

Amy Pitter,  
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Revenue

## A KINDER? GENTLER DOR?

Agency launches mediation program  
to speed up taxpayer appeals

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PHOTOGRAPH BY JON CHESTO FOR BOSTON BUSINESS JOURNAL

Accountants and tax lawyers often get frustrated with the lengthy appeals process to protest state **Department of Revenue** assessments.

An internal appeal can take a year or more to resolve. Litigation before the state Appellate Tax Board, the backup option for the dissatisfied, takes even longer — and is usually far more expensive.

Amy Pitter hopes the critics will soon experience a kinder, gentler DOR — or at least a more communicative one.

Soon after taking the job as the state's revenue commissioner a year ago, Pitter embarked on her "DOR 360" campaign to improve interactions with individuals and businesses who work with her agency.

The campaign's centerpiece: a new mediation program aimed at resolving tax appeals in a matter of months, not years.

"We've heard from the community, loud and clear, that people wanted another option for dispute resolution," Pitter said. "We wanted to be responsive. ... The main goal is to offer an alternative process that's quicker, cheaper and more collaborative."

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The agency launches a pilot version of this new mediation program within the next few weeks. DOR appeals officers will be trained as mediators for the program. (Participating taxpayers could also hire an outside me-

diator at their own expense.) Auditors and litigators in the agency, meanwhile, will be trained in conflict resolution.

The new program offers the potential to resolve an appeal within four months. If both sides can't reach an agreement in that time, then the taxpayer will need to pursue a formal appeal.

The program will be relatively small in scale, with six to 10 cases going to mediation at the start. Only cases in which a total of at least \$1 million is in dispute can be eligible, at least in the pilot program's early stages. Of the 2,900 cases that the agency's appeals office fielded in the past fiscal year, a DOR spokeswoman says 108 of them had more than \$1 million in dispute.

The voluntary mediation process would begin at the tail end of a DOR audit when the scope of the disagreement becomes clear but before the formal bill for back taxes arrives.

Mediators would work to help unhappy taxpayers reach some sort of amicable resolution with DOR auditors and lawyers. In most instances, both sides involved with the mediation talks would be authorized to approve a tax settlement, according to a DOR spokeswoman. She said particularly large settlements would need clear-





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ance from the state attorney general's office first.

Opting for mediation wouldn't kill a taxpayer's opportunity to appeal the assessment through other methods. Pitter said the information shared during the mediation sessions wouldn't be used against that taxpayer during subsequent steps in the appeals process.

Pitter said she's hopeful that mediation sessions could begin as soon as early November. If the mediation program is successful, Pitter said she would want to expand it to include as many as 35 cases at one time.

The new program — modeled, in part, after a mediation program run by the IRS — has the potential to reduce taxpayers' headaches. But there are potential benefits for the DOR as well.

"Just like litigation is time consuming and expensive for taxpayers, it's time consuming and expensive for us," Pitter said. "Theoretically, both (sides) walk away from mediation feeling satisfied."

Tax lawyers approve of the theory behind Pitter's program, and remain largely optimistic about the practical results.

Scott Susko, an attorney at McDermott Will & Emery's Boston office, said his clients are routinely vexed by DOR's typical approach to appeals. Even if a hearing officer endorses a settlement, Susko says the internal review necessary to make that settlement official can drag on for months longer than it should.

Susko hopes that mediation could avoid some of that frustration and resolve these big-dollar tax disputes more quickly.

"I think this is a good step in trying to make the process more efficient," Susko said. "It just remains to be seen how this will be implemented, and whether it will be successful."

Richard Jones, a lawyer with Sullivan & Worcester's Boston office, said he's hopeful that the mediation program can improve the current tax appeals system by expediting how a settlement can be reached.

"It gets the ball rolling earlier and it has someone in the middle trying to help resolve the conflict, which is a little different than what we're used to," Jones said.

Jones isn't sure if the program will be effective, at least not yet. He said he's heard some concerns about whether the DOR appeals officers will be able to act as neutral arbiters in these talks, given that they already work closely with the DOR's auditors. "There might be a culture of bias against taxpayers," Jones said.

The auditors involved, Jones said, also will need to shift their mind-set a bit. "They should be prepared to make concessions, when historically that's not a function that they've had," Jones said.

But Jones still sees the program as a major step forward in improving the agency's appeals system.

"We're hoping that the presence of a mediator makes this a better, fairer and more efficient process," Jones said. "Put me down as optimistic. ... What we've heard so far has been very refreshing."