

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 1440
By: Ellis
Intergovernmental Relations
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

C.S.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 Sections 25.25(e) and (g), Tax Code, as follows:

- (e) Requires a property owner who files a motion to correct certain errors that resulted in an error in an incorrect appraised value for the owner's property 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.
- (g) Authorizes the property owner or the chief appraiser, within 45 days after receiving notice of the appraisal review board's (board) determination of a motion under this section or of a determination of the board that the property owner has forfeited the right to a final determination of a motion under this section for failing to comply with the prepayment requirements of Section 25.26, to file suit to compel the appraisal review board to order a change in the appraisal roll as required by this section.

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 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. Amends Section 42.01, Tax Code, as follows:

Sec. 42.01. RIGHT OF APPEAL BY PROPERTY OWNER. (a) Creates this subsection from existing text. Entitles a property owner to appeal:

(1) an order of the board determining:

(A) a protest by the property owner as provided by Subchapter C (Taxpayer Protest) of Chapter 41;

(B) a determination of an board on a motion filed under Section 25.25; or

(C) a determination of an board that the property owner has forfeited the right to a final determination of a motion filed under Section 25.25 or of a protest under Section 41.411 for failing to comply with the prepayment requirements of Section 25.26 or 41.4115, as applicable; or

(2) an order of the comptroller issued as provided by Subchapter B (Railroad Rolling Stock), Chapter 24, apportioning among the counties the appraised value of railroad rolling stock owned by the property owner.

(b) Entitles a property owner who establishes that the owner did not forfeit the right to a final determination of a motion or of a protest in an appeal under Subsection (a)(1)(C) is entitled to a final determination of the court, as applicable:

(1) of the motion filed under Section 25.25; or

(2) of the protest under Section 41.411 of the failure of the chief appraiser or board to provide or deliver a notice to which the property owner is entitled, and, if failure to provide or deliver the notice is established, of a protest made by the property owner on any other grounds of protest authorized by this title relating to the property to which the notice applies.

SECTION 6. Makes application of this Act prospective.

SECTION 7. Effective date: upon passage or September 1, 2011.