

SUBJECT: Giving courts discretion over interest due on certain property tax refunds

COMMITTEE: Ways and Means — committee substitute recommended

VOTE: 7 ayes — Y. Davis, Bohac, Darby, Murr, Raymond, Shine, Stephenson

0 nays

4 absent — D. Bonnen, E. Johnson, Murphy, Springer

WITNESSES: For — Mark Ciavaglia, Linebarger, Goggan, Blair and Sampson, LLP; (*Registered, but did not testify*: Robert Turner, Earth Moving Contractors Association of Texas; Roland Altinger, Harris County Appraisal District; Annie Spilman, National Federation of Independent Business/Texas; Daniel Gonzalez and Julia Parenteau, Texas Association of REALTORS; Brent South, Texas Association of Appraisal Districts; Jim Short, Linebarger law firm; Ro'Vin Garrett, Tax Assessor-Collectors Association of Texas; Marya Crigler, Travis Central Appraisal District; Bruce Elfant, James Popp)

Against — (*Registered, but did not testify*: R Clint Smith, Texas Association of Property Tax Professionals)

BACKGROUND: Tax Code, sec. 42.08 requires a taxpayer appealing the appraised valuation of property to pay a certain portion of the tax initially determined to be due. Taxpayers also are allowed to pay the full amount or make payments throughout the appeals process. If, pursuant to sec. 42.08, a taxpayer chooses to pay less than the total tax that was initially determined to be due, 42.42(c) provides that the remainder is considered delinquent if the taxpayer does not prevail. Delinquent tax bills are subject to a penalty of up to 12 percent under sec. 33.01.

Under sec. 42.43(b), if a taxpayer who has paid more tax than is due prevails on appeal, the taxing unit must provide a refund plus interest. HB 1090 by N. Gonzalez, enacted by the 82nd Legislature in 2011, set the interest rate at 2 percent plus the most recent prime rate published by the

Federal Reserve. The 84th Legislature in 2015 enacted SB 1760 by Creighton, which changed the rate to 9.5 percent.

DIGEST:

CSHB 2253 would change the Tax Code provision under which a taxpayer who has paid more tax than is due receives a refund plus interest after prevailing on appeal in a suit to reduce a property's appraised value. In this situation, the bill would give the court making the final determination of the appeal full discretion over the portion of the refund on which the 9.5 percent interest rate was assessed.

CSHB 2253 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, 2017, and would apply only to an appeal filed on or after that date.

SUPPORTERS
SAY:

CSHB 2253 would allow courts flexibility in the amount of interest taxing units must pay on property tax refunds. This would fix a provision of law that currently allows some property taxpayers to profit unfairly from the system. A 9.5 percent interest rate on the full value of the refund can be excessive because it provides a better return than most investments. This may encourage taxpayers to pay their full tax bill up front and then contest the valuation, with the expectation that they could receive a solid return on investment without any risk. While interest rates on refunds are important, property tax refunds should not be treated as investments. Therefore, the amount of interest awarded should be at the discretion of the court.

This bill would resolve certain cases that impose hardships on taxing units, some of which risk of having to issue refunds that are larger than the actual property tax levied. This is especially difficult for rural taxing entities in which individual properties may make up a large percentage of the entity's revenue. CSHB 2253 would allow these entities to better budget their resources instead of planning for the possibility of an unaffordable property tax refund.

No inequality of risk exists between property owners and taxing units because taxpayers are allowed at any time during the appeals process to

make payments on their outstanding tax bill with no penalty, reducing their risk profile. Appraisal districts have no corresponding option.

The judiciary can and should be trusted to determine the fair amount of interest paid in these cases. Interest payments compensate taxpayers for the temporary deprivation of funds, which is true in any case where a refund is due. Even though the bill would not mandate a minimum amount of interest due, there would be no practical scenario under which the court would require no interest to be paid. Therefore, appraisal districts would continue to have an incentive to settle lawsuits.

OPPONENTS
SAY:

CSHB 2253 would increase the inequality that SB 1760 by Creighton tried to reduce. Because taxpayers must risk a 12 percent tax penalty when appealing valuations, the law also should impose a level of risk on taxing units, as equitably as possible. But CSHB 2253 probably would reduce the amount of interest that taxing units would be required to pay, reducing the equality of risk even further.

Additionally, CSHB 2253 would reduce the incentive to settle suits over appraised value, possibly prolonging litigation. Currently, the 9.5 percent interest rate on refunds creates a strong incentive to settle lawsuits, especially when the difference between the appraisal district's valuation and the taxpayer's valuation is high. As CSHB 2253 would eliminate the requirement for the taxing unit to pay any interest, leaving this determination to the court, it would reduce the incentive to reach a settlement.

NOTES:

CSHB 2253 differs from the filed bill in that the committee substitute would not set a minimum or a maximum portion of the refund on which a district court could assess the interest rate.

The companion bill, SB 1749 by Hinojosa, was referred to the Senate Finance Committee on March 23.