

What is Fair Tax Administration?

*Shu-Yi Oei**

This article examines what it means to be fair or even-handed in conducting tax administration. Issues of fairness or procedural justice in tax administration have taken on particular salience in the wake of the 2013 IRS tax-exempt organizations controversy. However, despite an abundance of rhetoric, it is difficult to pinpoint exactly what commentators mean when they talk about fairness in tax administration. More generally, in contrast with the rich literature on horizontal and vertical equity that exists with respect to substantive tax policy and rule design, the literature on what it means to be fair or equitable in the administration of our tax system and on how various aspects of tax administration should be evaluated under a fairness criterion is not as well developed. This article argues that the extant literature on the meaning of fairness in tax administration has been overwhelmingly instrumentalist or consequentialist. Most notably, the fairness question has most often been linked to whether perceptions of fairness and procedural justice cause taxpayers to be more compliant with their tax obligations. This article develops, by contrast, a deontological framework for deciphering what is meant by fair tax administration, one that de-emphasizes the link between fairness in tax administration and its incentives on taxpayer behavior. This article argues that fairness in tax administration is a multi-faceted construct that must be understood and evaluated around two axes: (1) the phase of tax administration that is under examination, and (2) a determination of who constitutes a similarly situated taxpayer.

* Hoffman F. Fuller Associate Professor of Tax Law, Tulane Law School.