

Amend CSSB 1863 (House Committee Report) by adding a new appropriately numbered ARTICLE to read as follows and renumbering subsequent ARTICLES accordingly:

ARTICLE \_\_. CONTESTED CASES INVOLVING THE COLLECTION,  
ADMINISTRATION, AND ENFORCEMENT OF CERTAIN TAXES AND FEES

SECTION \_\_.01. Subchapter A, Chapter 111, Tax Code, is amended by adding Section 111.00455 to read to as follows:

Sec. 111.00455. CONTESTED CASES PERFORMED BY TAX DIVISION OF STATE OFFICE OF ADMINISTRATIVE HEARINGS; FEES. (a) The tax division of the State Office of Administrative Hearings shall perform any contested case hearing as provided by Section 2003.0491, Government Code, in relation to the collection, administration, and enforcement of:

(1) a tax imposed under this title; and

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

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

(c) The tax division of the State Office of Administrative Hearings shall charge a fee of \$25 from the person bringing the contested case. The State Office of Administrative Hearings shall deposit the revenue generated by this fee into the general revenue fund.

(d) The State Office of Administrative Hearings may not charge a fee to a government body or to a government official appearing in a representative capacity.

(e) The State Office of Administrative Hearings may not charge a fee to an individual if the individual files a sufficient affidavit attesting to the fact that the individual is unable to pay the fee. The affidavit must contain sufficiently complete factual information regarding the individual's income, assets, and debts to demonstrate to the satisfaction of the State Office of Administrative Hearings that the individual is unable to pay the fee established under Subsection (c).

SECTION \_\_.02. Subchapter C, Chapter 2003, Government Code,

is amended by adding Section 2003.0491 to read as follows:

Sec. 2003.0491. TAX DIVISION. (a) The office shall establish a tax division to conduct hearings relating to contested cases involving the collection, administration, and enforcement of taxes and fees as prescribed by Section 111.00455, Tax Code.

(b) Only an administrative law judge in the tax division may conduct a hearing on behalf of the comptroller.

(c) To be eligible to preside at a hearing, an administrative law judge must:

(1) have been licensed to practice law in this state for at least 10 years;

(2) have at least five years of experience in state tax laws; and

(3) have substantial knowledge of tax law and substantial experience in tax cases in making the record suitable for judicial review.

(d) The office and the comptroller shall jointly adopt rules providing for certification to the comptroller of an issue that involves an ultimate finding of compliance with or satisfaction of a statutory standard the determination of which is committed to the discretion or judgment of the comptroller by law. The rules must address, at a minimum, the issues that are appropriate for certification and the procedure to be used in certifying the issue. Each agency shall publish the jointly adopted rules.

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

(1) determines that the administrative law judge:

(A) did not properly apply or interpret applicable law; or

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

(2) determines that a comptroller policy or a prior administrative decision on which the administrative law judge relied is incorrect or should be changed.

(f) The comptroller shall state in writing the specific

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

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

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

(A) in bad faith;

(B) for the purpose of harassment; or

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

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

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

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

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

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

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

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

(5) striking pleadings or testimony, or both, in whole or in part, or staying further proceedings until the order is obeyed.

(i) Hearings conducted for the comptroller by the office shall be held in hearing rooms provided by the comptroller. The comptroller shall also provide the tax division access to its computer systems, databases, library resources, and all records.

(j) The office shall charge the comptroller a fixed annual fee rather than an hourly rate for services rendered by the tax

division to the comptroller. The amount of the fee may not be less than the amount appropriated to the comptroller in the General Appropriations Act for payment to the tax division to conduct comptroller hearings. The amount of the fee shall be based on the costs of conducting the hearings, the costs of travel expenses and telephone charges directly related to the hearings, docketing costs, and other applicable administrative costs of the office, including the administrative costs of the tax division. The office and the comptroller shall negotiate the amount of the fixed fee biennially, subject to the approval of the governor, to coincide with the comptroller's legislative appropriations request.

(k) Judicial review of a final decision of the tax division is by trial de novo in district court.

(l) A finding of fact or conclusion of law made by an administrative law judge conducting a hearing under this section must be:

(1) independent and impartial; and

(2) based on state law and the evidence presented at the hearing.

(m) An administrative law judge conducting a hearing under this section may not directly or indirectly communicate in connection with an issue of fact or law with a party or its representative, except on notice and opportunity for each party to participate. The comptroller may not attempt to influence the findings of fact or the administrative law judge's application of the law except by proper evidence and legal argument.

(n) Appearances in hearings conducted for the comptroller by the office may be by:

(1) the taxpayer;

(2) an attorney licensed to practice law in this state;

(3) a certified public accountant; or

(4) an enrolled agent authorized to practice before the Internal Revenue Service.

(o) The office may allow an attorney or accountant authorized to practice or licensed in any other jurisdiction of the United States to appear and represent a taxpayer in hearings before the office for a particular matter. In addition, the office may

adopt rules allowing a taxpayer to be represented by an officer, employee, or member of the taxpaying entity. The comptroller is represented by an authorized representative in all hearings conducted for the comptroller by the office.

SECTION \_\_\_\_ .03. (a) A task force is established to administer the transfer of contested case hearings from the comptroller to the State Office of Administrative Hearings. The task force is composed of:

- (1) the governor or the governor's designee;
- (2) the lieutenant governor or the lieutenant governor's designee;
- (3) the speaker of the house of representatives or the speaker's designee;
- (4) the comptroller or the comptroller's designee;
- (5) a designee of the Legislative Budget Board; and
- (6) the chief administrative law judge of the State Office of Administrative Hearings or the judge's designee.

(b) The governor or the governor's designee is the presiding officer of the task force.

(c) The task force shall:

- (1) determine the equipment, electronic information and databases, including any electronic files, appropriations, contracts, rights, money, leases, facilities, and other items that will be transferred under this article and the schedule for the transfers; and
- (2) mediate and resolve disputes between the respective agencies relating to a transfer.

(d) After the transfers have been completed, the task force shall prepare a written report detailing the specifics of the transfers and shall submit the report to the governor and the legislature.

(e) In determining a transfer under this article, the task force shall ensure that the transfer does not adversely affect a proceeding before the comptroller or the rights of the parties to the proceeding.

SECTION \_\_\_\_ .04. (a) On January 1, 2006, the following are transferred to the tax division of the State Office of

Administrative Hearings:

(1) all hearings described by Section 2003.0491(a), Government Code, as added by this article; and

(2) subject to the proceeding section of this article, all equipment, data, facilities, and other items of the comptroller's administrative hearings division.

(b) Before January 1, 2006, the hearings shall continue to be held by the comptroller under the law related to the conduct of those hearings by the comptroller that existed on August 31, 2005, and that law is continued in effect only for this purpose.

SECTION \_\_\_\_\_.05. The changes in law made by this article that relate to the procedures governing a hearing before the tax division of the State Office of Administrative Hearings apply only to a case that is filed on or after January 1, 2006. Procedures relating to a case filed before January 1, 2006, shall continue to be used in a hearing as those provisions existed on August 31, 2005, and are continued in effect only for this purpose.

SECTION \_\_\_\_\_.06. This article takes effect September 1, 2005.