

BILL ANALYSIS

Senate Research Center
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S.B. 1440
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Under the Tax Code, taxpayers are required to pay either the amount of taxes they admit they owe or the full amount of taxes as billed in order to pursue litigation and a limited number of late correction remedies available under Section 25.25(c) (relating to directing changes in the appraisal roll for any of the five preceding years to correct certain errors) and (d) (relating to a motion with the appraisal review board to change the appraisal roll to correct an error that resulted in an incorrect appraised value for the owner's property), and to challenge the failure of a chief appraiser to provide required statutory notices under Section 41.411 (Protest of Failure to Give Notice). These latter two remedies must initially be pursued before an appraisal review board. Failure to timely pay one's taxes is fatal to all such appeals.

Many years ago, the legislature was faced with the problem of how to deal with taxpayers who legitimately could not pay their taxes while their cases were pending in district court. Because it was unfair to dismiss the legitimate lawsuits of people who did not have the money to pay their taxes, the legislature amended the Tax Code to provide for a determination by the district court as to whether taxpayers were financially unable to pay their taxes in a timely fashion and to provide a waiver of the statutory forfeiture provisions upon a finding of such inability. In doing so, no thought was given as to what to do with those matters that were not already before a district court, but instead were pending before appraisal review boards at the time the taxes became due.

As a result, taxpayers who are challenging matters before appraisal review boards under either Sections 25.25(c) or (d) or Section 41.411 and find themselves unable to pay their taxes timely are having their cases automatically dismissed by appraisal review boards because those boards do not possess the power to review claims of indigence. In order to obtain relief, these taxpayers must appeal the dismissals to district courts to avail themselves of the administrative relief they would otherwise have been entitled to obtain. This process undermines the basic premise underlying the Tax Code of having all taxpayer disputes resolved at the lowest, least costly level possible.

S.B. 1440 authorizes appraisal review boards to rule on taxpayers' claims of inability to pay taxes on a timely basis in claims pertaining to Sections 25.25(c) or (d) or Section 41.411, and allows both appraisal districts and taxpayers to appeal those rulings to district courts.

As proposed, S.B. 1440 amends current law relating to the requirement to prepay ad valorem taxes as a prerequisite to determining certain motions or protests and the authority of an appraisal review board to determine compliance with the requirement.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 25.25(e), Tax Code, to require a property owner who files the motion to comply with the payment requirements of Section 25.26, rather than Section 42.08

(Forfeiture of Remedy for Nonpayment of Taxes), or forfeit the right to a final determination of the motion.

SECTION 2. Amends Chapter 25, Tax Code, by adding Section 25.26, as follows:

Sec. 25.26. FORFEITURE OF REMEDY FOR NONPAYMENT OF TAXES.

(a) Provides that the pendency of a motion filed under Section 25.25 (Correction of Appraisal Roll) does not affect the delinquency date for the taxes on the property that is the subject of the motion. Provides, however, that that delinquency date applies only to the amount of taxes required to be paid under Subsection (b). Provides that, if the property owner complies with Subsection (b), the delinquency date for any additional amount of taxes due on the property is determined in the manner provided by Section 42.42(c) (requiring the assessor for each affected taxing unit to prepare and mail a supplemental tax bill in a certain form and manner) for the determination of the delinquency date for additional taxes finally determined to be due in an appeal under Chapter 42 (Judicial Review), and that additional amount is not delinquent before that date.

(b) Requires a property owner who files a motion under Section 25.25, except as provided by Subsection (d), to pay the amount of taxes due on the portion of the taxable value of the property that is the subject of the motion that is not in dispute before the delinquency date or the property owner forfeits the right to proceed to a final determination of the motion.

(c) Provides that a property owner who pays an amount of taxes greater than that required by Subsection (b) does not forfeit the property owner's right to a final determination of the motion by making the payment. Provides that, if the property owner files a timely motion under Section 25.25, taxes paid on the property are considered paid under protest, even if paid before the motion is filed.

(d) Authorizes a property owner, after filing an oath of inability to pay the taxes at issue, to be excused from the requirement of prepayment of tax as a prerequisite to the determination of a motion if the appraisal review board (board), after notice and hearing, finds that such prepayment would constitute an unreasonable restraint on the property owner's right of access to the board. Provides that the board, on the motion of a party, is required to determine compliance with this section in the same manner and by the same procedure as provided by Section 41.4115(d) and is authorized to set such terms and conditions on any grant of relief as may be reasonably required by the circumstances.

SECTION 3. Amends Section 41.411(c), Tax Code, as follows:

(c) Requires a property owner who protests as provided by this section to comply with the payment requirements of Section 41.4115, rather than Section 42.08, or the property owner forfeits the property owner's right to a final determination of the protest. Deletes existing text providing that the delinquency date for purposes of Section 42.08(b) (relating to forfeiting the right to proceed to a final determination of the appeal) for the taxes on the property subject to a protest under this section is postponed to the 125th day after the date that one or more taxing units first delivered written notice of the taxes due on the property, as determined by the board at a hearing under Section 41.44(c-3) (entitling a certain property owner to a hearing solely on the issue of whether one or more taxing units timely delivered a tax bill).

SECTION 4. Amends Subchapter C, Chapter 41, Tax Code, by adding Section 41.4115, as follows:

Sec. 41.4115. FORFEITURE OF REMEDY FOR NONPAYMENT OF TAXES. (a) Provides that the pendency of a protest under Section 41.411 (Protest of Failure to Give Notice) does not affect the delinquency date for the taxes on the property subject to the protest. Provides that, however, that delinquency date applies only to the amount of taxes

required to be paid under Subsection (b) and, for purposes of Subsection (b), that delinquency date is postponed to the 125th day after the date one or more taxing units first delivered written notice of the taxes due on the property, as determined by the board at a hearing under Section 41.44(c-3). Provides that, if the property owner complies with Subsection (b), the delinquency date for any additional amount of taxes due on the property is determined in the manner provided by Section 42.42(c) for the determination of the delinquency date for additional taxes finally determined to be due in an appeal under Chapter 42, and that additional amount is not delinquent before that date.

(b) Requires a property owner who files a protest under Section 41.411, except as provided in Subsection (d), to pay the amount of taxes due on the portion of the taxable value of the property subject to the protest that is not in dispute before the delinquency date or the property owner forfeits the right to proceed to a final determination of the protest.

(c) Provides that a property owner who pays an amount of taxes greater than that required by Subsection (b) does not forfeit the property owner's right to a final determination of the protest by making the payment. Provides that, if the property owner files a timely protest under Section 41.411, taxes paid on the property are considered paid under protest, even if paid before the protest is filed.

(d) Authorizes a property owner, after filing an oath of inability to pay the taxes at issue, to be excused from the requirement of prepayment of tax as a prerequisite to the determination of a protest if the board, after notice and hearing, finds that such prepayment would constitute an unreasonable restraint on the property owner's right of access to the board. Requires the board, on the motion of a party, to hold a hearing to review and determine compliance with this section, and the reviewing board is authorized set such terms and conditions on any grant of relief as may be reasonably required by the circumstances. Requires the board, if the board determines that the property owner has not substantially complied with this section, to dismiss the pending protest. Requires the board, if the board determines that the property owner has substantially but not fully complied with this section, to dismiss the pending protest unless the property owner fully complies with the board's determination within 30 days of the determination.

SECTION 5. Makes application of this Act prospective.

SECTION 6. Effective date: upon passage or September 1, 2011.