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TEXAS COMPTROLLER PROVIDES GUIDANCE ON TAXPAYER'S MEDIATION ALTERNATIVE

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New dispute resolution provisions are among the myriad changes to the Texas Tax Code in the last 18 months. Of course, the spotlight has been focused on the introduction of Texas' Margin tax, and rightfully so. But it is worth noting that the Comptroller has been working diligently to improve all phases of the Comptroller's tax process, particularly the area of dispute resolution.

With the goal of establishing parity between the Comptroller's office and taxpayers, the Comptroller augmented the tax dispute resolution process with a formal mediation alternative. The Texas audit and hearing process has been restructured. Taxpayers are now provided three distinct opportunities to resolve tax disputes: an independent audit review; a hearing attorney review with the taxpayer; and mediation.

On January 3, 2007, the Comptroller transferred the Administrative Law Judges who hear tax cases from the Comptroller's office to the State Office of Administrative Hearings ("SOAH"). Prior to this transition, the only formal opportunity to resolve a tax dispute before hearing was during a conference with an Audit Division Dispute Resolution Officer. Naturally, taxpayers were not enthusiastic about further conferences with the Audit Division because of the apparent lack of impartiality.

Taxpayers now have more options to resolve disputes before incurring the cost of a hearing. New provisions now provide an opportunity to resolve a tax dispute before hearing by mediation. Mediation is an elective option.

A taxpayer desiring mediation should contact the Deputy General Counsel for Administrative Hearings before the commencement of the SOAH hearing. The mediation will be scheduled within 30 days after the taxpayer requests the mediation, unless the mediator's schedule requires additional time. In mediation, a neutral third party (the "mediator") facilitates discussions between the taxpayer and the hearings attorney to promote understanding of the parties' respective positions.

The mediator will typically be any one of up to three mediators on the SOAH staff. Alternatively, a taxpayer may select a non-SOAH mediator, provided the taxpayer covers the cost differential between the proposed mediator and the SOAH mediator.

Outside of that variant, the cost of the mediation is divided equally between the Comptroller and the taxpayer.

The mediation provides the parties an opportunity to identify the interests behind, and strengths of, their respective positions. Ideally, with the help of an experienced mediator, the parties will evaluate their options and resolve the dispute to the satisfaction of all parties.

Mediation, however, does not guarantee a resolution. The mediator cannot require the parties to reach an agreement, nor can the mediator enter any order in a pending case. Even if an agreement is not achieved, the mediation is often times beneficial because it provides perspective to the parties about the strength and plausibility of each party's claims and defenses. Furthermore, in the event the mediation is unsuccessful, a participant in mediation retains the right to proceed with a contested case hearing or trial. Thus, the mediation process offers a win-win situation for all parties.

The state tax team at Jones Day and certainly a multitude of taxpayers and other practitioners are grateful to Comptroller Susan Combs and her staff for being proactive in implementing more options for independent review and resolution of tax disputes. Particularly, we applaud Comptroller Combs' timeliness in disseminating guidance on the mediation function. Undoubtedly, countless state and taxpayer resources will be preserved by this magnanimous act. Thank you.■



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