

1-1 By: Shapiro S.B. No. 242
1-2 (In the Senate - Filed January 18, 2007; January 30, 2007,
1-3 read first time and referred to Committee on Finance;
1-4 April 4, 2007, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 14, Nays 0; April 4, 2007,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 242 By: Nelson

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the transfer to the State Office of Administrative
1-11 Hearings of contested cases involving the collection, receipt,
1-12 administration, and enforcement of state taxes and fees by the
1-13 comptroller of public accounts.

1-14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-15 SECTION 1. Subchapter A, Chapter 111, Tax Code, is amended
1-16 by adding Section 111.00455 to read as follows:

1-17 Sec. 111.00455. CONTESTED CASES CONDUCTED BY TAX DIVISION
1-18 OF STATE OFFICE OF ADMINISTRATIVE HEARINGS. (a) The tax division
1-19 of the State Office of Administrative Hearings shall conduct any
1-20 contested case hearing as provided by Section 2003.101, Government
1-21 Code, in relation to the collection, receipt, administration, and
1-22 enforcement of:

1-23 (1) a tax imposed under this title; and

1-24 (2) any other tax, fee, or other amount that the
1-25 comptroller is required to collect, receive, administer, or enforce
1-26 under a law not included in this title.

1-27 (b) The following are not contested cases under Subsection
1-28 (a) and Section 2003.101, Government Code:

1-29 (1) a show cause hearing or any hearing not related to
1-30 the collection, receipt, administration, or enforcement of the
1-31 amount of a tax or fee imposed, or the penalty or interest
1-32 associated with that amount, except for a hearing under Section
1-33 151.157(f), 151.1575(c), 151.712(g), 154.1142, or 155.0592;

1-34 (2) a property value study hearing under Subchapter M,
1-35 Chapter 403, Government Code;

1-36 (3) a hearing in which the issue relates to:

1-37 (A) Chapters 72-75, Property Code;

1-38 (B) forfeiture of a right to do business;

1-39 (C) a certificate of authority;

1-40 (D) articles of incorporation;

1-41 (E) a penalty imposed under Section 151.7031;

1-42 (F) the refusal or failure to settle under
1-43 Section 111.101; or

1-44 (G) a request for or revocation of an exemption
1-45 from taxation; and

1-46 (4) any other hearing not related to the collection,
1-47 receipt, administration, or enforcement of the amount of a tax or
1-48 fee imposed, or the penalty or interest associated with that
1-49 amount.

1-50 (c) A reference in law to the comptroller that relates to
1-51 the performance of a contested case hearing described by Subsection
1-52 (a) means the tax division of the State Office of Administrative
1-53 Hearings.

1-54 SECTION 2. Subsection (c), Section 2003.0411, Government
1-55 Code, is amended to read as follows:

1-56 (c) Except as provided by Section 2003.101, to [To] be
1-57 appointed a master administrative law judge, a person must have at
1-58 least 10 years of general legal experience, must have at least six
1-59 years of experience presiding over administrative hearings or
1-60 presiding over hearings as a judge or master of a court, and must
1-61 meet other requirements as prescribed by the chief administrative
1-62 law judge.

1-63 SECTION 3. Chapter 2003, Government Code, is amended by

2-1 adding Subchapter D to read as follows:

2-2 SUBCHAPTER D. TAX DIVISION

2-3 Sec. 2003.101. TAX DIVISION. (a) The office shall
 2-4 establish a tax division to conduct hearings relating to contested
 2-5 cases involving the collection, receipt, administration, and
 2-6 enforcement of taxes, fees, and other amounts as prescribed by
 2-7 Section 111.00455, Tax Code.

2-8 (b) An administrative law judge in the tax division is
 2-9 classified as a "master administrative law judge II." The judge may
 2-10 only conduct hearings for the tax division and may not conduct
 2-11 hearings for other state agencies or other types of hearings the
 2-12 office conducts under this chapter or other law. Section 2003.0411
 2-13 does not apply to this section.

2-14 (c) To be eligible to preside at a tax division hearing, an
 2-15 administrative law judge, including a temporary administrative law
 2-16 judge contracted with under Section 2003.043, must:

2-17 (1) be a United States citizen;

2-18 (2) be an attorney in good standing with the State Bar
 2-19 of Texas;

2-20 (3) have been licensed in this state to practice law
 2-21 for at least seven years;

2-22 (4) have substantial experience in tax cases in making
 2-23 the record suitable for review; and

2-24 (5) have devoted at least 75 percent of the person's
 2-25 legal practice to Texas state tax law in each of the five years
 2-26 before the date on which the person begins employment in the tax
 2-27 division.

2-28 (d) Notwithstanding Section 2001.058, the comptroller may
 2-29 change a finding of fact or conclusion of law made by the
 2-30 administrative law judge or vacate or modify an order issued by the
 2-31 administrative law judge only if the comptroller:

2-32 (1) determines that the administrative law judge:

2-33 (A) did not properly apply or interpret
 2-34 applicable law, then existing comptroller rules or policies, or
 2-35 prior administrative decisions; or

2-36 (B) issued a finding of fact that is not
 2-37 supported by a preponderance of the evidence; or

2-38 (2) determines that a comptroller policy or a prior
 2-39 administrative decision on which the administrative law judge
 2-40 relied is incorrect.

2-41 (e) The comptroller shall state in writing the specific
 2-42 reason and legal basis for a determination under Subsection (d).

2-43 (f) An administrative law judge, on the judge's own motion
 2-44 or on motion of a party and after notice and an opportunity for a
 2-45 hearing, may impose appropriate sanctions as provided by Subsection
 2-46 (g) against a party or its representative for:

2-47 (1) filing of a motion or pleading that is groundless
 2-48 and brought:

2-49 (A) in bad faith;

2-50 (B) for the purpose of harassment; or

2-51 (C) for any other improper purpose, such as to
 2-52 cause unnecessary delay or needless increase in the cost of the
 2-53 proceeding;

2-54 (2) abuse of the discovery process in seeking, making,
 2-55 or resisting discovery; or

2-56 (3) failure to obey an order of the administrative law
 2-57 judge or the comptroller.

2-58 (g) A sanction imposed under Subsection (f) may include, as
 2-59 appropriate and justified, issuance of an order:

2-60 (1) disallowing further discovery of any kind or of a
 2-61 particular kind by the offending party;

2-62 (2) holding that designated facts be deemed admitted
 2-63 for purposes of the proceeding;

2-64 (3) refusing to allow the offending party to support
 2-65 or oppose a designated claim or defense or prohibiting the party
 2-66 from introducing designated matters in evidence;

2-67 (4) disallowing in whole or in part requests for
 2-68 relief by the offending party and excluding evidence in support of
 2-69 such requests; and

3-1 (5) striking pleadings or testimony, or both, wholly
3-2 or partly, or staying further proceedings until the order is
3-3 obeyed.

3-4 (h) For each hearing conducted under this section, an
3-5 administrative law judge in the tax division shall issue a proposal
3-6 for decision that includes findings of fact and conclusions of law.
3-7 In addition, the proposal for decision must include the legal
3-8 reasoning and other analysis considered by the judge in reaching
3-9 the decision. Each finding of fact or conclusion of law made by the
3-10 judge must be:

3-11 (1) independent and impartial; and
3-12 (2) based on state law and the evidence presented at
3-13 the hearing.

3-14 (i) The comptroller may not attempt to influence the
3-15 findings of fact or the administrative law judge's application of
3-16 the law except by evidence and legal argument. An administrative
3-17 law judge conducting a hearing under this subchapter may not
3-18 directly or indirectly communicate in connection with an issue of
3-19 fact or law with a party or its representative, except:

3-20 (1) on notice and opportunity for each party to
3-21 participate; or
3-22 (2) to ask questions that involve ministerial,
3-23 administrative, or procedural matters that do not address the
3-24 substance of the issues or positions taken in the case.

3-25 (j) Appearances in hearings conducted for the comptroller
3-26 by the office may be by:

3-27 (1) the taxpayer;
3-28 (2) an attorney licensed to practice law in this
3-29 state;

3-30 (3) a certified public accountant; or
3-31 (4) any other person designated by the taxpayer who is
3-32 not otherwise prohibited from appearing in the hearing.

3-33 (k) The comptroller is represented by an authorized
3-34 representative in all hearings conducted for the comptroller by the
3-35 office.

3-36 Sec. 2003.102. SUNSET PROVISION. (a) The tax division is
3-37 subject to Chapter 325 (Texas Sunset Act).

3-38 (b) The Sunset Advisory Commission shall evaluate the tax
3-39 division every two years and present to the legislature at each
3-40 regular legislative session a report on that evaluation and the
3-41 commission's recommendations in relation to the tax division.

3-42 (c) The commission shall submit the first report required
3-43 under this section to the 82nd Legislature.

3-44 (d) During the regular legislative session at which the
3-45 commission presented its report and recommendations, the
3-46 legislature by law may continue the tax division as provided by
3-47 Chapter 325 for a period not to exceed two years. If the tax
3-48 division is not continued in existence as provided by that chapter,
3-49 the tax division is abolished and this subchapter and Section
3-50 111.00455, Tax Code, expire on September 1 of the odd-numbered year
3-51 in which the regular legislative session occurred.

3-52 Sec. 2003.103. TIMELINESS OF HEARINGS. (a) The tax
3-53 division shall conduct all hearings under this subchapter in a
3-54 timely manner.

3-55 (b) The tax division shall use every reasonable means to
3-56 expedite a case under this subchapter when the comptroller requests
3-57 that the division expedite the case.

3-58 (c) This section is not intended to impair the independence
3-59 of the office in conducting a hearing under this subchapter.

3-60 Sec. 2003.104. CONFIDENTIALITY OF TAX DIVISION
3-61 INFORMATION. (a) The office shall keep information that
3-62 identifies a taxpayer who participates in a case under this
3-63 subchapter confidential, including the taxpayer's name and social
3-64 security number.

3-65 (b) The provision of information to the office that is
3-66 confidential under any law, including Section 111.006, 151.027, or
3-67 171.206, Tax Code, does not affect the confidentiality of the
3-68 information, and the office shall maintain that confidentiality.

3-69 (c) A hearing conducted under this subchapter is

4-1 confidential and not open to the public.

4-2 Sec. 2003.105. TAX DIVISION HEARINGS FEE. The office shall
4-3 charge the comptroller a fixed annual fee rather than an hourly rate
4-4 for services rendered by the office to the comptroller. The office
4-5 and the comptroller shall negotiate the amount of the fixed fee
4-6 biennially to coincide with the comptroller's legislative
4-7 appropriations request.

4-8 Sec. 2003.106. COMPTROLLER'S PRIORITIES AND PUBLIC POLICY
4-9 NEEDS. (a) The comptroller shall provide input to the office to
4-10 assist the office regarding the comptroller's priorities and public
4-11 policy needs.

4-12 (b) This section is intended to assist the office in
4-13 providing efficient service under this subchapter and is not
4-14 intended to impair the independence of the office in conducting a
4-15 hearing under this subchapter.

4-16 Sec. 2003.107. TAX DIVISION REVIEW. On request of the
4-17 comptroller, the office shall provide the comptroller the following
4-18 regarding the tax division:

4-19 (1) a list of the administrative law judges, including
4-20 temporary administrative law judges, who have heard cases in the
4-21 division in the past year;

4-22 (2) the qualifications of the judges; and

4-23 (3) any other information considered necessary by the
4-24 comptroller in evaluating the performance of the judges hearing
4-25 cases in the tax division.

4-26 Sec. 2003.108. REPORTS. (a) The office shall provide the
4-27 comptroller a monthly status report that lists pending cases and
4-28 provides information on any case that exceeds the comptroller's
4-29 time lines for issuing a proposal for decision or an agreed order.

4-30 (b) At least quarterly, the office shall review with the
4-31 comptroller and appropriate staff of the office the status of
4-32 pending cases under this subchapter.

4-33 (c) The office shall provide a quarterly report to the
4-34 comptroller on services performed by the office for the comptroller
4-35 under this subchapter.

4-36 Sec. 2003.109. RULES; EARLY REFERRAL. (a) The comptroller
4-37 may adopt rules to provide for the referral to the tax division of
4-38 issues related to a case described by Section 111.00455, Tax Code,
4-39 to resolve a procedural or other preliminary dispute between the
4-40 comptroller and a party.

4-41 (b) After a referral under this section, the tax division
4-42 shall docket the case and assign an administrative law judge under
4-43 Section 2003.101. If additional proceedings are required after the
4-44 consideration of the procedural or other preliminary dispute, the
4-45 tax division shall appoint the same administrative law judge to
4-46 hear the case.

4-47 SECTION 4. The changes in law made by this Act that relate
4-48 to the procedures governing a hearing before the tax division of the
4-49 State Office of Administrative Hearings apply only to a case that is
4-50 filed with the State Office of Administrative Hearings on or after
4-51 the effective date of this Act. Procedures relating to a case filed
4-52 with the State Office of Administrative Hearings before the
4-53 effective date of this Act shall continue to be used in a hearing as
4-54 those procedures existed immediately before the effective date of
4-55 this Act, or as provided by an interagency cooperation contract
4-56 entered into between the comptroller of public accounts and the
4-57 office in effect immediately before the effective date of this Act,
4-58 and are continued in effect only for that purpose.

4-59 SECTION 5. This Act takes effect immediately if it receives
4-60 a vote of two-thirds of all the members elected to each house, as
4-61 provided by Section 39, Article III, Texas Constitution. If this
4-62 Act does not receive the vote necessary for immediate effect, this
4-63 Act takes effect September 1, 2007.

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