

By: Shapiro

S.B. No. 242

A BILL TO BE ENTITLED

AN ACT

relating to contested cases involving the collection, administration, and enforcement of certain taxes and fees.

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

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

Sec. 111.00455. CONTESTED CASES PERFORMED BY TAX DIVISION OF STATE OFFICE OF ADMINISTRATIVE HEARINGS. (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) The following are not contested cases under Subsection (a) and Section 2003.0491, Government Code:

(1) a show cause hearing or any hearing not related to the collection, administration, or enforcement of the amount of a tax or fee imposed, or the penalty or interest associated with that amount, except for a hearing under Section 151.157(f), 151.1575(c), or 151.712(g);

(2) a property value study hearing under Subchapter M, Chapter 403, Government Code;

1 (3) a hearing in which the issue relates to:

2 (A) Chapters 72-75, Property Code;

3 (B) forfeiture of a right to do business;

4 (C) a certificate of authority;

5 (D) articles of incorporation;

6 (E) a penalty imposed under Section 151.7031;

7 (F) the refusal or failure to settle under
8 Section 111.101 or 111.102; or

9 (G) a request for or revocation of an exemption
10 from taxation; and

11 (4) any other hearing not related to the collection,
12 administration, or enforcement of the amount of a tax or fee
13 imposed, or the penalty or interest associated with that amount.

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

18 SECTION 2. Subchapter C, Chapter 2003, Government Code, is
19 amended by adding Section 2003.0491 to read as follows:

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

24 (b) Only an administrative law judge in the tax division may
25 conduct a hearing on behalf of the comptroller. An administrative
26 law judge in the tax division may conduct hearings for other state
27 agencies as time allows.

1 (c) Except as provided by Subsection (d), to be eligible for
2 employment in the tax division as an administrative law judge, a
3 person must:

4 (1) be a United States citizen;

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

7 (3) have been licensed in this state to practice law
8 for at least seven years; and

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

13 (d) The office may transfer a senior or master
14 administrative law judge to the tax division for employment. The
15 judge must have a working knowledge of state tax laws obtained by:

16 (1) training in state tax law;

17 (2) completing academic course work on state taxation;

18 (3) working in state taxation;

19 (4) reviewing the Tax Code;

20 (5) co-presiding at hearings conducted by the tax
21 division; or

22 (6) assisting in writing proposals for decision in
23 cases heard by the tax division.

24 (e) At the time the office receives jurisdiction of a
25 proceeding, the comptroller shall provide to the administrative law
26 judge a list of issues or areas that must be addressed. In
27 addition, the comptroller may identify and provide to the

1 administrative law judge at any time additional issues or areas
2 that must be addressed.

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

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

9 (A) in bad faith;

10 (B) for the purpose of harassment; or

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

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

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

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

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

22 (2) charging all or any part of the expenses of
23 discovery against the offending party or its representative;

24 (3) holding that designated facts be deemed admitted
25 for purposes of the proceeding;

26 (4) refusing to allow the offending party to support
27 or oppose a designated claim or defense or prohibiting the party

1 from introducing designated matters in evidence;

2 (5) disallowing wholly or partly requests for relief
3 by the offending party and excluding evidence in support of such
4 requests;

5 (6) punishing the offending party or its
6 representative for contempt to the same extent as a district court;

7 (7) requiring the offending party or its
8 representative to pay, at the time ordered by the administrative
9 law judge, the reasonable expenses, including attorney's fees,
10 incurred by other parties because of the sanctionable behavior; and

11 (8) striking pleadings or testimony, or both, wholly
12 or partly, or staying further proceedings until the order is
13 obeyed.

14 (h) The office shall charge the comptroller a fixed annual
15 fee rather than an hourly rate for services rendered by the tax
16 division to the comptroller. The amount of the fee shall be based
17 on the costs of conducting the hearings and issuing proposals for
18 decision for those hearings, the costs of travel expenses and
19 telephone charges directly related to the hearings, docketing
20 costs, and other applicable administrative costs of the office,
21 including the administrative costs of the tax division. The office
22 and the comptroller shall negotiate the amount of the fixed fee
23 biennially to coincide with the comptroller's legislative
24 appropriations request.

25 SECTION 3. This Act does not affect the validity of any
26 interagency cooperation contract entered into between the
27 comptroller and the State Office of Administrative Hearings before

1 the effective date of this Act.

2 SECTION 4. The changes in law made by this Act that relate
3 to the procedures governing a hearing before the tax division of the
4 State Office of Administrative Hearings apply only to a case that is
5 filed on or after September 1, 2007. Procedures relating to a case
6 filed before September 1, 2007, shall continue to be used in a
7 hearing as those procedures existed on August 31, 2007, or as
8 provided by an interagency cooperation contract entered into
9 between the comptroller and the office in effect on that date, and
10 are continued in effect only for that purpose.

11 SECTION 5. This Act takes effect September 1, 2007.