

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 242
By: Shapiro
Finance
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Under current law, the comptroller of public accounts (comptroller) is granted rulemaking authority relating to contested cases involving the collection, administration, and enforcement of a tax imposed under Title 2 (State Taxation), Tax Code, and any other tax or fee that the comptroller is required to collect. This situation allows for the possibility of a conflict of interest on the part of the comptroller.

C.S.S.B. 242 gives the State Office of Administrative Hearings (SOAH) the authority to hear contested tax cases on behalf of the comptroller. This bill moves the administrative law judges that hear such cases from the comptroller's office to a tax division within SOAH, and requires SOAH to charge the comptroller's office a fixed annual fee, to be negotiated biennially to coincide with the comptroller's legislative appropriations request, for services rendered by the tax division.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the comptroller of public accounts in SECTION 3 (Section 2003.109, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter A, Chapter 111, Tax Code, by adding Section 111.00455, as follows:

Sec. 111.00455. CONTESTED CASES PERFORMED BY TAX DIVISION OF STATE OFFICE OF ADMINISTRATIVE HEARINGS. (a) Requires the tax division (division) of the State Office of Administrative Hearings (SOAH) to conduct any contested case hearing relating to the collection, receipt, administration, and enforcement of certain state taxes and any other taxes required to be collected by the comptroller of public accounts (comptroller).

(b) Sets forth a list of hearings that are not contested cases under this section and Section 2003.101, Government Code.

(c) Provides that references in law to the comptroller relating to the performance of certain contested case hearings means the division.

SECTION 2. Amends Section 2003.4011(c), Government Code, to include an exception, as provided by Section 2003.101, Government Code, to the requirements for a person to be appointed as a master administrative law judge.

SECTION 3. Amends Chapter 2003, Government Code, by adding Subchapter D, as follows:

SUBCHAPTER D. TAX DIVISION

Sec. 2003.101. TAX DIVISION. (a) Requires SOAH to establish a division to conduct hearings regarding contested cases as prescribed by Section 11.00455, Tax Code.

(b) Provides that an administrative law judge in the division is classified as a "master administrative law judge II." Authorizes administrative law judges

(judges) in the division to only conduct hearings on behalf of the comptroller. Prohibits judges in the tax division from conducting hearings for other state agencies or other types of hearings that SOAH conducts under this chapter or other law. Provides that Section 2003.4011 does not apply to this section.

(c) Sets forth the list of eligibility requirements for a judge to preside at a division hearing.

(d) Authorizes the comptroller, notwithstanding Section 2001.058 (Hearing Conducted by State Office of Administrative Hearings), Government Code, to change a finding of fact or conclusion of law made by the judge or to vacate or modify an order issued by the judge if the comptroller determines that the judge did not properly apply or interpret certain law, rules, policies, or prior decisions, or if the judge issued a finding of fact that is not supported by a preponderance of the evidence, or if the comptroller determines that a comptroller policy or prior administrative decision upon which the judge relied is incorrect.

(e) Requires the comptroller to state in writing the specific reason and legal basis for a determination under Subsection (d).

(f) Authorizes a judge, on the judge's own motion or on motion of a party and after notice and an opportunity for a hearing, to impose appropriate sanctions as provided by Subsection (g) against a party or its representative for filing a motion or pleading that is groundless and brought in bad faith for certain purposes for abuse of the discovery process, or for failure to obey an order of the administrative law judge or the comptroller.

(g) Authorizes a sanction imposed under Subsection (f) to include, as appropriate and justified, issuance of an order requiring certain actions or imposing certain conditions.

(h) Requires a judge in the division, for each hearing conducted under this section, to issue a proposal for decision that includes findings of fact, conclusions of law, and the legal reasoning and other analysis considered by the judge in reaching the decision. Requires each finding of fact or conclusion of law made by the judge to be independent, impartial, and based on state law and the evidence presented at the hearing.

(i) Prohibits the comptroller from attempting to influence the findings of fact or the judge's application of the law except by evidence and legal argument. Prohibits a judge conducting a hearing under this chapter from directly or indirectly communicating in connection with an issue of fact or law with a part or its representatives except on notice and opportunity for each party to participate or to ask questions that involve certain matters that do not address the substance of the issues or positions taken in the case.

(j) Authorizes the appearance of certain persons in hearings conducted for the comptroller by SOAH.

(k) Provides that the comptroller is represented by an authorized representative in all hearings conducted for the comptroller by SOAH.

Sec. 2003.102. SUNSET PROVISION. (a) Provides that the division is subject to Chapter 325 (Texas Sunset Act), Government Code.

(b) Requires the Sunset Advisory Commission (commission) to evaluate the division every two years and to present a report on the evaluation of and the commission's recommendations relating to the division to the legislature at each regular session.

(c) Requires the commission to submit the first report required under this section to the 82nd Legislature.

(d) Authorizes the legislature, by law and during the regular session at which the report and recommendations are presented, to continue the tax division as provided by that chapter for a period not to exceed two years. Provides that the division is abolished and that this subchapter and Section 111.00455, Tax Code, expire on September 1 of the odd-numbered year in which the regular session occurred if the division is not continued in existence.

Sec. 2003.103. **TIMELINESS OF HEARINGS.** (a) Requires the division to conduct all hearings under this subchapter in a timely manner.

(b) Requires the division to use every reasonable means to expedite a case under this subchapter upon request of such from the comptroller.

(c) Provides that this section is not intended to impair SOAH's independence in conducting a hearing under this chapter.

Sec. 2003.104. **CONFIDENTIALITY OF TAX DIVISION INFORMATION.** (a) Requires SOAH to keep certain information that identifies a taxpayer who participates in a case under this subchapter confidential.

(b) Provides that the provision of information to SOAH that is confidential under certain laws does not affect the confidentiality of the information. Requires SOAH to maintain that confidentiality.

(c) Provides that a hearing conducted under this subchapter is confidential and not open to the public.

Sec. 2003.105. **TAX DIVISION HEARINGS FEE.** Requires SOAH to charge the comptroller a fixed annual fee, rather than an hourly rate, for services rendered by the division. Requires SOAH and the comptroller to negotiate the amount of the fixed fee biennially to coincide with the comptroller's legislative appropriations request.

Sec. 2003.106. **COMPTROLLER'S PRIORITIES AND PUBLIC POLICY NEEDS.** (a) Requires the comptroller to provide input to SOAH to assist SOAH regarding the comptroller's priorities and public policy needs.

(b) Provides that this section is intended to assist SOAH in providing efficient service under this subchapter and is not intended to impair SOAH's independence in conducting a hearing under this subchapter.

Sec. 2003.107. **TAX DIVISION REVIEW.** Requires SOAH to provide to the comptroller, upon the comptroller's request, a list of judges who have heard cases in the division in the last year, including temporary judges, the judges' qualifications, and any other information considered necessary by the comptroller in evaluating the judges' performance.

Sec. 2003.108. **REPORTS.** (a) Require SOAH to provide a monthly status report that lists pending cases and provides information on any case that exceeds the comptroller's time lines for issuing a proposal for decision or an agreed order to the comptroller.

(b) Requires SOAH to review the status of pending cases under this subchapter with the comptroller and appropriate staff at least quarterly.

(c) Requires SOAH to provide a quarterly report to the comptroller on services performed by SOAH for the comptroller under this subchapter.

Sec. 2003.109. **RULES.** Authorizes the comptroller to adopt rules to provide for the referral of issues related to a case described by Section 111.00455, Tax Code, to the

division to resolve a procedure or other preliminary dispute between the comptroller and a party.

(b) Requires the division, after a referral, to docket the case and assign a judge. Requires the division to appoint the same judge to hear the case if additional proceedings are required after the consideration of the procedural or other preliminary dispute.

SECTION 4. Makes application of this Act toward the procedures governing hearings before the division prospective.

SECTION 5. Effective date: upon passage or September 1, 2007.