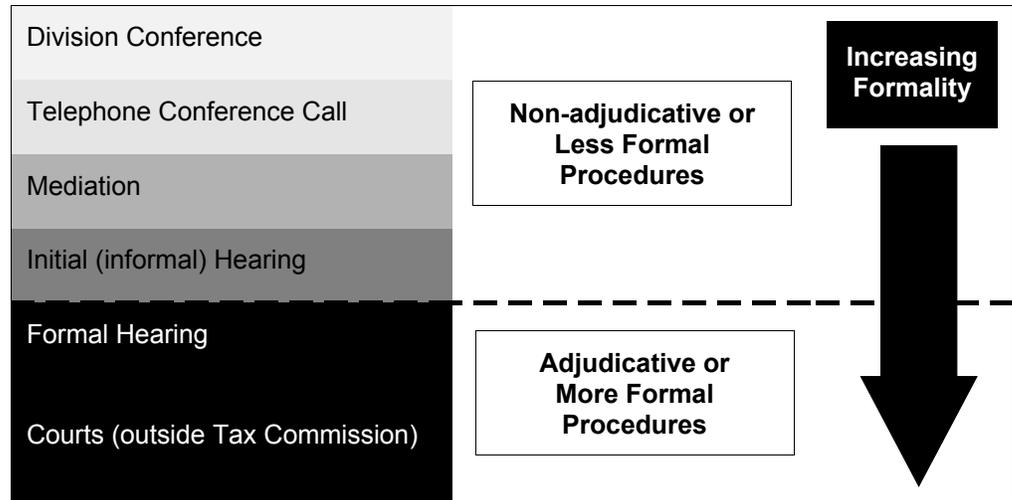


Figure 1 is meant to illustrate that each level of review offers an increased level of formality. For example, the earliest level (division conference) offers little formality because it is a conference with Tax Commission employees and middle management to discuss issues and arguments of the appeals case. The next level is a telephone conference call supervised by an administrative law judge, which may involve legal counsel, but is used more to clarify the status of the case and to explore future options. Another level offers a mediator who is provided by the Tax Commission or from outside the department, but agreed upon by both parties. This mediator helps with an independent review so that both parties can resolve the case. The initial hearing, which could occur next, is a significant move toward formality because the case is presented to an administrative law judge who hears the case and makes a ruling.

Finally, the formal hearing is a courtroom style hearing with Tax Commissioners acting as judges. Of course, the parties have the option to always appeal any decision to the state’s court system. We can see how each level of appeal raises the formality of how the case is handled, but as we have stated earlier, very few cases are appealed to the level of formal hearing or even the courts. Each of the major procedures used in appeals are discussed in more detail in the following paragraphs.

**Case Can Be Discussed with Tax Commission Auditors.** One form of resolution, which is not discussed as part of the appeals process, is the opportunity a taxpayer has to resolve tax issues with the assigned

**Some of the less formal procedures include: division conferences, status calls, mediation, and initial (informal) hearings.**

employee (auditor). This usually takes place as a telephone conversation after a taxpayer receives notice of an audit assessment, but before an appeal is sought. Typically, the audit process includes significant participation by the individual or company being audited, although sometimes the party chooses not to participate by not responding to correspondence from the Tax Commission.

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**In a division conference, “Any party directly affected by a Commission action...may request [an informal] conference with the [related] division.”**

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**Division Conferences Are Commonly Used.** Division conferences provide another way to resolve tax questions and issues. The conferences are simply an opportunity for the taxpayer to meet with and explain their case to someone with more authority than front-line Tax Commission employees, such as a supervisor, manager or director. This is done without the uneasiness that sometimes accompanies a formal hearing. “Division Conferences” are allowed under *Utah Code* 59-10-210 and 63-46b-1:

Any party directly affected by a Commission action or contemplated action may request a conference with the supervisor or designated officer of the division involved in relation to such action. . . such conference will be conducted in an **informal manner** in an effort to clarify and narrow the issues and problems involved. . . . Such conference may be held at any time prior to a hearing, whether or not a petition for such hearing, appeal, or other commencement of an adjudicative proceeding has been filed (emphasis added).

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**Mediation is an effective procedure where informal discussions between appellant parties are facilitated by a neutral third party.**

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**Mediation Is an Effective Tool for Commissioners.** The Tax Commissioners and appeals division personnel generally agree that the mediation process is a well-liked, oft used and effective appeals tool. Under the Tax Commission’s administrative procedures, which are governed by statute, “. . . a resolution to any matter of dispute may be pursued through mediation.” And, if a matter remains unresolved after mediation, it can be scheduled for an initial hearing or a formal hearing because the initial hearing is an optional step. (See Rule R861-1A-32.)

In a pamphlet given to appellants considering mediation, the “Mediation Conferences” are defined as:

. . . informal discussions facilitated by a neutral third party mediator. A Mediation Conference allows opposing parties the opportunity to discuss their concerns in a non-adversarial setting

and to explore whether the dispute can be resolved without further hearings. It focuses on finding a workable solution that satisfies the law.

If all parties agree to mediate the case, the Tax Commissioners will support the decision reached through an order, as described below:

If the mediation process resolves some or all of the issues under appeal, you will be asked to work with the other party to prepare and sign a settlement agreement. If some matters are left unresolved, the agreement will include a stipulation only as to the matters settled, and all other matters will be identified and reserved for further mediation discussions or a hearing.

Settlement agreements or stipulations must be submitted to the Commission for approval. If you use a mediator provided by the Tax Commission, the mediator will process the agreement document for you. If you use an independent mediator, you must submit the agreement in writing to the Tax Commission Appeals Unit for processing.

The Commission will issue you a final order that disposes of the issues settled through mediation. If any issues are reserved for hearing, or if the Commission finds that it cannot accept the agreement, your appeal will be set for a hearing.

**Initial Hearings Less Structured than Formal Hearings.** Initial hearings are the next option for a petitioning taxpayer. Once an appeal is filed, taxpayers can request an initial hearing or can choose to waive an initial hearing and go straight to the formal hearing.

The initial hearing is meant to be more structured and formal than the division conference and mediation, but less formal than the formal hearing. In an initial hearing, the deliberation is not recorded. An administrative law judge (working for the commissioners) listens to evidence from both the taxpayer and the Tax Commission employees and makes a decision that is reviewed by at least three of the four commissioners. The commissioners then issue a written opinion. This opinion can be appealed in a formal hearing.

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**An initial hearing is overseen by an administrative law judge. Afterwards, the commission issues a written opinion based on the hearing which can be appealed in the formal hearing.**

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**A Tax Commission formal hearing for appeals is court-like, with evidence presented by both sides in front of all four of the commissioners.**

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**Formal Hearing Is Final Appeal Before Going to Court.** As mentioned, if one of the parties is not satisfied with the initial hearing decision, that party can request a formal hearing—the next and final level of recourse within the Tax Commission. In contrast to the initial hearing, the formal hearing is potentially more contentious. The hearing is recorded and usually one or more of the commissioners are present.

In a formal hearing, as in the initial hearing, evidence is presented by both sides in the process of discovery. Because the formal hearing is completely separate from the initial hearing, however, parties may choose a completely different approach to argue their case than they did in the initial hearing. After commission deliberation, a written decision is issued. Of course, if after the Tax Commission procedures and hearing(s), the taxpayers (or in the case of property tax, the counties) are still not satisfied, they can take the matter to court. Note that a division of the Tax Commission does not appeal to the court since it represents the policy direction of the commission.

To summarize, in our view, the existence of these various types of recourse provides a good safety net for the taxpayer. The taxpayer has the opportunity to present the facts of his or her case to different people of various levels of authority. We believe the system is set up appropriately and each level of review offers an increased level of formality. In the end, it is more likely that the average taxpayer will resolve an appeal through informal means than using the more adjudicative formal hearing.

### **Delinquent Taxpayers Have Payment Options**

In addition to appeals procedures, we believe that a logical component of the Tax Commission's fairness is how they accommodate taxpayers who cannot pay in full. If taxpayers are not able to pay an entire debt all at once, they can pay their debt in installments, as they are able. Collections agents work with the taxpayers to establish a fair payment—one that does not debilitate the taxpayer, but at the same time, holds them responsible for the debt.

The Tax Commission also has programs for the rare circumstances where taxpayers owe tax, and other delinquencies such as penalties or interest, but do not have the money to pay currently, and likely never will.

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**In addition to appeals, the Tax Commission also has fair and reasonable ways to help taxpayers pay taxes in full.**

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Under these programs, if the taxpayer meets certain criteria, portions of the penalty or interest may be waived, reduced or compromised.

As a final remark about the allegations discussed in this report, we believe that the audit team took the allegations seriously, made every effort to accommodate the citizen group, and followed-up in areas that we determined to be subject to audit. However, we believe that the long list of circumstances already discussed in this audit clearly show that we could not review many of the allegations.

### **No Evidence to Substantiate Internal Complaints of Preferential Treatment**

Some confidential staff sources alleged that members of Taxpayer Services Division management were giving preferential treatment to some delinquent taxpayers. However, our review could not find sufficient evidence to support these claims. Because our 1995 legislative audit found some instances of preferential treatment, we believe this conclusion is a positive finding which shows improvement at the Tax Commission. Still, it is difficult for our audit review to act as an unequivocal guarantee that no preferential treatment occurs. But, when we could find no evidence from internal sources, it is reasonable to conclude that preferential treatment is not generally occurring at the Tax Commission.

We acknowledge that there will likely always be those who disagree with the methods of the Tax Commission. In general, while we believe that the Tax Commission makes concerted efforts to treat taxpayers and appellants fairly, it is unlikely that we could ever guarantee that taxpayers are treated fairly in every instance. Such a guarantee is unlikely and unreasonable. Therefore, overall, it is our view that taxpayers, both compliant and non-compliant, are treated fairly by the Tax Commission in the areas discussed.

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**Our review did not substantiate the allegation that management was giving preferential treatment to some taxpayers.**

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**There will always be critics of the Tax Commission. But, overall, we believe the Tax Commission treats taxpayers fairly.**

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## **Recommendations**

1. We recommend the Tax Commissioners continue to utilize informal procedures in appeals.
2. We recommend the Tax Commissioners' staff in the Appeals Unit more consistently record the final disposition method in the appeals database in order to provide complete information on appeals procedures used.

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**Agency Response**

June 2, 2003

Wayne L. Welsh, CPA  
Legislative Auditor General  
130 State Capitol  
Salt Lake City UT 84114-0151

Re: Performance Audit of Allegations Against the Tax Commission

Dear Wayne:

Thank you for allowing us to review the draft Performance Audit of Allegations Against the Tax Commission. We commend the professionalism of your staff and their efforts to carefully investigate these allegations.

It is gratifying to note that you recognize that we are trying to treat taxpayers fairly and professionally. Our experience regarding allegations of adversarial treatment or unfair treatment of taxpayers is that they are usually not supported by fact. We will continue to work to earn the taxpayers' trust and to improve our systems and processes.

Sincerely,

Rodney G. Marrelli  
Executive Director

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