

## **BILL ANALYSIS**

Senate Research Center  
86R15541 SMT-F

H.B. 2256  
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Finance  
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Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

It has been noted that the natural gas severance tax is levied on the market value of natural gas at the wellhead, the taxable value of which is determined by subtracting the producer's costs incurred to get the gas to market from the producer's gross receipts from the sale of the gas. It has been suggested that allowing these deductions is intended to equalize the tax burden for those producers selling at or near the point of production with those who have to treat the gas and send it farther away to market. Concerns have been raised regarding the lack of guidance for the comptroller of public accounts when calculating the percentages of the numerous marketing costs that may be deducted.

H.B. 2256 seeks to eliminate burdensome practices for the comptroller and taxpayer by authorizing the comptroller to enter into an agreement with a taxpayer to perform a managed audit of a natural gas severance tax return.

H.B. 2256 amends current law relating to procedures for tax auditing, determining amounts of overpayments, and obtaining reimbursements of overpayments of gas production taxes.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the comptroller of public accounts of the State of Texas in SECTION 1 and 2 (Section 201.207 and Section 201.3021, Tax Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Subchapter E, Chapter 201, Tax Code, by adding Section 201.207 as follows:

Sec. 201.207. DETERMINATION OF OVERPAID AMOUNTS. (a) Provide that this section applies to the tax paid under this chapter by a person who filed a report under Section 201.203 (Producer's Report) or 201.2035 (First Purchaser's Report) and remitted tax in error to this state.

(b) Authorizes a person to whom this section applies to compute the amount of overpayment using a sampling of marketing cost transactions if the comptroller of public accounts of the state of Texas (comptroller) approves the sampling method.

(c) Authorizes the person to obtain reimbursement for amounts determined to have been overpaid by taking a credit on one or more reports filed under Section 201.203 or 201.2035 or by filing a claim for refund with the comptroller within the limitation period specified by Section 111.107 (When Refund or Credit is Permitted) and Subchapter D (Limitations), Chapter 111 (Collection Procedures).

(d) Requires the person to record the method by which the computation of the overpayment is performed and to make available on request by the comptroller the records on which the computation is based.

(e) Authorizes the comptroller to adopt rules specifying additional procedures that must be followed in connection with claiming a credit under this section.

SECTION 2. Amends Subchapter G, Chapter 201, Tax Code, by adding Section 201.3021, as follows:

Sec. 201.3021. MANAGED AUDITS. (a) Defines "managed audit" for purposes of this section.

(b) Authorizes the comptroller to, in a written agreement, authorize a taxpayer to conduct a managed audit under this section. Requires the agreement to:

(1) be signed by an authorized representative of the comptroller and the taxpayer; and

(2) specify the period to be audited and the procedure to be followed.

(c) Provides that the decision to authorize or not authorize a managed audit rests solely with the comptroller.

(d) Authorizes the comptroller, in determining whether to authorize a managed audit under this section, to consider:

(1) the taxpayer's history of tax compliance;

(2) whether the taxpayer has sufficient time and resources to conduct the audit;

(3) the sufficiency and availability of the taxpayer's tax records;

(4) the taxpayer's ability to pay any liability arising as a result of the audit; and

(5) any other factor the comptroller determines is relevant.

(e) Authorizes a managed audit to be limited to one or more factors affecting a taxpayer's liability for tax under this chapter, including:

(1) gross value of gas produced;

(2) exempt interest;

(3) marketing costs of gas produced;

(4) gas used to power operations at a well or lease; or

(5) tax reimbursement paid by a purchaser to a producer.

(f) Authorizes the comptroller to examine records and perform reviews that the comptroller determines are necessary before the audit is finalized to verify the results of the audit.

(g) Prohibits the comptroller, unless the audit or information reviewed by the comptroller under Subsection (f) discloses fraud or willful evasion of the tax, from assessing a penalty and authorizes the comptroller to waive all or part of the interest that would otherwise accrue on any amount identified to be due in a managed audit. Provides that this subsection does not apply to any amount collected by the taxpayer that was a tax or represented to be a tax but that was not remitted to this state.

(h) Entitles the taxpayer, except as provided by Section 111.104(f) (relating to the prohibition of taxes, penalties, or interest to be refunded to a person who has collected the taxes from another person unless the person has refunded all the taxes and interest to the person from whom the taxes were collected), to a refund

of any tax overpayment disclosed by a managed audit under this section.

(i) Authorizes the comptroller to adopt rules and establish procedures to administer this section, including procedures that must be followed when conducting a managed audit under this section.

SECTION 3. Provides that the change in law made by this Act does not affect tax liability accruing before the effective date of this Act. Provides that the liability continues in effect as if this Act had not been enacted, and that the former law is continued in effect for the collection of taxes due and for civil and criminal enforcement of the liability for those taxes.

SECTION 4. Effective date: September 1, 2019.