

- SUBJECT:** Creating a penalty for early solicitation of services for tax audits
- COMMITTEE:** State Affairs — favorable, without amendment
- VOTE:** 5 ayes — Swinford, Miller, B. Cook, J. Keffer, Wong  
0 nays  
4 absent — Gattis, Farrar, Martinez Fischer, Villarreal
- SENATE VOTE:** On final passage, April 18 — 29-0
- WITNESSES:** No public hearing
- BACKGROUND:** Under chapter 111 of the Tax Code, the comptroller may audit the books and records of any person required to collect and remit taxes to the state, including sales and use, franchise, oil and gas, and hotel occupancy taxes. Prior to beginning an audit, the comptroller sends the taxpayer a letter of notice of the audit. The identity of the person being audited is considered public information under the Public Information Act (Government Code, ch. 552).
- DIGEST:** SB 263 would require a person who received, under the public information act, the name of a taxpayer that was being or would be audited by the comptroller to wait six days before contacting the taxpayer in order to make a direct solicitation of business or employment for pecuniary gain. If a solicitation was made by mail, the postmark or the receipt mark would be prima facie evidence of the date the solicitation was made.
- A person who contacted a taxpayer within the first six days would be subject to a civil penalty of up to \$500 for the first violation, \$1,000 for the second violation, and \$3,000 for each subsequent violation. The attorney general or the appropriate district or county attorney could institute a suit to collect the penalty and restrain the person from further violations upon the request of the comptroller or the person to whom the solicitation was directed. The penalty would be in addition to any other penalty provided by law.
- The bill would take effect September 1, 2005, and would only apply to a

request for information received by the comptroller on or after that date.

**SUPPORTERS  
SAY:**

Tax consultants eager to solicit their services often place repeated requests to the Comptroller's Office to gather the names of taxpayers the comptroller intends to audit. As a result, these tax consultants often learn of an impending audit before the taxpayer does, and in several cases citizens have learned that they are to be audited from a consultant before receiving notice from the state. Taxpayers that are going to be audited deserve the certainty that comes from receiving notice directly from the state. Requiring tax consultants to wait several days before contacting a taxpayer who is going to be audited also would reduce the appearance of an improper relationship between these consultants and the state that is created when the consultants learn of an impending audit before the person involved.

**OPPONENTS  
SAY:**

No harm accrues to a taxpayer who learns of an impending audit from an accountant rather than the comptroller. SB 263 unnecessarily would limit a reasonable business practice.