

By: Shapiro

S.B. No. 242

Substitute the following for S.B. No. 242:

By: Otto

C.S.S.B. No. 242

A BILL TO BE ENTITLED

1

AN ACT

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.

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. Section 2003.0411(c), Government Code, is
23 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 every two years and present to the legislature at each
14 regular legislative session a report on that evaluation and the
15 commission's recommendations in relation to the tax division.

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

18 (d) During the regular legislative session at which the
19 commission presented its report and recommendations, the
20 legislature by law may continue the tax division as provided by that
21 chapter for a period not to exceed two years. If the tax division is
22 not continued in existence as provided by that chapter, the tax
23 division is abolished and this subchapter and Section 111.00455,
24 Tax Code, expire on September 1 of the odd-numbered year in which
25 the regular legislative session occurred.

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

1 timely manner.

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

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

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

12 (b) The provision of information to the office that is
13 confidential under any law, including Section 111.006, 151.027, or
14 171.206, Tax Code, does not affect the confidentiality of the
15 information, and the office shall maintain that confidentiality.

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

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

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

1 (b) This section is intended to assist the office in
2 providing efficient service under this subchapter and is not
3 intended to impair the independence of the office in conducting a
4 hearing under this subchapter.

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

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

11 (2) the qualifications of the judges; and

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

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

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

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

25 Sec. 2003.109. RULES; EARLY REFERRAL. (a) The comptroller
26 may adopt rules to provide for the referral to the tax division of
27 issues related to a case described by Section 111.00455, Tax Code,

1 to resolve a procedural or other preliminary dispute between the
2 comptroller and a party.

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

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

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