

By: Shapiro

S.B. No. 242

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the transfer to the State Office of Administrative
3 Hearings of contested cases involving the collection, receipt,
4 administration, and enforcement of state taxes and fees by the
5 comptroller of public accounts.

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

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

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

15 (1) a tax imposed under this title; and

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

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

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

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." The judge may
14 only conduct hearings for the tax division and may not conduct
15 hearings for other state agencies or other types of hearings the
16 office conducts under this chapter or other law. Section 2003.0411
17 does not apply to this section.

18 (c) To be eligible to preside at a tax division hearing, an
19 administrative law judge, including a temporary administrative law
20 judge contracted with under Section 2003.043, must:

21 (1) be a United States citizen;

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

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

26 (4) have substantial experience in tax cases in making
27 the record suitable for review; and

1 (5) have devoted at least 75 percent of the person's
2 legal practice to Texas state tax law in each of the five years
3 before the date on which the person begins employment in the tax
4 division.

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

9 (1) determines that the administrative law judge:

10 (A) did not properly apply or interpret
11 applicable law, then existing comptroller rules or policies, or
12 prior administrative decisions; or

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

15 (2) determines that a comptroller policy or a prior
16 administrative decision on which the administrative law judge
17 relied is incorrect.

18 (e) The comptroller shall state in writing the specific
19 reason and legal basis for a determination under Subsection (d).

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

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

26 (A) in bad faith;

27 (B) for the purpose of harassment; or

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

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

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

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

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

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

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

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

20 (5) striking pleadings or testimony, or both, wholly
21 or partly, or staying further proceedings until the order is
22 obeyed.

23 (h) For each hearing conducted under this section, an
24 administrative law judge in the tax division shall issue a proposal
25 for decision that includes findings of fact and conclusions of law.
26 In addition, the proposal for decision must include the legal
27 reasoning and other analysis considered by the judge in reaching

1 the decision. Each finding of fact or conclusion of law made by the
2 judge must be:

3 (1) independent and impartial; and

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

6 (i) The comptroller may not attempt to influence the
7 findings of fact or the administrative law judge's application of
8 the law except by evidence and legal argument. An administrative
9 law judge conducting a hearing under this subchapter may not
10 directly or indirectly communicate in connection with an issue of
11 fact or law with a party or its representative, except:

12 (1) on notice and opportunity for each party to
13 participate; or

14 (2) to ask questions that involve ministerial,
15 administrative, or procedural matters that do not address the
16 substance of the issues or positions taken in the case.

17 (j) Appearances in hearings conducted for the comptroller
18 by the office may be by:

19 (1) the taxpayer;

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

22 (3) a certified public accountant; or

23 (4) any other person designated by the taxpayer who is
24 not otherwise prohibited from appearing in the hearing.

25 (k) The comptroller is represented by an authorized
26 representative in all hearings conducted for the comptroller by the
27 office.

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

3 (b) The Sunset Advisory Commission shall evaluate the tax
4 division every two years and present to the legislature at each
5 regular legislative session a report on that evaluation and the
6 commission's recommendations in relation to the tax division.

7 (c) The commission shall submit the first report required
8 under this section to the 82nd Legislature.

9 (d) During the regular legislative session at which the
10 commission presented its report and recommendations, the
11 legislature by law may continue the tax division as provided by
12 Chapter 325 for a period not to exceed two years. If the tax
13 division is not continued in existence as provided by that chapter,
14 the tax division is abolished and this subchapter and Section
15 111.00455, Tax Code, expire on September 1 of the odd-numbered year
16 in which the regular legislative session occurred.

17 Sec. 2003.103. TIMELINESS OF HEARINGS. (a) The tax
18 division shall conduct all hearings under this subchapter in a
19 timely manner.

20 (b) The tax division shall use every reasonable means to
21 expedite a case under this subchapter when the comptroller requests
22 that the division expedite the case.

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

25 Sec. 2003.104. CONFIDENTIALITY OF TAX DIVISION
26 INFORMATION. (a) The office shall keep information that
27 identifies a taxpayer who participates in a case under this

1 subchapter confidential, including the taxpayer's name and social
2 security number.

3 (b) The provision of information to the office that is
4 confidential under any law, including Section 111.006, 151.027, or
5 171.206, Tax Code, does not affect the confidentiality of the
6 information, and the office shall maintain that confidentiality.

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

9 Sec. 2003.105. TAX DIVISION HEARINGS FEE. The office shall
10 charge the comptroller a fixed annual fee rather than an hourly rate
11 for services rendered by the office to the comptroller. The office
12 and the comptroller shall negotiate the amount of the fixed fee
13 biennially to coincide with the comptroller's legislative
14 appropriations request.

15 Sec. 2003.106. COMPTROLLER'S PRIORITIES AND PUBLIC POLICY
16 NEEDS. (a) The comptroller shall provide input to the office to
17 assist the office regarding the comptroller's priorities and public
18 policy needs.

19 (b) This section is intended to assist the office in
20 providing efficient service under this subchapter and is not
21 intended to impair the independence of the office in conducting a
22 hearing under this subchapter.

23 Sec. 2003.107. TAX DIVISION REVIEW. On request of the
24 comptroller, the office shall provide the comptroller the following
25 regarding the tax division:

26 (1) a list of the administrative law judges, including
27 temporary administrative law judges, who have heard cases in the

1 division in the past year;

2 (2) the qualifications of the judges; and

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

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

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

13 (c) The office shall provide a quarterly report to the
14 comptroller on services performed by the office for the comptroller
15 under this subchapter.

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

21 (b) After a referral under this section, the tax division
22 shall docket the case and assign an administrative law judge under
23 Section 2003.101. If additional proceedings are required after the
24 consideration of the procedural or other preliminary dispute, the
25 tax division shall appoint the same administrative law judge to
26 hear the case.

27 SECTION 4. The changes in law made by this Act that relate

1 to the procedures governing a hearing before the tax division of the
2 State Office of Administrative Hearings apply only to a case that is
3 filed with the State Office of Administrative Hearings on or after
4 the effective date of this Act. Procedures relating to a case filed
5 with the State Office of Administrative Hearings before the
6 effective date of this Act shall continue to be used in a hearing as
7 those procedures existed immediately before the effective date of
8 this Act, or as provided by an interagency cooperation contract
9 entered into between the comptroller of public accounts and the
10 office in effect immediately before the effective date of this Act,
11 and are continued in effect only for that purpose.

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