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Texas Makes More Procedural Changes To Audit And Hearing Process

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The new Texas Comptroller Susan Combs continues to implement changes intended to improve the tax audit and hearing process. Last month we reported that the Comptroller transferred the administrative tax hearing process to the State Office of Administrative Hearings, an independent agency. Since then, the Comptroller has proposed substantial changes to the agency's procedural rules and issued a "Comptroller Tax Process Improvements" policy statement explaining the new procedures.

The new policy changes are generally intended to streamline audits and hearings and to provide more opportunities for resolving a matter prior to formal, oral hearing.

Increased Role of Tax Policy

Tax Policy is expected to play a more important role in the overall controversy process. The Tax Policy and Process Committee is directed to meet at least monthly to receive reports on relevant cases or audits handled since the last meeting. This process may lead to publication of new industry or special mailings from Tax Policy, revision or creation of rules, or meetings between Tax Policy and Audit to clarify policy. Within the last year, there have been significant disagreements between Tax Policy and Audit in terms of what policy is (and should be) and how it should be applied. This process is evolving.

Audit Policy

Audit and refund claim review deadlines are being tightened to avoid undue delays on the part of both taxpayers and the Comptroller's Office. The Audit Division has issued a policy memorandum explaining the new deadlines. Auditors are told to avoid lapses longer than 30 days with no audit activity. Taxpayers are generally given 30 days to provide documents requested by the auditor, subject to a possible 90-day extension.

At the suggestion of Jones Day, Texas audit write-ups must contain a sufficient explanation of the legal basis for the assessment, hopefully similar to the detail of "90-day letters" used by the IRS. At the conclusion of the audit, but before a final audit report is sent to the taxpayer, an independent audit review will take place. The independent audit review replaces the existing dispute resolution officer conference.

Unlike a DRO, the independent audit reviewer will not be an employee of the Audit Division. The reviewer will be trained as a mediator.

Administrative Hearing Policy

A proposed resolution by an audit reviewer will be developed by areas such as Tax Policy, General Counsel, and Audit and approved by the Assistant Director of Tax Administration. If the issue is not resolved in the independent audit review, the audit will be billed and assigned to the Administrative Hearings Section following receipt of a redetermination request. The assigned AHS hearings attorney will be required to seek informal resolution via contact with the taxpayer, prior to issuing the position letter. If the matter is not resolved, the taxpayer and the hearings attorney will exchange a series of pleadings with supporting evidence.

The proposed rules alter the deadlines for pleadings and submitting evidence and may impact the types of evidence that must be submitted. Affected taxpayers should consult their tax advisors.

If the issue still remains unresolved, taxpayers will be allowed to request mediation before a case is referred to SOAH. One of up to three mediators who report directly to the General Counsel will conduct the mediation. The mediation will generally be scheduled within 30 days of the request.

Independent Hearing at SOAH

If the matter remains unresolved after mediation, the Comptroller will transfer the matter to SOAH and the process will be handled under SOAH's procedures. In general, an administrative law judge at SOAH Tax Division will conduct an evidentiary hearing and subsequently issue a proposal for decision. Upon receipt of a proposal for decision, and after reviewing any exceptions, the Comptroller will issue a final Comptroller's decision. The Comptroller's ability to reject SOAH's findings of fact and conclusions of law is to some extent limited by the Administrative Procedures Act. Taxpayers will still have the ability to seek *de novo* judicial review in state district court.

Jones Day is committed to working closely with Comptroller Combs and her top officials to improve the process for both our clients and the State. The Comptroller has shown a willingness to listen to input and take appropriate action. We will continue to report on notable developments in future editions. In the interim, if you have questions or concerns, please contact the attorneys listed above.■



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