

BILL ANALYSIS

C.S.H.B. 1465
By: Hartnett
Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

A business can make a payment by check for a legitimate expense that for any number of reasons never gets cashed by the payee. The funds become “unclaimed property” subject to escheat to the Comptroller of Public Accounts if the owner’s location becomes unknown to the business for a period of three years or more. There are a number of different transactions that can be subject to the unclaimed property provisions, including, among others, uncashed dividend, payroll or cashier’s checks, gift certificates, stocks, mutual fund accounts, bonds, utility deposits and other refunds, bank accounts, insurance proceeds, mineral interest or royalty payments, court deposits, trust funds, and escrow accounts. In many cases, such unclaimed property may only be discovered by an audit of the business’ records by the comptroller, the attorney general, or the authorized agent of either. The period of the audit may exceed the period that the business has retained records required by the Internal Revenue Service or the Texas Tax Code.

The auditor will then assess the business for the amount of the unclaimed property based on actual records, if available, or an estimate based on whatever records are available. Interest is then assessed on this amount equal to ten percent per year that the property was not surrendered to the comptroller. A penalty equal to five percent of the property’s value is added, and if the property has been retained more than 31 days an additional five percent penalty is assessed.

The only recourse for a business who disagrees with an unclaimed property audit is to refuse to pay and then wait to be sued by the attorney general in district court in Travis County. There is no administrative remedy, and if the business pays the assessment, it is unclear whether it has any statutory right to seek a refund of all or part of the property if an error is later discovered. Following a suit in which the attorney general is the prevailing party, in addition to the property, interest, and penalty, the state may recover reasonable attorney’s fees from the business in addition to a further civil penalty not to exceed \$100 per day that the business has possessed the unclaimed property.

House Bill No. 1465 establishes the process for an administrative hearing for a holder of property who disagrees with an unclaimed property assessment.

RULEMAKING AUTHORITY

It is the committee’s opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

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EFFECTIVE DATE

September 1, 2003

COMPARISON OF ORIGINAL TO SUBSTITUTE

The introduced versions of the H.B. 1465 established an administrative hearings process for "owners" of alleged unclaimed property. This could include the payor or payee. In many cases the payee is unknown and represents a very large potential class of persons.

The substitute version establishes the administrative hearings process for the "holders" of alleged unclaimed property. This would be the payor of alleged unclaimed property paid to another. This is a significantly smaller class of persons who are easily identified.

Limiting the right to the holders of unclaimed property greatly reduces the administrative burden on the Comptroller's office, while not significantly affecting the rights of the owners who can make a claim their property at any time.