

BILL ANALYSIS

C.S.H.B. 3335
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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. 3335 establishes the process for an administrative hearing for a holder of property who disagrees with an unclaimed property assessment.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

ANALYSIS

SECTION 1. Adds Section 74.7085 to Subchapter H, Chapter 74, Property Code, as follows:

Sec. 74.7085. HEARING. (a) Entitles the holder of unclaimed property the comptroller has determined should have been delivered to the comptroller under provisions of this chapter to petition the comptroller for a hearing to determine the amount of property and any interest or penalty, if any, that is due to the comptroller.

(b) A person must file a petition for the hearing provided for by Subsection (a) within 30 days of date of the determination. If the petition is not filed within that period, the determination is final on the expiration of the 30 day-period.

SECTION 2. The single business enterprise doctrine does not apply to this chapter.

SECTION 3. This Act is prospective.

SECTION 4. Effective date.

EFFECTIVE DATE

September 1, 2005

COMPARISON OF ORIGINAL TO SUBSTITUTE

The Substitute adds a new SECTION 2 to provide that the single business enterprise doctrine does not apply to this chapter of the Business and Commerce Code.

There are cases where the Comptroller has commingled the liabilities of various related entities, even though only one of the related entities was holding unreported unclaimed property.

Under the Texas unclaimed property law, a holder is defined as “a person, wherever organized or domiciled, who is in possession of property that belongs to another; or is a trustee; or is indebted to another on an obligation.” The single business enterprise doctrine limitation language serves to further clarify that it is the specific holder of the property that is accountable to the Comptroller for the unreported property.

Failure to include this language would result in a situation where any affiliate of a holder could be held liable for unclaimed property even though the affiliate is not holding the property, is not a trustee of the property, or is not indebted to another on the obligation.

this would create a hostile business environment where the Comptroller could assess a completely separate business solely because it has common shareholders with the holder. Persons, that do business in Texas should be able to rely on the clear language in the statute, which names only the holder as the property party to report and remit unclaimed property.