

SUBJECT: Defining when a membership initiation deposit is not abandoned property

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 7 ayes — Oliveira, Shine, Collier, Romero, Stickland, Villalba, Workman

WITNESSES: For — Eric Affeldt, ClubCorp; Gib Lewis, TARO; (*Registered, but did not testify*: Michael Geary, Texas Conservative Coalition; Brian Sullivan, Texas Hotel & Lodging Association)

Against — (*Registered, but did not testify*: John Kroll, Audit Services)

BACKGROUND: Property Code, sec. 72.101 requires that personal property be presumed abandoned if the location of the property's owner is unknown to the property holder for more than three years and a claim to the property has not been made or an act of ownership has not been exercised.

Property Code, sec. 74.301 requires that any abandoned property held on March 1 be delivered to the comptroller on or before the following July 1 with a report on the property.

DIGEST: CSHB 2650 would establish that a membership initiation deposit not be presumed abandoned if the member forfeited the deposit under the terms of an agreement between the member and the business that sold the membership, or if the business included the deposit as discharge of indebtedness income on its federal income tax return.

The bill would define "membership initiation deposit" as an amount of money paid to join a club membership program operated by a business that provided a member access to or the use of entertainment, recreation, sports, dining, or social facilities and other related real property.

This 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, 2017.

SUPPORTERS
SAY:

CSHB 2650 would offer technical clarification to reflect the status of membership initiation deposits as taxable income and to allow businesses to disburse them more efficiently to their owners.

Deposit classification. The bill would offer clarification on membership initiation deposits, which are different from other deposits. Membership initiation deposits are taxable, and businesses must pay federal income and state franchise tax on them the day they become claimable by their owners. These deposits also are not held in escrow accounts and instead serve a continuing purpose as working capital of the business that holds them. The bill offers clarification that would allow businesses to retain the deposits as working capital while they remain unclaimed, which would incentivize these businesses to invest in the state's economy.

Disbursements to individuals. The bill would maintain the traditional role of the state in respecting private contracts between individuals and businesses without government intervention. Agreements that govern membership initiation deposits allow members to claim a deposit at the time it becomes claimable or any time thereafter. This form of agreement is consistent across companies that use membership initiation deposits and does not prevent the property owner from claiming his or her property.

Disbursements to the comptroller. By adjusting the classification of membership initiation deposits to not have to be disbursed to the state comptroller, the bill would allow businesses holding the deposits to more effectively honor deposit agreements and disburse deposits to members who claimed them. It would enable a business to retain unclaimed deposits as working capital to improve the fiscal health of the business and community. Members of clubs that use membership initiation deposits often want their clubs to be able to benefit from unclaimed deposit funds rather than send them off to the comptroller. Some members forego claiming deposits so the club may benefit.

Although businesses may not be legally required to advertise abandoned property like the comptroller, they are best positioned to return deposits to their owners. The purpose of the comptroller account holding abandoned

property is not to supply general revenue but to serve as an account to retain abandoned funds. Finally, businesses holding these deposits already contribute to federal and state government revenue by paying federal income tax and state franchise tax on the deposit amounts.

Related business services. Although some businesses generate revenue by connecting unclaimed deposits with owners, this is immaterial in the case of membership initiation deposits because they are a different form of deposit that is taxable and functions as working capital and should be classified differently.

OPPONENTS
SAY:

CSHB 2650 would redefine when membership initiation deposits were considered abandoned property to allow certain businesses to avoid their obligation to disburse the deposits to their owners or to the comptroller.

Deposit classification. The bill would differentiate membership initiation deposits from other forms of deposits, such as utility deposits, but there is no reason to treat them differently. Both represent a sum paid to a business that is claimable after a certain period of time and should be treated accordingly under the law.

Disbursements to individuals. The bill would prevent individuals from claiming their deposits if a business had already discharged the deposit debt and paid income taxes on it. This would deprive individuals of their property, often valued in the thousands of dollars, and their contractual rights under membership initiation deposit agreements. Although some membership deposit agreements may allow the deposit to be claimed indefinitely, this may not be universal and the bill could allow other forms of agreements to abuse the law and deprive people of their property.

Disbursements to the comptroller. The bill would allow a business to avoid eschewing an abandoned property deposit to the state comptroller, which holds property in perpetuity for owners to claim, by not classifying membership initiation deposits as "abandoned." The state comptroller is the most responsible holder of abandoned property, as it is not at risk of business failure, unlike those businesses which would continue to hold

unclaimed membership initiation deposits under the bill.

The comptroller already serves the purpose of reuniting owners with their abandoned property and advertises to facilitate this, something businesses would not be required to do.

Finally, the abandoned property held by the state comptroller account is used as general revenue and it is estimated that the bill would allow certain businesses to avoid disbursing hundreds of millions of dollars of unclaimed deposits to the account.

Related business services. The bill would eliminate opportunities for certain other businesses to connect property owners with their abandoned property and subsequently claim a "finder's fee." This form of business arrangement is mutually beneficial and provides a service that benefits the general public, as it provides businesses a form of income and helps individuals to claim property that belongs to them.

NOTES:

According to the Legislature Budget Board, the bill could result in an undetermined loss to the General Revenue Fund depending on the number and value of membership initiation deposits which no longer would be presumed abandoned and remitted to the state.