

By: Taylor

H.B. No. 2488

A BILL TO BE ENTITLED

AN ACT

relating to the establishment of an independent agency to function as a tax tribunal.

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

SECTION 1. Amending Tax Code, Title 2, to add Chapter 114, to read as follows:

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 114.001. SHORT TITLE. This chapter may be called the Tax Tribunal Act.

Sec. 114.002. DEFINITIONS. As used in this Chapter:

(a) "Authorized representative" means:

(1) an attorney admitted to practice in this State, or any other jurisdiction of the United States, including an attorney who is a partner or member of, or is employed by, an accounting or other professional services firm;

(2) an accountant licensed in this State or any other jurisdiction of the United States;

(3) an enrolled agent authorized to practice before the Internal Revenue Service;

(4) an officer, employee, partner or member of the taxpayer; or

(5) any other person authorized in writing by the taxpayer to represent it before the tribunal.

(b) "Tribunal" means the Tax Tribunal established by this

1 Chapter.

2 SUBCHAPTER B. ESTABLISHMENT, JUDGES, AND EMPLOYEES

3 Sec. 114.051. The Tax Tribunal. (a) There is hereby  
4 established the Tax Tribunal.

5 (b) The tribunal is an independent agency.

6 (c) The tribunal shall officially exist on and after  
7 September 1, 2013; however, the tribunal shall have the authority  
8 to take any action prior to September 1, 2013 that is necessary for  
9 the tribunal to properly exercise its powers on and after September  
10 1, 2013.

11 Sec. 114.052. JUDGES. (a) The tribunal shall consist of at  
12 least one judge. Additional judges may be appointed pursuant to  
13 this section.

14 (b) Judges shall be appointed by the Governor for a term of  
15 six years. If the tribunal has more than one judge, the initial  
16 terms shall be staggered so that all judges' terms do not expire in  
17 the same year. Under no circumstances shall a judge's initial term  
18 exceed six years.

19 (c) Each judge shall receive an annual salary as provided in  
20 section 659.012(a)(1) of the Government Code.

21 (d) Once appointed, each judge shall continue in office  
22 until his or her term expires and until a successor has been  
23 appointed.

24 (e) If, for any reason, a judge does not fulfill his or her  
25 term, the Governor shall appoint a replacement judge, who will  
26 complete the unexpired portion of the term.

27 (f) The Governor may remove a judge, after notice and an

1 opportunity to be heard, for neglect of duty, inability to perform  
2 duties, malfeasance in office, or other good cause.

3 (g) A judge may disqualify or recuse himself or herself on  
4 his or her own motion, or on the motion of any party, in any matter,  
5 and shall be disqualified or recused as provided in the Texas Code  
6 of Judicial Conduct and rules 18a and 18b of the Texas Rules of  
7 Civil Procedure.

8 Sec. 114.053. QUALIFICATIONS OF JUDGES. (a) Each judge of  
9 the tribunal shall:

10 (1) be a citizen of this State; and

11 (2) possess substantial knowledge of the tax law and  
12 substantial experience representing taxpayers in tax cases.

13 (b) Each judge is subject to and shall follow the Texas Code  
14 of Judicial Conduct.

15 (c) Each judge shall devote his or her full time during  
16 business hours to the duties of his or her office. Each judge shall  
17 not engage in any other gainful employment or business, nor hold  
18 another office or position of profit in a government of this State,  
19 any other State, or the United States. Notwithstanding these  
20 prohibitions, a judge may own passive interests in business  
21 entities and may earn income from incidental teaching, publishing,  
22 or scholarly activities.

23 Sec. 114.054. CLERK, REPORTERS, AND OTHER EMPLOYEES. (a)  
24 The tribunal shall appoint a clerk and a reporter, employ  
25 additional personnel, and make such other expenditures, including  
26 expenditures for libraries, publications, and equipment, as are  
27 necessary to permit it to efficiently execute its functions.

1       (b) The reporter shall be appointed pursuant, and subject  
2 to, the provisions of Section 52.021, Government Code.

3       (c) No employee of the tribunal shall act as attorney,  
4 representative, or accountant for others in any matter involving  
5 any tax imposed or levied by this State or political subdivision of  
6 this State.

7       (d) In addition to the services of the official reporter,  
8 the tribunal may contract the reporting of its proceedings and, in  
9 the contract, fix the terms and conditions under which transcripts  
10 will be supplied by the contractor to the tribunal and to other  
11 persons and agencies.

12                   SUBCHAPTER C. JURISDICTION AND VENUE

13       Sec. 114.101. JURISDICTION. (a) The tribunal shall hear  
14 all cases in relation to the collection, receipt, administration,  
15 and enforcement of:

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

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

20       (b) Payment of the tax, penalty, or interest identified in a  
21 deficiency determination under section 111.008 of the Tax Code is  
22 not required to initiate a proceeding with the tribunal.

23       (c) The tribunal shall not have the power to determine the  
24 constitutionality of the tax statutes or rules of this State.

25       Sec. 114.102. VENUE. (a) All hearings conducted by the  
26 tribunal shall be at its offices in Austin, Texas.

27       Sec. 114.103. COMMENCEMENT OF PROCEEDINGS. (a) A taxpayer

1 may initiate a proceeding before the tribunal by filing a petition  
2 on or before the expiration of 60 days following the date of the  
3 comptroller's:

4 (1) deficiency determination issued pursuant to  
5 section 111.008 of the Tax Code;

6 (2) denial of a refund claim filed pursuant to section  
7 111.104 of the Tax Code; or

8 (3) other notice or demand assessing a tax, fee,  
9 penalty, interest, or other amount administered by the comptroller.

10 (b) A petition filed under subsection (a) of this section  
11 shall name the comptroller as respondent in his or her official  
12 capacity, and be served on the comptroller in a manner prescribed by  
13 rule 21a of the Texas Rules of Civil Procedure.

14 (c) The comptroller shall file its answer with the tribunal  
15 no later than 30 days after service of the petition, and serve a  
16 copy on the taxpayer and its representative, if any, in a manner  
17 prescribed by rule 21a of the Texas Rules of Civil Procedure.

18 (d) The petition shall be in a form as prescribed by the  
19 tribunal.

20 Sec. 114.104. NO ELECTION OF REMEDIES. (a) Filing a  
21 petition under Tax Code section 114.103 does not prejudice a  
22 taxpayer's right to file suit pursuant to the provisions of Chapter  
23 112 of the Tax Code.

24 SUBCHAPTER D. DISCOVERY AND HEARINGS

25 Sec. 114.151. APPLICATION OF THE TEXAS RULES OF CIVIL  
26 PROCEDURE. (a) Unless otherwise provided in this Act, the  
27 provisions of the Texas Rules of Civil Procedure shall apply to all

1 aspects of proceedings before the tribunal; provided, however, that  
2 the tribunal may, by rule or by order in a particular proceeding,  
3 modify the Texas Rules of Civil Procedure to fairly and efficiently  
4 resolve disputes between the parties.

5 Sec. 114.152. DISCOVERY; SUBPOENAS. (a) The parties to a  
6 proceeding are entitled to the forms of discovery provided in rules  
7 190 through 215 of the Texas Rules of Civil Procedure; however, the  
8 parties to a proceeding shall make every effort to conduct  
9 discovery by informal consultation or communication.

10 (b) A judge of the tribunal shall have the power to rule on  
11 discovery matters presented by the parties to a proceeding.

12 (c) A judge or clerk of the tribunal, on the request of any  
13 party to the proceeding, shall issue subpoenas requiring the  
14 attendance of witnesses and giving of testimony and subpoenas  
15 requiring the production of evidence or things.

16 (d) Any employee of the tribunal designated in writing for  
17 such purpose by a tribunal judge may administer oaths.

18 (e) Any witness who is subpoenaed or whose deposition is  
19 taken shall receive the same fees established in section 22.001 of  
20 the Civil Practice and Remedies Code.

21 (f) A judge of the tribunal shall have the power granted to  
22 the courts of this State under section 21.002 of the Government Code  
23 to enforce compliance with a subpoena issued under this section.

24 Sec. 114.153. SUMMARY DISPOSITION. (a) Any party to a  
25 proceeding may file a motion for summary disposition.

26 (b) The judge shall grant a motion for summary disposition  
27 if the evidence before him or her establishes that there is no

1 genuine issue as to any material fact and that the moving party is  
2 entitled to a decision in its favor as a matter of law.

3 (c) A movant shall file its motion for summary disposition  
4 at least 30 days before the date of the hearing on the merits. The  
5 motion must include:

6 (1) a separate statement that sets forth plainly and  
7 concisely all material facts that the moving party contends are  
8 undisputed;

9 (2) a clear and specific reference to the evidence  
10 supporting the facts that the moving party contends are undisputed;  
11 and

12 (3) copies the evidence supporting the facts that the  
13 moving party contends are undisputed.

14 (d) The non-moving party may file a response within 14 days  
15 of receipt of the motion for summary disposition. The response  
16 must:

17 (1) include a separate statement

18 (A) addressing each of the material facts that  
19 the moving party contends are undisputed; and

20 (B) indicating whether the non-moving party  
21 agrees or disagrees that the facts are undisputed;

22 (2) plainly and concisely set forth any other material  
23 facts that the non-moving party contends are disputed;

24 (3) clearly and specifically refer to evidence  
25 supporting the material facts that the non-moving party contends  
26 are disputed; and

27 (4) object to the form of the motion and to the

1 evidence.

2 (e) The moving party may file a response within 7 days of  
3 receipt of the non-moving party's response. The reply must include  
4 objections to the form of the response and to the evidence.

5 Sec. 114.154. HEARINGS. (a) Hearings before the tribunal  
6 shall be de novo.

7 (b) Hearings are confidential and are not open to the  
8 public.

9 (c) Unless provided otherwise in this Act or in rules  
10 promulgated by the tribunal, hearings shall be conducted according  
11 to the Texas Rules of Civil Procedure governing nonjury civil cases  
12 in the district courts of this State.

13 (d) The tribunal shall take evidence, conduct hearings,  
14 rule on motions, and issue final decisions.

15 (e) The rules of evidence as applied in a nonjury civil case  
16 in a district court of this State shall apply to a proceeding before  
17 the tribunal except that evidence inadmissible under those rules  
18 may be admitted, at the discretion of the judge, if the evidence is:

19 (1) necessary to ascertain facts not reasonably  
20 susceptible of proof under those rules;

21 (2) not precluded by statute; and

22 (3) of a type on which a reasonably prudent person  
23 commonly relies in the conduct of the person's affairs.

24 (f) Testimony may be given only on oath or affirmation.

25 (g) In the case of an issue of fact:

26 (1) the burden of proof is on the comptroller:

27 (A) by a preponderance of the evidence, if the



1 issue is whether the suspension or revocation of a license is  
2 warranted; or

3 (B) by clear and convincing evidence, if the  
4 issue is whether the imposition of additional penalty for willful  
5 or fraudulent failure to pay tax is warranted;

6 (2) the burden of proof is on the taxpayer:

7 (A) by a preponderance of the evidence, if  
8 contesting an action, or proposed action, of the comptroller; or

9 (B) by clear and convincing evidence, if claiming  
10 a transaction is exempt from taxation.

11 SUBCHAPTER E. DECISIONS

12 Sec. 114.201. AUTHORITY. (a) A decision by a judge of the  
13 tribunal shall be deemed to be the decision of the tribunal.

14 Sec. 114.202. DECISION TO BE IN WRITING. (a) The tribunal  
15 shall render its decision in writing, including a concise statement  
16 of the facts found and the conclusions of law reached. All  
17 decisions shall grant such relief, invoke such remedies, and issue  
18 such orders as the tribunal deems appropriate to carry out its  
19 orders and decisions. The tribunal shall promptly mail a notice of  
20 its decision to the taxpayer and the comptroller.

21 (b) The tribunal shall render its decision no later than 90  
22 days after the submission of the last brief filed subsequent to the  
23 completion of the hearing or, if briefs are not submitted, then no  
24 later than 90 days after completion of the hearing. The tribunal  
25 may extend the 90 day period, for good cause, up to 30 additional  
26 days.

27 (c) If the tribunal fails to render its decision by the

1 applicable deadlines established in subsection (b) of this section,  
2 the tribunal is deemed to have ruled against the taxpayer on all  
3 issues.

4 (d) The tribunal's decision shall finally decide the  
5 matters in controversy, unless the taxpayer timely appeals the  
6 decision as provided in section 114.251 of this Act.

7 (e) The tribunal shall adhere to the principle of stare  
8 decisis. The tribunal's interpretation of a tax statute subject to  
9 contest in one case shall be followed by the tribunal in subsequent  
10 cases involving the same statute, and its application of a statute  
11 to the facts of one case shall be followed by the tribunal in  
12 subsequent cases involving similar facts, unless the tribunal's  
13 interpretation or application conflicts with that of a district or  
14 appellate court or the tribunal provides satisfactory reasons for  
15 departing from prior precedent.

16 (f) A decision of the tribunal shall become final 45 days  
17 after the issuance of a notice of decision or 45 days after the  
18 tribunal fails to issue a decision as provided in section  
19 141.202(c).

20 Sec. 114.203. PUBLICATION OF DECISIONS; CONFIDENTIALITY.

21 (a) A final decision of the tribunal shall be indexed and published  
22 in print or electronic form as the tribunal deems best adapted for  
23 public convenience.

24 (b) A published final decision shall comply with the  
25 confidentiality provisions of section 114.352 of this Act.

26 (c) A published final decision shall not include the  
27 following types of information:

- 1           (1) identity of the taxpayer and its employees;  
2           (2) taxpayer identification numbers;  
3           (3) trade secrets;  
4           (4) intellectual property; or  
5           (5) any other type of information that could possibly  
6 identify the taxpayer.

7                                   SUBCHAPTER F. APPEALS

8           Sec. 114.251. DE NOVO APPEAL TO THE DISTRICT COURT. (a) A  
9 taxpayer may appeal a final decision of the tribunal to the district  
10 courts of Travis County pursuant to Chapter 112 of the Tax Code.

11           (b) The appeal under this section is de novo.

12           (c) A taxpayer must appeal a final decision of the tribunal  
13 on or before the expiration of 30 days after the date the decision  
14 becomes final under section 114.202(f) of this Act.

15                                   SUBCHAPTER G. REPRESENTATION

16           Sec. 114.301. REPRESENTATIVES. (a) The comptroller shall  
17 be represented by its general counsel in all proceedings before the  
18 tribunal.

19           (b) A taxpayer may represent itself, or may appear through  
20 its authorized representative in all proceedings before the  
21 tribunal.

22           Sec. 114.302. PRACTICE OF LAW. (a) Under no circumstance  
23 shall representation of a taxpayer before the tribunal be  
24 considered the practice of law.

25                                   SUBCHAPTER H. MISCELLANEOUS PROVISIONS

26           Sec. 114.351. RULES AND FORMS. (a) The tribunal is  
27 authorized to promulgate and adopt all reasonable rules and forms

1 as may be necessary or appropriate to carry out the intent and  
2 purposes of this Act.

3 (b) Rules shall be adopted in accordance with the rulemaking  
4 procedures of Chapter 2001 of the Government Code.

5 Sec. 114.352. CONFIDENTIALITY. All information received by  
6 the tribunal as a result of a hearing conducted under the provisions  
7 of this Act shall be confidential as provided in section 111.006 of  
8 the Tax Code, and is not subject to disclosure under Chapter 552 of  
9 the Government Code.

10 SECTION 2. Section 111.00455, Tax Code, is amended to read  
11 as follows:

12 Sec. 111.00455. CONTESTED CASES CONDUCTED BY TAX TRIBUNAL.  
13 [~~TAX DIVISION OF STATE OFFICE OF ADMINISTRATIVE HEARINGS.~~] (a) The  
14 tribunal [~~tax division of the State Office of Administrative~~  
15 ~~Hearings~~] shall conduct any contested case hearing as provided by  
16 Chapter 114, [2003.101,] Tax [Government] Code, in relation to the  
17 collection, receipt, administration, and enforcement of:

- 18 (1) a tax imposed under this title; and  
19 (2) any other tax, fee, or other amount that the  
20 comptroller is required to collect, receive, administer, or enforce  
21 under a law not included in this title.

22 (b) The following are not contested cases under Subsection  
23 (a) and Chapter 114, [Section, 2003.101,] Tax [Government] Code:

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

1 151.157(f), 151.1575(d), 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 151.703(d);

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 tribunal. [~~tax division of the State Office of~~  
21 ~~Administrative Hearings.~~]

22 SECTION 3. Section 111.105(a), Tax Code, is amended to read  
23 as follows:

24 Sec. 111.105. TAX REFUND: HEARING. (a) A person claiming a  
25 refund under Section 111.104 is entitled to a hearing on the claim  
26 if the person requests a hearing on or before the 60th [~~30th~~] day  
27 after the date the comptroller issues a letter denying the claim for

1 refund. The person is entitled to 20 days' notice of the time and  
2 place of the hearing.

3 SECTION 4. Subchapter D, Chapter 2003, Government Code, is  
4 repealed.

5 SECTION 5. This Act takes effect September 1, 2013.