



PERFORMANCE AUDIT

TAX ADVISORY COUNCIL

A Report to the Arizona Legislature
By the Auditor General
May 1985
85-6



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STATE OF ARIZONA
OFFICE OF THE
AUDITOR GENERAL

May 3, 1985

Members of the Arizona Legislature
The Honorable Bruce Babbitt, Governor
Mr. J. Elliott Hibbs, Chairman
Tax Advisory Council

Transmitted herewith is a report of the Auditor General, A Performance Audit of the Tax Advisory Council. This report is in response to an April 27, 1983, resolution of the Joint Legislative Oversight Committee. The performance audit was conducted as a part of the Sunset Review set forth in A.R.S. §§41-2351 through 41-2379.

This performance audit report is submitted to the Arizona State Legislature for use in determining whether to continue the Tax Advisory Council beyond its scheduled termination date of July 1, 1986. The report concludes the Council has not accomplished its statutory mission. However, other organizations effectively fulfill the Council's purpose, making the Council unnecessary.

My staff and I will be pleased to discuss or clarify items in the report.

Respectfully submitted,

Douglas R. Norton
Auditor General

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Enclosure

SUMMARY

The Office of the Auditor General has conducted a performance audit of the Tax Advisory Council in response to an April 27, 1983, resolution of the Joint Legislative Oversight Committee. This performance audit was conducted as part of the Sunset Review set forth in A.R.S. §§41-2351 through 41-2379.

The Tax Advisory Council was created in 1973 in the same legislation that created the Department of Revenue and the State Board of Tax Appeals. The Council's purpose as set forth in its statutes is to "provide for a continuing review and exchange of ideas for a fair and uniform system of taxation" and "to facilitate the efficient, economical and effective administration of taxation and revenue collection" in Arizona. The Council is required to report to the Department of Revenue, the Governor and the Legislature.

The Council has failed to fulfill its statutory mission. It has developed few suggestions to improve the tax system, and discussion topics have been limited. In addition, there has been very little communication between the council and State policy makers. Further, other organizations effectively fulfill the Council's purpose, making the Council unnecessary. Consequently, the Council should be allowed to terminate under the Sunset statutes.

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INTRODUCTION AND BACKGROUND

The Office of the Auditor General has conducted a performance audit of the Tax Advisory Council in response to an April 27, 1983, resolution of the Joint Legislative Oversight Committee. This performance audit was conducted as part of the Sunset Review set forth in Arizona Revised Statutes (A.R.S.) §§41-2351 through 41-2379.

The Council was created in 1973 in the same legislation that created the Department of Revenue and the State Board of Tax Appeals. The Department of Revenue (DOR) is the tax collection and enforcement agency of the State, and administers laws relating to taxation. The Board of Tax Appeals hears and decides appeals by taxpayers from decisions rendered by DOR. The Council is intended to communicate any problems identified during the appeals process and possible solutions to DOR, the Legislature and the Governor.

The Council is composed of nine members: the director of the Department of Revenue who serves as chairman, all six members of the State Board of Tax Appeals, and two private citizens appointed by the Governor for 3-year terms. Statutes require that Council meetings be held at least quarterly.

The Council does not have a budget or staff of its own. Tax Appeals Board members receive \$50 per day for time spent in the performance of their duties and compensation for travel expenses from the Board of Tax Appeals. Public members receive \$50 per day for time spent in the performance of their duties and travel reimbursement from the Department of Revenue. The Department of Revenue also provides secretarial and support services to the Council.

Scope Of Audit

Our audit addressed issues set forth in the 12 Sunset Factors in A.R.S. §41-2354, and more specifically studied whether the Council serves a necessary function and should be continued.

The Auditor General and staff express appreciation to the members of the Council and the Department of Revenue for their cooperation and assistance during the audit.

SUNSET FACTORS

In accordance with A.R.S. §41-2354, the Legislature should consider the following 12 factors in determining whether the Tax Advisory Council should be continued or terminated.

1. Objective and purpose in establishing the Council

The Tax Advisory Council's objectives and purposes as set forth in A.R.S. §42-111 are to "provide for a continuing review and exchange of ideas for a fair and uniform system of taxation" and "to facilitate the efficient, economical and effective administration of taxation and revenue collection" in Arizona. The Council is intended to provide a forum for informed individuals to share concerns and develop remedies to tax problems. The Council's statutory charge is to provide a channel of communication to the Department of Revenue (DOR), the Governor and the Legislature. The Council does not have statements for goals and objectives and has no plans to develop any in the future.

2. The effectiveness with which the Council has met its objective and purpose and the efficiency with which the Council has operated

The Tax Advisory Council has not successfully met its statutory objectives. The Council has made some effort to review the fairness and uniformity of Arizona's tax system, and has provided feedback to government policy makers on two occasions. However, the few recommendations developed by the Council have not been seriously considered by the Legislature. The director of DOR has stated that this is probably because they provided little substance to policy makers. Overall, the Council has failed to communicate with the Legislature and the Governor in a timely or periodic manner. In addition, the Council has provided no recommendations to DOR to improve the efficiency and effectiveness of tax administration (see page 8).

In addition, the Council failed to hold the required meetings for any of the last 5 years. Although the Council is required by law to hold meetings at least quarterly, it has failed to do so (see page 9).

3. The extent to which the Council has operated within the public interest

If the Council fulfilled its mandate it would operate within the public interest. The Council has been ineffective in achieving the purpose for which it was originally established, and has provided little benefit to the State.

4. The extent to which rules and regulations promulgated by the Council are consistent with the legislative mandate

Statutes do not require promulgation of any rules and regulations, and the Council has not done so.

5. The extent to which the Council has encouraged input from the public before promulgating its rules and regulations and the extent to which it has informed the public as to its actions and their expected impact on the public

The Council has not adequately informed the public about its actions because it has failed to comply with several aspects of the open meeting law. Council minutes and agendas are inconsistent and do not fully conform to legal requirements. Some Board minutes have failed to make proper attributions to speakers, failed to identify guests attending the meetings, and failed to list the names of members not attending the meetings.

Council agendas have also failed to conform to open meeting law requirements. On some occasions, agendas have not been available 24 hours before the scheduled Council meeting and have lacked adequate detail.

6. The extent to which the Council has been able to investigate and resolve complaints that are within its jurisdiction

This factor does not apply because the Council is not a regulatory agency.

7. The extent to which the Attorney General, or any other applicable agency of State government has the authority to prosecute actions under enabling legislation

The Council is not responsible for enforcing tax laws. This is the responsibility of the Department of Revenue. Therefore, this factor is not applicable.

8. The extent to which the Council has addressed deficiencies in the enabling statutes which prevent it from fulfilling its statutory mandates

The Council has not proposed legislation to amend its statutes and no changes to its legislation are planned.

9. The extent to which changes are necessary in the laws of the Council to adequately comply with the factors listed in the Sunset Law

Our review identified no needed statutory changes.

10. The extent to which termination of the Council would significantly harm the public health, safety or welfare

Termination of the Council would not harm the public health, safety or welfare, since the Council's role of advising DOR, the Governor and the Legislature is not necessary (see page 9).

11. The extent to which the level of regulation exercised by the Council is appropriate and whether less or more stringent levels of regulation would be appropriate

This factor does not apply because the Council is not a regulatory agency.

12. The extent to which the Council has used private contractors in the performance of its duties and how effective use of private contractors could be accomplished

The Council does not use private contractors in connection with its duties. There are no areas of the Council's functions in which effective use of private contractors could be accomplished.

FINDING

THE TAX ADVISORY COUNCIL IS NOT NECESSARY

The Tax Advisory Council is not necessary and could be allowed to terminate. The Council has been ineffective in achieving the purposes for which it was originally established. Although the Council's mission is still valid, its responsibilities are being met by other public and private organizations, making the Council obsolete.

The Council Has Been Ineffective In Achieving Its Purpose

The Tax Advisory Council has failed to fulfill its statutory mission. The Council has developed few suggestions to improve the tax system, and discussion topics have been limited. In addition, the Council has not consistently communicated its activities to policy makers, as required by law. Furthermore, the infrequency of Council meetings may also limit its effectiveness.

The Tax Advisory Council's statutory purpose is to provide for a continuing review and exchange of ideas to promote a fair and uniform tax system, and to facilitate the efficient and effective administration of taxation and revenue collection in Arizona. The Council is chaired by the director of DOR, and also includes two public members and all six members of the State Board of Tax Appeals. The State Board of Tax Appeals is an independent agency, not subject to the control of the Department of Revenue, with the power to equalize the valuation of all property in the State and to hear and decide all appeals from DOR decisions. The Council was intended to provide a communication channel between the Appeals Board and policy makers regarding problems encountered during the appeals process.

The Tax Council Has Accomplished Little - Tax Council activities have been minimal. Since 1980 the Council has commented on proposed tax legislation only twice. These analyses both related to bills involving property classification or valuation, and were actually prepared by members of Division I of the Board of Tax Appeals outside the Council meeting setting. These two reviews were given minimal consideration by the Legislature because they provided little substance to policy makers.

Valid topics for discussion have been neglected by the Council. Since 1980, the Council has spent a majority of its meeting time discussing property value levels and assessment practices. Aside from property tax matters, no other subjects have dealt with fairness and uniformity issues. In addition, the Council has spent very little time reviewing the efficiency and effectiveness of Arizona's tax administration program and has developed no useful recommendations in this area.

Some valid topics may be purposely neglected by the Council because of a perceived conflict of interest with potential Board of Tax Appeals cases. Some Council members who are also on the Board have refused to discuss important issues that may arise in future Board cases. This attitude has limited one of the Council's most valuable sources of possible topics.

Failure To Communicate - The Council has failed to communicate its activities in writing to the executive and legislative branches as required by statute. A.R.S. §42-112 requires that the Council:

". . . shall render their findings, reports, and recommendations in writing to the governor, to the director of the department of revenue and the legislature."

Council members have not followed through to ensure that their ideas are communicated to policy makers.

Meetings Too Infrequent - Finally, the Council has failed to hold the required meetings for any of the last 5 years. The Council is

statutorily required to hold meetings at least quarterly. In none of the last 5 years has the Council satisfied this requirement. According to figures provided by DOR staff, only 12 meetings have been held since 1980. Infrequent meetings, the failure to generate meaningful agenda topics, and minimal communication with the Governor and Legislature suggests a lack of member interest in Council functions.

Necessary Review Is
Accomplished By Others

Presently, other entities evaluate Arizona's system of taxation and revenue collection. Tax Advisory Council oversight responsibilities are being met by other private and public entities. In addition, the Board of Tax Appeals does not need the Council in order to provide effective input on tax problems. Therefore, termination of the Council would not inhibit identification of tax problems or proposal of solutions to administrators and policy makers.

Council Mission Fulfilled By Others - Numerous public and private entities substantially fulfill the Council's mission. These groups provide policy makers and administrators with an ongoing review of taxation problems and suggestions for solutions. The following organizations are examples of such groups: the Arizona Tax Research Association, the Arizona Chamber of Commerce, Governor's Office, the Arizona Federation of Taxpayer Associations, the Arizona Society of Certified Public Accountants Tax Liaison Committee, the Arizona Society of Practicing Accountants, the Tax Committee of the Arizona Bar, the Municipal Sales Tax Study Commission, and the County Assessor's Association. Various legislative committees and legislative staff can provide forums for discussion and research, and often prepare recommendations and proposals relating to tax problems of all kinds.

DOR receives input from the private sector to review tax problems and propose remedies. DOR maintains a close working relationship with several private organizations that offer opinions on new legislation and DOR administrative procedures. In addition, DOR can utilize statutory powers

to form special purpose councils or committees to study specific tax problems. For example, A.R.S. §42-1451.B provides for a uniform licensing, collection and audit committee to study the State administered sales tax system. Such a committee has been established. Also, A.R.S. §42-111.C gives the DOR director the authority to form special purpose councils as required or "essential to the public interest." Although such special purpose councils have not been formed, it is desirable for the director of DOR to have this option.

Board Of Tax Appeals Does Not Need Council - State Board of Tax Appeals members, who also serve on the Council, would still be able to provide feedback to appropriate officials if the Council were terminated. Board members are in a position to identify specific tax problems generated by cases on appeal. Termination of the Council would not inhibit the identification of taxation problems or prohibit direct communication with tax administrators and tax policy makers by members of the Board of Tax Appeals. Board statutes do not prohibit direct contact by members with DOR staff to discuss problems generated by cases on appeal. In addition, Board members can communicate their concerns directly to members of the Governor's staff who effect tax policy changes. In the past, Board members have met with staff of DOR and the Governor's Office outside their role as Tax Advisory Council members to discuss taxation problems. Nothing prohibits Board members from directly communicating with legislative committees to discuss problems, as long as specific pending cases are not discussed. Finally, the director of the Department of Revenue and most Council members believe that the Council has accomplished little in its present form and could be terminated. Some Council members still feel that the Council is needed, but should be restructured.

CONCLUSION

The Tax Advisory Council is unnecessary and could be allowed to terminate under the Sunset statutes. The Council has been ineffective in achieving the purpose for which it was established, and has provided little benefit to the State. Private professional associations and public entities

review taxation legislation and propose solutions to tax problems, substantially fulfilling the Council's mission.

RECOMMENDATIONS

1. The Tax Advisory Council should be allowed to terminate under the Sunset statutes.
2. The statutory authority in A.R.S. §42-111.C for the director of DOR to establish special purpose councils when necessary should be retained in DOR's statutes.



J. Elliott Hibbs
Director

Bruce Babbitt
Governor

April 26, 1985



Mr. Douglas Norton
Auditor General
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Dear Mr. Norton:

This letter is in response to your recent performance audit of the Tax Advisory Council. After reviewing your findings, I agree with your recommendation that the Council should be abolished. It has not been effective in bringing out suggestions for improving our state's administration of taxes, nor has it outlined any substantive options for revised tax policy. I feel the composition of the Council limits its objectivity and makes it difficult to discuss and develop policy on pertinent issues.

It is true that the Council has not met as regularly as it should, but most of this is due to the general lack of interest and inability of the members to define topics and tackle key problems. Attendance at the meetings has been poor and there is little input for meaningful, important agenda items.

To our knowledge we have consistently met open meeting requirements. We have always taken the necessary steps to inform the public prior to the meetings and attempted to prepare agendas reflecting the subjects that were to be discussed. Tapes have been available immediately for anyone to review the discussions of the Council.

I agree with your analysis that the objectives of this Council are being better met through the various private tax advisory groups that currently work with the Department. Your report cited such groups as the CPA Tax Liaison Committee, the Arizona Society of Practicing Accountants and the Tax Committee of the Arizona Bar Association, all of which provide valuable feedback on problems in tax administration and are active in the legislative arena to affect necessary policy changes.

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Mr. Douglas Norton
Auditor General
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Therefore, I concur the Council is not a useful group for the legislature to continue and that its regulatory status should be allowed to expire.

Sincerely,

ARIZONA DEPARTMENT OF REVENUE


J. Elliott Hibbs
Director