

BILL ANALYSIS

Senate Research Center

H.B. 2543
By: McCall (Armbrister)
Administration
5/11/1999
Engrossed

DIGEST

The Tax Code does not clearly state the standards to be used when deliberating a penalty waiver request by a taxpayer in either an audit or non-audit situation, or in taking a filing position with respect to a tax report. Section 111.061, Tax Code, imposes a mandatory penalty on tax underpayments that do not exceed 10 percent of the tax owed to the comptroller of public accounts (comptroller). However, if the taxpayer exercised “reasonable diligence” to comply with the tax laws, a waiver of the penalty is available under Section 111.103, Tax Code. There is no statutory definition of “reasonable diligence” to guide the taxpayer.

A taxpayer is required regularly to file a tax return contemporaneous with, or prior to, the Texas court’s final resolution of a tax issue involving another taxpayer. The taxpayer is forced to choose between a conservative filing position that may result in an overpayment of taxes without any interest available for an overpayment, and an aggressive filing position that will automatically result in penalties and interest. Historically, the comptroller has not considered this taxpayer dilemma when deliberating penalty waiver requests. A taxpayer may have a reasonable interpretation of the statute, regulation, or policy that differs from the comptroller’s interpretation. The taxpayer should not be penalized for taking such a position if there is appropriate authority for the position taken, or in the instance in which a taxpayer has limited authority, the position is fully disclosed on the return. This bill would define “reasonable diligence” to include a “substantial authority” standard similar to the federal standard contained in the U.S. Internal Revenue Code, and would provide for adequate disclosure of the relevant facts affecting an item’s tax treatment in the tax return or report, similar to the federal disclosure standards in the U.S. Internal Revenue Code.

PURPOSE

As proposed, H.B. 2543 defines “reasonable diligence” to include a “substantial authority” standard similar to the federal standard contained in the U.S. Internal Revenue Code, and provides for adequate disclosure of the relevant facts affecting an item’s tax treatment in the tax return or report, similar to the federal disclosure standards in the U.S. Internal Revenue Code.

RULEMAKING AUTHORITY

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 11.103, Tax Code, by adding Subsections (b) and (c), to provide that a taxpayer exercises reasonable diligence to comply with the provisions of this title in relation to a tax item when the taxpayer acts in good faith with respect to that item and substantial authority for the tax treatment of that item by the taxpayer existed at the time the claim is settled, or the taxpayer adequately discloses the relevant facts affecting the item’s tax treatment in the report or in a statement attached to the report and there is a reasonable basis for that tax treatment. Defines “substantial authority” and “reasonable basis.”

SECTION 2. (a) Effective date: The first day of the first calendar quarter beginning on or after the earliest date that it may take effect under Section 39, Article III, Texas Constitution.

(b) Makes application of this Act prospective.

SECTION 3. Emergency clause.