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## Conclusory Allegations Not Sufficient To Overcome Presumed Correctness Of Texas Comptroller's Certificates Of Delinquency

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The Texas Court of Appeals recently ruled that a taxpayer's self-serving, conclusory allegations were not sufficient to overcome the presumed correctness of certificates of delinquency from the Texas Comptroller of Public Accounts (the "Comptroller").<sup>1</sup> The taxpayer failed to conclusively show that he did not owe the taxes stated in the Comptroller's certificates of delinquency and, therefore, the certificates were deemed sufficient to establish the amount of taxes owed as a matter of law.

### Background

The taxpayer operated a small convenience store from the front room of his house. In March, 2004, the State of Texas, the City of Houston, and the Transit Authority of Houston (collectively "the State") brought suit against the taxpayer seeking to recover delinquent sales tax, penalties, and interest for the period from January 1, 1998 through March 31, 2001. The State filed a motion for summary judgment, attaching certificates of delinquency from the Comptroller establishing the amount of the delinquent taxes and the State's entitlement to summary judgment.

The taxpayer filed numerous documents in response to the State's motion for summary judgment, including copies of his 1998 and 2000 federal income tax returns, documents relating to the sale of his home, and an affidavit testifying to the fact that he closed his business in March, 2001. The taxpayer's affidavit also indicated that all of his business records were destroyed by a tropical storm.

The trial court granted the State's motion for summary judgment and awarded the parties approximately \$58,000 in unpaid taxes and more than \$12,000 in penalties, interest, attorney's fees, and court costs. The taxpayer appealed.

### Unrebutted Certificates Of Delinquency Establish Taxes Owed As A Matter Of Law

A party seeking summary judgment in Texas must show that, except as to the amount of damages, there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law on the issues expressly set out in the motion.<sup>2</sup>

<sup>1</sup> *Kawaja v. Texas*, No. 03-05-00491-CV, 2006 Tex. App. LEXIS 4974 (Tex. App.--Austin June 8, 2006).

<sup>2</sup> Tex. R. Civ. P. § 166a(c).

When reviewing a motion for summary judgment, Texas courts accept all evidence favorable to the nonmovant as true, and resolve any doubts in favor of the nonmovant.<sup>3</sup>

Taxpayers attempting to defeat a motion for summary judgment in Texas bear a heavy burden once the Comptroller has issued certificates of delinquency. The Texas Tax Code provides that a certificate from the Comptroller showing a delinquency is prima facie evidence of (1) the determination of the tax or the amount of the tax, (2) the stated amount of penalties and interest, (3) the delinquency of the amounts stated, and (4) the Comptroller's compliance with the Tax Code in computing and determining the amounts due.<sup>4</sup> A taxpayer must overcome this presumption of correctness to defeat the taxing authority's motion for summary judgment. If un rebutted, the Comptroller's certificates are sufficient to establish the amount owed by the taxpayer as a matter of law.<sup>5</sup>

To overcome the presumed correctness of a Comptroller certificate of delinquency, a taxpayer must conclusively show that he or she owes no tax by presenting "evidence tending to support the contrary as would be conclusive, or evidence which would be so clear and positive it would be unreasonable not to give effect to it as conclusive."<sup>6</sup> Vague, self-serving, or conclusory allegations of the taxpayer are deemed insufficient to overcome the presumption of correctness.<sup>7</sup>

### Taxpayer's Evidence

In the instant case, the taxpayer's evidence, which consisted mainly of conclusory statements that he made no sales after March 26, 2001 and that he sold his house in April, 2001, was deemed irrelevant by the court since the State was seeking to recover taxes from January 1, 1998 through March 31, 2001. The court also refused to accept the taxpayer's testimony that his business records were destroyed in a flood as conclusive evidence. The court stated that "to allow [the taxpayer's] self-serving statements to overcome the presumption of correctness would render the statutory scheme requiring taxpayers to keep and produce records meaningless." Accordingly, the court determined that the taxpayer failed to discharge his burden as a matter of law and affirmed the trial court's judgment.

### Practice Pointer

Although the taxpayer in this case apparently failed to produce any relevant evidence to dispute the asserted liability, it is important to recognize the onerous burden Texas courts place on taxpayers that hope to defeat a motion for summary judgment raised by a taxing authority. Once the Comptroller issues a certificate of delinquency, the taxpayer must be prepared to present evidence that *conclusively* establishes that no tax is owed. Keeping adequate business records is important. Also, as illustrated here, it is important to document any destruction or loss of records. Had the taxpayer offered the

<sup>3</sup> *Kawaja v. Texas* (citing *Southwestern Elec. Power Co. v. Grant*, 73 S.W.3d 211 (Tex. 2002)).

<sup>4</sup> Tex. Tax Code §§ 111.013(a) and 151.603.

<sup>5</sup> See, e.g., *Hylton v. State*, 665 S.W.2d 571 (Tex. App.--Austin 1984, no writ); *Baker v. Bullock*, 529 S.W.2d 279 (Tex. Civ. App.--Austin 1975, writ ref'd n.r.e).

<sup>6</sup> *Hylton v. State*, 665 S.W.2d at 572.

<sup>7</sup> *Kawaja v. Texas* (citing *Baker v. Bullock*, 529 S.W.2d at 281).

court evidence supporting his claim that the business records were destroyed, or attempted to reconstruct the records, he may have defeated the motion for summary judgment and had his day in court.■



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