

- SUBJECT:** Report, delivery, and claims process regarding unclaimed property
- COMMITTEE:** Business and Industry — committee substitute recommended
- VOTE:** 8 ayes — Giddings, Elkins, Bailey, Bohac, Martinez, Taylor, Vo, Zedler  
0 nays  
1 absent — Solomons
- WITNESSES:** For — Ira Lipstet; Bob Owen, Texas Society of CPAs; James Santivanez  
Against — None
- BACKGROUND:** Property Code, sec. 74.702 maintains that to enforce laws related to the report, delivery, and claims process for unclaimed property and to determine whether reports have been made as required, the comptroller, the attorney general, or an authorized agent of either, at any reasonable time, may examine the books and records of any holder.
- Sec. 74.705 provides that a holder of unclaimed or abandoned property who fails to pay or deliver the property within the prescribed time shall pay the comptroller interest, at an annual rate of 10 percent, on the property from the date the property should have been paid or delivered until the date it actually was paid or delivered.
- Sec. 74.706 states that a penalty equal to 5 percent of the value of the property due shall be imposed on a holder who fails to pay or deliver property within the time prescribed. If a holder fails to pay or deliver property within 30 days after the date the property is due, an additional penalty equal to 5 percent of the value of the property due shall be imposed.
- Sec. 74.709 establishes that upon request of the comptroller, the attorney general shall bring an action in Travis County district court in the name of the state to compel a holder to deliver unclaimed property or to file a property report. The attorney general may recover reasonable attorney's fees from the holder in addition to recovery of any unclaimed property accrued, a penalty, or interest due. In addition to a penalty or interest

assessed on delinquent property, a holder who fails to pay or deliver property or who fails to file a property report within the prescribed time is subject to a civil penalty up to \$100 for each day in violation.

**DIGEST:**

CSHB 3335 would amend Property Code, ch. 74, involving the report, delivery, and claims process for unclaimed property. If, after an examination of records, the comptroller determined that a person held unclaimed property that should have been delivered to the comptroller, a person could petition the comptroller for a hearing on that determination and on the imposition of any resulting interest or penalty. A person would have to file a petition for such a hearing within 30 days after the date the determination was made. If a petition for a hearing was not filed before that 30-day period, the determination would be final at the end of that period.

The bill would establish that the single business enterprise doctrine would not apply to ch. 74. This provision would be intended only to clarify existing law.

The bill would take effect September 1, 2005. The change made with respect to determination of unclaimed property would apply only to a determination by the comptroller made on or after that date.

**SUPPORTERS  
SAY:**

CSHB 3335 would establish a process for an administrative hearing for a business that disagreed with an unclaimed property assessment by the comptroller. Many transactions are subject to unclaimed property laws, including uncashed dividend, payroll, or cashier's checks, gift certificates, stocks, mutual fund accounts, bonds, deposits, and other refunds. A business could make a payment by check for a legitimate expense that for any number of reasons never gets cashed by the payee. If the payee's location is unknown to the business for a period of three years or more, the funds (amount of the check) become unclaimed property subject to escheat.

The comptroller, attorney general, or an authorized agent of either, may audit such unclaimed property. The period subject to the audit, customarily nine years, exceeds the period for record retention by the IRS or the Texas Tax Code.

An auditor assesses the business for the amount of unclaimed property based on actual records, if available, or an estimate based on whatever

records are available for that nine-year period. Interest is assessed on this amount equal to 10 percent per year that the property was not surrendered to the comptroller. A penalty equal to 5 percent of the property's value is added, and if the property has been retained more than 31 days, an additional 5 percent penalty is assessed. In practical terms, the penalty assessment usually is 10 percent.

The only recourse for a business that disagrees with an unclaimed property audit is to refuse to pay and wait to be sued by the attorney general in district court in Travis County. The law provides no administrative remedy. If a business pays the assessment, it is unclear whether that business has any statutory right to seek a refund of all or part of the property if an auditor or agent later discovers an error. In a lawsuit in which the attorney general is the prevailing party—in addition to the property, interest, and penalty or penalties—the state may recover reasonable attorney's fees from the business in addition to an additional civil penalty up to \$100 per day that the business has possessed the unclaimed property.

CSHB 3335 would allow due process short of being sued by the attorney general and possibly accruing additional civil penalties and attorney's fees. It is important that taxpayers have the opportunity to present evidence to the comptroller as to whether the state's claim against unclaimed property is appropriate. Texas is a leader among other states in unclaimed property administration. The state has a high percentage of compliance, excellent education resources for holders of unclaimed property, and an outstanding Website. Creating an administrative appeal process for unclaimed property audits would be consistent with other innovative measures by the comptroller.

Language in the bill clarifying the single business enterprise doctrine would assure that the specific holder of the unclaimed property was accountable to the comptroller for the unreported property. Without this clarification in the legislation, any affiliate of a holder could be held liable for unclaimed property, even though the affiliate did not hold the property, was not a trustee of the property, or was not indebted to another on the obligation. This could create a hostile business environment when the comptroller assessed a completely separate business solely because it had common shareholders with the holder.

OPPONENTS  
SAY:

Few states have any type of audit re-determination process in place for unclaimed property. Since procedures for an administrative appeals process for audits of unclaimed property would be unknown, the bill could result in additional costs for the state.

NOTES:

The committee substitute added that the single business enterprise doctrine would not apply to Property Code, ch. 74.

A similar bill, HB 1465 by Hartnett, passed the House during the 2003 regular session on the Local, Consent, and Resolutions Calendar and died in the Senate Business and Commerce Committee. Also last session, a similar provision was added to HB 2425 by McCall as it passed the House but removed from the bill before it passed the Senate.