

AN ACT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

relating to the transfer to the State Office of Administrative Hearings of contested cases involving the collection, receipt, administration, and enforcement of state taxes and fees by the comptroller of public accounts.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter A, Chapter 111, Tax Code, is amended by adding Section 111.00455 to read as follows:

Sec. 111.00455. CONTESTED CASES CONDUCTED BY TAX DIVISION OF STATE OFFICE OF ADMINISTRATIVE HEARINGS. (a) The tax division of the State Office of Administrative Hearings shall conduct any contested case hearing as provided by Section 2003.101, Government Code, in relation to the collection, receipt, administration, and enforcement of:

(1) a tax imposed under this title; and

(2) any other tax, fee, or other amount that the comptroller is required to collect, receive, administer, or enforce under a law not included in this title.

(b) The following are not contested cases under Subsection (a) and Section 2003.101, Government Code:

(1) a show cause hearing or any hearing not related to the collection, receipt, administration, or enforcement of the amount of a tax or fee imposed, or the penalty or interest associated with that amount, except for a hearing under Section

S.B. No. 242

1 151.157(f), 151.1575(c), 151.712(g), 154.1142, or 155.0592;

2 (2) a property value study hearing under Subchapter M,
3 Chapter 403, Government Code;

4 (3) a hearing in which the issue relates to:

5 (A) Chapters 72-75, Property Code;

6 (B) forfeiture of a right to do business;

7 (C) a certificate of authority;

8 (D) articles of incorporation;

9 (E) a penalty imposed under Section 151.7031;

10 (F) the refusal or failure to settle under
11 Section 111.101; or

12 (G) a request for or revocation of an exemption
13 from taxation; and

14 (4) any other hearing not related to the collection,
15 receipt, administration, or enforcement of the amount of a tax or
16 fee imposed, or the penalty or interest associated with that
17 amount.

18 (c) A reference in law to the comptroller that relates to
19 the performance of a contested case hearing described by Subsection
20 (a) means the tax division of the State Office of Administrative
21 Hearings.

22 SECTION 2. Subsection (c), Section 2003.0411, Government
23 Code, is amended to read as follows:

24 (c) Except as provided by Section 2003.101, to [To] be
25 appointed a master administrative law judge, a person must have at
26 least 10 years of general legal experience, must have at least six
27 years of experience presiding over administrative hearings or

1 presiding over hearings as a judge or master of a court, and must
2 meet other requirements as prescribed by the chief administrative
3 law judge.

4 SECTION 3. Chapter 2003, Government Code, is amended by
5 adding Subchapter D to read as follows:

6 SUBCHAPTER D. TAX DIVISION

7 Sec. 2003.101. TAX DIVISION. (a) The office shall
8 establish a tax division to conduct hearings relating to contested
9 cases involving the collection, receipt, administration, and
10 enforcement of taxes, fees, and other amounts as prescribed by
11 Section 111.00455, Tax Code.

12 (b) An administrative law judge in the tax division is
13 classified as a "master administrative law judge II." Section
14 2003.0411 does not apply to this section.

15 (c) If there are no cases in the tax division, and subject to
16 the prior approval of the comptroller, an administrative law judge
17 in the tax division may conduct hearings for other state agencies.
18 Before conducting a hearing for another state agency under this
19 subsection, the tax division must notify the comptroller in
20 writing. The notification must describe the case that will be heard
21 and the administrative law judge who will conduct the hearing and
22 must estimate the amount of time that the judge will spend on the
23 case. The office shall reimburse the comptroller at an appropriate
24 hourly rate for the time spent by the administrative law judge on
25 the case. The comptroller may revoke approval to conduct hearings
26 for other state agencies under this subsection at any time.

27 (d) To be eligible to preside at a tax division hearing, an

1 administrative law judge, including a temporary administrative law
2 judge contracted with under Section 2003.043, must:

3 (1) be a United States citizen;

4 (2) be an attorney in good standing with the State Bar
5 of Texas;

6 (3) have been licensed in this state to practice law
7 for at least seven years;

8 (4) have substantial experience in tax cases in making
9 the record suitable for administrative review or otherwise; and

10 (5) have devoted at least 75 percent of the person's
11 legal practice to Texas state tax law in at least five of the past 10
12 years before the date on which the person begins employment in the
13 tax division.

14 (e) Notwithstanding Section 2001.058, the comptroller may
15 change a finding of fact or conclusion of law made by the
16 administrative law judge or vacate or modify an order issued by the
17 administrative law judge only if the comptroller:

18 (1) determines that the administrative law judge:

19 (A) did not properly apply or interpret
20 applicable law, then existing comptroller rules or policies, or
21 prior administrative decisions; or

22 (B) issued a finding of fact that is not
23 supported by a preponderance of the evidence; or

24 (2) determines that a comptroller policy or a prior
25 administrative decision on which the administrative law judge
26 relied is incorrect.

27 (f) The comptroller shall state in writing the specific

1 reason and legal basis for a determination under Subsection (e).

2 (g) An administrative law judge, on the judge's own motion
3 or on motion of a party and after notice and an opportunity for a
4 hearing, may impose appropriate sanctions as provided by Subsection
5 (h) against a party or its representative for:

6 (1) filing of a motion or pleading that is groundless
7 and brought:

8 (A) in bad faith;

9 (B) for the purpose of harassment; or

10 (C) for any other improper purpose, such as to
11 cause unnecessary delay or needless increase in the cost of the
12 proceeding;

13 (2) abuse of the discovery process in seeking, making,
14 or resisting discovery; or

15 (3) failure to obey an order of the administrative law
16 judge or the comptroller.

17 (h) A sanction imposed under Subsection (g) may include, as
18 appropriate and justified, issuance of an order:

19 (1) disallowing further discovery of any kind or of a
20 particular kind by the offending party;

21 (2) holding that designated facts be deemed admitted
22 for purposes of the proceeding;

23 (3) refusing to allow the offending party to support
24 or oppose a designated claim or defense or prohibiting the party
25 from introducing designated matters in evidence;

26 (4) disallowing in whole or in part requests for
27 relief by the offending party and excluding evidence in support of

1 such requests; and

2 (5) striking pleadings or testimony, or both, wholly
3 or partly, or staying further proceedings until the order is
4 obeyed.

5 (i) For each hearing conducted under this section, an
6 administrative law judge in the tax division shall issue a proposal
7 for decision that includes findings of fact and conclusions of law.
8 In addition, the proposal for decision must include the legal
9 reasoning and other analysis considered by the judge in reaching
10 the decision. Each finding of fact or conclusion of law made by the
11 judge must be:

- 12 (1) independent and impartial; and
- 13 (2) based on state law and the evidence presented at
14 the hearing.

15 (j) The comptroller may not attempt to influence the
16 findings of fact or the administrative law judge's application of
17 the law except by evidence and legal argument. An administrative
18 law judge conducting a hearing under this subchapter may not
19 directly or indirectly communicate in connection with an issue of
20 fact or law with a party or its representative, except:

- 21 (1) on notice and opportunity for each party to
22 participate; or
- 23 (2) to ask questions that involve ministerial,
24 administrative, or procedural matters that do not address the
25 substance of the issues or positions taken in the case.

26 (k) Appearances in hearings conducted for the comptroller
27 by the office may be by:

- 1 (1) the taxpayer;
- 2 (2) an attorney licensed to practice law in this
- 3 state;
- 4 (3) a certified public accountant; or
- 5 (4) any other person designated by the taxpayer who is
- 6 not otherwise prohibited from appearing in the hearing.

7 (1) The comptroller is represented by an authorized
 8 representative in all hearings conducted for the comptroller by the
 9 office.

10 Sec. 2003.102. SUNSET PROVISION. (a) The tax division is
 11 subject to Chapter 325 (Texas Sunset Act).

12 (b) The Sunset Advisory Commission shall evaluate the tax
 13 division and present to the 82nd Legislature a report on that
 14 evaluation and the commission's recommendations in relation to the
 15 tax division.

16 (c) During the regular legislative session at which the
 17 commission presents its report and recommendations, the
 18 legislature by law may continue the tax division as provided by that
 19 chapter. If the tax division is not continued in existence as
 20 provided by that chapter, the tax division is abolished and this
 21 subchapter and Section 111.00455, Tax Code, expire on September 1
 22 of the odd-numbered year in which the regular legislative session
 23 occurred.

24 Sec. 2003.103. TIMELINESS OF HEARINGS. (a) The tax
 25 division shall conduct all hearings under this subchapter in a
 26 timely manner.

27 (b) The tax division shall use every reasonable means to

1 expedite a case under this subchapter when the comptroller requests
2 that the division expedite the case.

3 (c) This section is not intended to impair the independence
4 of the office in conducting a hearing under this subchapter.

5 Sec. 2003.104. CONFIDENTIALITY OF TAX DIVISION
6 INFORMATION. (a) The office shall keep information that
7 identifies a taxpayer who participates in a case under this
8 subchapter confidential, including the taxpayer's name and social
9 security number.

10 (b) The provision of information to the office that is
11 confidential under any law, including Section 111.006, 151.027, or
12 171.206, Tax Code, does not affect the confidentiality of the
13 information, and the office shall maintain that confidentiality.

14 (c) A hearing conducted under this subchapter is
15 confidential and not open to the public.

16 Sec. 2003.105. TAX DIVISION HEARINGS FEE. The office shall
17 charge the comptroller a fixed annual fee rather than an hourly rate
18 for services rendered by the office to the comptroller. The office
19 and the comptroller shall negotiate the amount of the fixed fee
20 biennially to coincide with the comptroller's legislative
21 appropriations request.

22 Sec. 2003.106. COMPTROLLER'S PRIORITIES AND PUBLIC POLICY
23 NEEDS. (a) The comptroller shall provide input to the office to
24 assist the office regarding the comptroller's priorities and public
25 policy needs.

26 (b) This section is intended to assist the office in
27 providing efficient service under this subchapter and is not

1 intended to impair the independence of the office in conducting a
2 hearing under this subchapter.

3 Sec. 2003.107. TAX DIVISION REVIEW. On request of the
4 comptroller, the office shall provide the comptroller the following
5 regarding the tax division:

6 (1) a list of the administrative law judges, including
7 temporary administrative law judges, who have heard cases in the
8 division in the past year;

9 (2) the qualifications of the judges; and

10 (3) any other information considered necessary by the
11 comptroller in evaluating the performance of the judges hearing
12 cases in the tax division.

13 Sec. 2003.108. REPORTS. (a) The office shall provide the
14 comptroller a monthly status report that lists pending cases and
15 provides information on any case that exceeds the comptroller's
16 time lines for issuing a proposal for decision or an agreed order.

17 (b) At least quarterly, the office shall review with the
18 comptroller and appropriate staff of the office the status of
19 pending cases under this subchapter.

20 (c) The office shall provide a quarterly report to the
21 comptroller on services performed by the office for the comptroller
22 under this subchapter.

23 Sec. 2003.109. RULES; EARLY REFERRAL. (a) The comptroller
24 may adopt rules to provide for the referral to the tax division of
25 issues related to a case described by Section 111.00455, Tax Code,
26 to resolve a procedural or other preliminary dispute between the
27 comptroller and a party.

1 (b) After a referral under this section, the tax division
 2 shall docket the case and assign an administrative law judge under
 3 Section 2003.101. If additional proceedings are required after the
 4 consideration of the procedural or other preliminary dispute, the
 5 tax division shall appoint the same administrative law judge to
 6 hear the case.

7 SECTION 4. The changes in law made by this Act that relate
 8 to the procedures governing a hearing before the tax division of the
 9 State Office of Administrative Hearings apply only to a case that is
 10 filed with the State Office of Administrative Hearings on or after
 11 the effective date of this Act. Procedures relating to a case filed
 12 with the State Office of Administrative Hearings before the
 13 effective date of this Act shall continue to be used in a hearing as
 14 those procedures existed immediately before the effective date of
 15 this Act, or as provided by an interagency cooperation contract
 16 entered into between the comptroller and the office in effect
 17 immediately before the effective date of this Act, and are
 18 continued in effect only for that purpose.

19 SECTION 5. This Act takes effect immediately if it receives
 20 a vote of two-thirds of all the members elected to each house, as
 21 provided by Section 39, Article III, Texas Constitution. If this
 22 Act does not receive the vote necessary for immediate effect, this
 23 Act takes effect September 1, 2007.

Lee
2/12/07

S.B. No. 242

David Newkum
President of the Senate

Jim Caddick
Speaker of the House

I hereby certify that S.B. No. 242 passed the Senate on April 19, 2007, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendments on May 15, 2007, by the following vote: Yeas 31, Nays 0.

Patricia Spaw
Secretary of the Senate

I hereby certify that S.B. No. 242 passed the House, with amendments, on May 9, 2007, by the following vote: Yeas 141, Nays 0, one present not voting.

Robert Haney
Chief Clerk of the House

Approved:

15 JUN 07
Date

Rick Perry
Governor

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
3 PM O'CLOCK
JUN 15 2007
Roger Williams
Secretary of State