

SUBJECT: Transfer comptroller's tax court to State Office of Administrative Hearings

COMMITTEE: Ways and Means — committee substitute recommended

VOTE: 6 ayes — Keffer, Ritter, Bonnen, Flores, Paxton, Pitts

0 nays

1 present not voting — Y. Davis

2 absent — Otto, Peña

WITNESSES: For — (*Registered, but did not testify:* James LeBas, Koch Industries; Donna Warnof, Texas Independent Producers and Royalty Owners (TIPRO); Dale K. Craymer, Texas Taxpayers and Research Association)

Against — None

On — Rick Budd, Office of the Comptroller of Public Accounts

BACKGROUND: Tax Code, Title 2, requires the Comptroller's Office to collect the state's sales-and-use and franchise taxes as well as a variety of other taxes on other products and services, including motor fuels, hotel occupancy, mixed drinks, cigarettes, and fireworks. Taxpayers seeking refunds or appealing assessments based on audits can attempt to resolve their cases informally with the Comptroller's Office or through a quasi-judicial review by administrative law judges.

In September 2005, the State Auditor's Office released *A Review of Tax Settlements at the Office of the Comptroller of Public Accounts*, which reviewed information from the Comptroller's Office and the Texas Ethics Commission to analyze the disposition of tax claim settlements and campaign contributions made to then-Comptroller Carole Keeton Strayhorn by taxpayer representatives. One auditor's report recommendation was to transfer the administrative law judges hearing tax cases from the Comptroller's Office to the State Office of Administrative Hearings (SOAH).

In January 2007, Comptroller Susan Combs transferred the tax hearings court from her office to SOAH.

DIGEST:

CSHB 593 would amend Government Code, ch. 2003 and Tax Code, ch. 111 to establish a tax division at SOAH and authorize the agency to conduct any contested case hearing regarding the collection, receipt, administration, and enforcement of the Tax Code.

The bill would establish the qualifications of a master administrative law judge II, who would be required to:

- be a United States citizen;
- be an attorney of good standing with the State Bar of Texas;
- have been licensed in the state to practice law at least seven years;
- have substantial experience in tax cases; and
- have devoted at least 75 percent of his or her time in legal practice in the state during five of the last 10 years.

SOAH would be required to charge the comptroller a fixed annual fee, rather than an hourly rate, for the administrative law judge's services. SOAH and the comptroller would negotiate the fixed fee on a biennial basis to coincide with the comptroller's legislative appropriations request.

SOAH would be allowed to reassign tax code administrative judges to hear cases from other state agencies if there were no cases for the tax division. However, SOAH would have to:

- notify the comptroller in writing about the proposed temporary reassignment;
- describe both the case and the administrative law judge being assigned to hear it;
- estimate the time the hearing would take; and
- reimburse the comptroller's office at an appropriate hourly rate for the time the administrative judge spent on the case.

The comptroller would retain the right at any time to revoke the approval for administrative judges to hear other agency cases.

Also, CSHB 593 would:

- provide a procedure for the comptroller to change the administrative judge's finding of fact or to vacate or modify an order for cause;
- allow the administrative judge to sanction parties in the case;
- require that information identifying a taxpayer by name or social security number be kept confidential; and
- require SOAH to provide monthly and quarterly status reports to the comptroller on the progress of cases.

The SOAH tax division would be subject to Sunset review every two years, and the first report would be made to the 82nd Legislature.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2007, and would apply to cases filed on or after that date.

**SUPPORTERS
SAY:**

CSHB 593 would codify the existing agreement between the comptroller and SOAH and make the change permanent by placing it into statute. Taxpayers who disagree with the Comptroller's Office on tax matters should have access to a fair and impartial hearing. The old arrangement was inappropriate and comparable to having the police, prosecutors, and judges working out of the same office. The bill would implement some of the recommendations of the 2005 State Auditor's Office report.

Appearance of conflicts of interest can be just as damaging to the integrity of the administrative and legal process as actual corruption. The 2005 auditor's report identified 3,656 tax settlements for 755 distinct taxpayers that occurred within a year of the comptroller's receiving a contribution from these taxpayers or their representatives. The political contributions totaled \$2 million, and the tax settlements were worth more than \$461 million. While the contributions may have been completely unrelated to the tax settlements, moving tax court out of the Comptroller's Office would remove lingering doubts about the tax appeals process.

CSHB 593 would provide exacting standards to ensure that the tax court administrative law judges had the qualifications and expertise to hear complex tax cases. Five experienced hearings officers were transferred from the Comptroller's Office to SOAH as part of the interagency

cooperation contract this spring. The bill would allow SOAH some flexibility to transfer these hearings officers to handle other cases, but only if there were no tax cases pending and if the comptroller approved the temporary reassignment. There also would be a continuing review through the Sunset process to ensure that the office was functioning properly.

**OPPONENTS
SAY:**

Moving the tax court from the Comptroller's Office to SOAH could increase demands on hearings officers should taxpayers take advantage of what is perceived as a fairer venue. This could lead to a problem in finding qualified hearings officers. Administrative law judges should not jump from hearing appeals from cosmetologists, boxers, and air conditioning technicians to presiding over tax cases.

Any allegations about the connection between political contributions and tax court settlements are old news now. Even the auditor's report concluded that the statistics cited in the report did not imply any wrongdoing on the part of any individual or group examined for the audit.

NOTES:

The companion bill, SB 242 by Shapiro, passed the Senate on the Local and Uncontested Calendar on April 19 and was reported favorably, as substituted, by the House Ways and Means Committee on May 2, making it eligible to be considered in lieu of HB 593.