

Contesting Disagreed Audits

Susan Combs, Texas Comptroller of Public Accounts

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At the Comptroller's office we want to be fair and give taxpayers full consideration in every case. This brochure explains how to exercise your rights as a taxpayer if you disagree with the results of your audit.

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After the exit conference, but before a *Notification of Audit Results* is produced, disputed issues can be reviewed with the audit manager or supervisor in a reconciliation conference. If this is not adequate, or if issues still remain after a reconciliation conference, an independent audit review conference can be held.

Independent Audit Review Conference

Q What is an Independent Audit Review Conference (IARC)?

A The IARC allows taxpayers to meet with a third party that has not been involved in the audit or refund verification process. The IARC is an informal meeting between a taxpayer, auditor, and an Independent Audit Reviewer (IAR). The IAR will conduct the meeting by asking questions of both the taxpayer and auditor to gather information. Matters that can be addressed in the conference

include taxability issues, sampling issues, accounting disputes and waiver of penalty and interest.

Q What is the purpose of the Independent Audit Review Conference?

A IARCs allow taxpayers to address disputes closer to, and even at, their places of business. Taxpayers will avoid the expenses associated with preparing for and attending proceedings in the formal

administrative hearing process and state court system, both located in Austin. In addition, IARCs may reduce the expenses of the Comptroller's office, benefiting all Texas taxpayers.

Q Who are the Independent Audit Reviewers (IARs)?

A IARs are Comptroller employees who report directly to the assistant director of Tax Administration. Each IAR is very knowledgeable about audit and taxability issues, but is not an employee of the Audit Division and does not work at any Comptroller office that conducts audits.



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Q When and how do I request an Independent Audit Review Conference?

A While the field work is being conducted during an audit or refund verification, we strongly encourage you to meet with the auditor and the auditor's supervisor or manager to discuss and resolve any issues that arise. However, if disputed items still remain after the field work is completed, let the auditor know the issues that you disagree with and request an IARC during the exit conference. The auditor will notify his/her supervisor and/or manager and they will contact the IAR to set up an appointment at a mutually acceptable date and location for the meeting. The IARC will not occur until after your exit conference.

Q Are there any situations where an Independent Audit Review Conference (IARC) is not available?

A Yes. These are:

1. When no records are provided to verify a refund request or to verify a previously paid refund;
2. When no records are provided to perform the audit, and the audit liability must be estimated, even if the dispute concerns how the estimate is calculated;
3. When a taxpayer has received a written taxability determination from the

Tax Policy Division on the issue(s) in dispute; and

4. When an IARC has already taken place and a decision was rendered.

Q Is there any charge for an Independent Audit Review Conference (IARC)?

A No.

Q Does having an Independent Audit Review Conference (IARC) stop interest from accruing on amounts that are not in dispute or that I may still owe after the conference is over?

A No. Interest will continue to accrue on all proposed assessments. Therefore, you may want to make payment on any part of the assessment that you agree with to stop interest from accruing on that amount.

Q How do I prepare for an Independent Audit Review Conference (IARC)?

A This is *your meeting* to discuss the disputed issues. Arrive at the IARC fully prepared to support your position by bringing records, contracts and any other relevant documentation. We also recommend that you deliver a written statement of your position to the IAR. You may bring an attorney, accountant or other



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persons with you to help explain your position.

Q What happens after the conference is over?

A The IAR will submit a written report to the assistant director of Tax Administration with recommendations of how to resolve the disputed items. The Tax Policy Division will review all IAR recommendations concerning taxability issues to make sure they are consistent with applicable law and agency policy. The

IAR will then notify you of the agency's decision. You may request a copy of the IAR report.

Q Does participation in an Independent Audit Review Conference (IARC) eliminate my right to seek review of any disputed items in the formal administrative hearing process?

A No. You may still request a redetermination or refund hearing. Information on the redetermination or refund hearing is listed under Taxpayer Options.

The IAR will submit a written report to the assistant director of Tax Administration with recommendations of how to resolve the disputed items.

Texas Taxpayer “Bill of Rights”

As a Texas taxpayer, you have a right to expect:

- Fair and courteous treatment from all our employees.
- Tax forms and information written in plain language.
- Prompt and accurate responses to all questions and requests for tax assistance.
- Ready access to public records.
- Strict confidentiality for the financial information you give to us.
- Tax notices that provide a clear explanation of the amount being billed.
- A clear set of rules and procedures to resolve tax problems that arise from the interpretation and administration of our tax laws.
- A fair and timely hearing on a dispute of any liability.
- That our employees are not paid or promoted as a result of money billed or collected from taxpayers.
- That we'll listen with an open mind to your suggestions about how we can better serve you.

For more information, visit our Web site www.window.state.tx.us. Receive tax help via e-mail at tax.help@cpa.state.tx.us.

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The Texas Notification of Audit Results is the comptroller's official determination of the results of your audit. A Notification is issued for each tax or fee that was audited regardless of the outcome of the audit.

Notification of Audit Results

Q I received a *Notification of Audit Results*. What is it?

A The *Texas Notification of Audit Results* is the comptroller's official determination of the results of your audit. A *Notification* is issued for each tax or fee that was audited regardless of the outcome of the audit.

Q I have open balances for return periods within the audit period. Are those balances included in the *Notification*?

A No. The *Notification* balance will only reflect the results of the audit. Open balances from return periods will not be included in the audit results and any ongoing collection action will not be affected by an audit.

Q I paid my deficiency before my audit was final. Will I receive a *Texas Notification of Audit Results*?

A Yes. A *Notification* will be issued that reflects the audit balance as of the date of the *Notification* (if the liability is paid in full, including penalty and interest, then the balance will show zero.)

Penalty and Interest

Q How are penalty and interest determined?

A *Penalty*

Taxes and fees assessed in an audit are subject to a penalty of 10 percent of the amount due. An additional 10 percent is imposed if you do not pay on or before the date indicated on the *Texas Notification of Audit Results*.

Interest

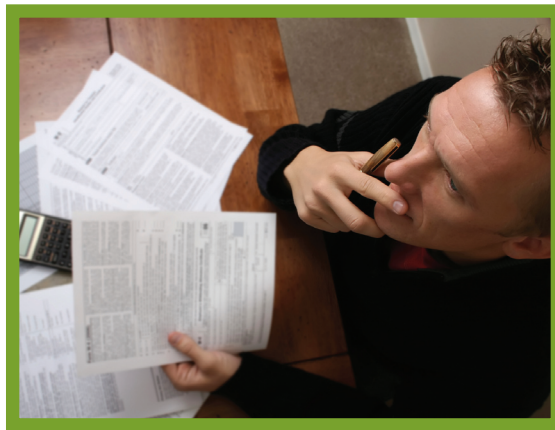
Reports due before January 1, 2000:

Interest accrues at 12 percent per annum on additional taxes and fees. There is no provision in the law for payment of credit interest.

Reports due after December 31, 1999:
The interest rate is subject to change every January 1, based on the prime rate, as published in the *Wall Street Journal*, plus one percent. This is the rate that is assessed on any additional tax or fee liabilities, and

effective January 1, 2000, this was also the rate of credit interest paid on any tax or fee overpayments.

Credits and refunds claimed after August 31, 2005: The rate of credit interest paid on overpaid taxes and fees changed effective September 1, 2005, to the lower of the prime rate, as published in the *Wall Street Journal*, plus one percent; or the annual rate of interest earned on deposits in the state treasury during December of the previous calendar year. The interest rate assessed on any additional liabilities did



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not change and is still at the prime rate plus one percent.

Q How can I request a penalty or interest waiver?

A There is no need to request a waiver of penalty or interest. When we conduct audit examinations, we presume taxpayers have requested waiver of penalty and interest. You will be notified of our decision on the waiver in the letter sent to you with the audit package. Penalty waivers are usually limited to periods originally filed in a timely manner.

Taxpayer Options

After receiving the *Notification*, you have two options available:

1. If you agree with the audit results, send a check or money order payable to the State Comptroller for the total liability as calculated on the *Notification*, plus any additional interest that has accrued from the date of the *Notification*. A determination becomes final 30 days after this date (20 days for a jeopardy determination). A 10% late payment penalty becomes due 40 days after the *Notification* date (20 days for a jeopardy determination). Interest continues to accrue on the tax/fee until paid or refunded.
2. If you do not agree with the audit results, you can request a redetermination hearing by sending a statement of grounds. All tax and

fee audits are subject to the hearings process despite the final results. Your statement of grounds must be postmarked on or before the due date indicated on the *Notification*. If you choose this method, you are not required to pay the assessment at that time, but if you do not pay, interest continues to accrue on the amount of tax/fee ultimately determined to be owed the state. If you miss the deadline to file for a redetermination hearing, then the entire liability must be paid before a refund hearing can be granted.

Statute of Limitations

All periods in an audit are open for refund up to six months after the liability becomes final (usually 30 days from the *Notification* date) and is paid. Refund claims filed after this six-month interval can only include

periods that fall within the four-year statute of limitations. Hearing requests made more than 30 days after the *Notification* date, but within six months after becoming final, can cover all periods in the audit, limited to the transactions at issue in the audit, unless the transaction would normally fall within the four-year statute of limitations.

Statement of Grounds

If you disagree with the results of an audit, your statement of grounds must list the items in the audit with which you disagree, either individually or by category, and



All tax and fee audits are subject to the hearings process no matter what the final results may be.

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why you disagree. If you disagree with the agency's interpretation of the law, you must cite legal authority for your position.

Your statement of grounds should be sent to:

Susan Combs
Texas Comptroller of Public Accounts
Austin, Texas 78774-0100

Q What happens after I send in my statement of grounds?

A The Audit Processing section of the Audit Division will determine if the request is timely and complete. If timely and complete, a letter will be sent acknowledging the receipt of the request, granting 60 days to provide to the auditor any additional documentation to support the statement of grounds.

Q What happens after the auditor reviews my additional documentation and statement of grounds?

A If the auditor agrees with all of your contentions, the audit will be amended and no hearing will be held. If other issues remain, your case will be assigned to a hearings attorney who will contact you or your representative to try to resolve the case. The hearings attorney will review your case and prepare a Position Letter or Agreed Motion to Dismiss. This will explain the position being taken in your case by the Tax Administration Division. If you are sent a Position Letter, you can accept the position stated in the letter or you can ask to have your case heard by an Administrative Law Judge (ALJ) at the State Office of Administrative Hearings (SOAH). If you receive an Agreed Motion, we will assume you agree unless you tell us otherwise.

Comptroller's Decision

Q What happens if I ask to have my case heard by the State Office of Administrative Hearings?

If you disagree with the results of an audit, your statement of grounds must list the items in the audit with which you disagree, either individually or by category, and why you disagree. If you disagree with the agency's interpretation of the law, you must cite legal authority for your position.

Additional Information

The Rules of Practice and Procedure (publication #96-145) explain in detail the administrative appeals system for taxpayers who disagree with audit assessments or tax law interpretations. You may obtain a copy of the rules from any of our field offices or by calling our toll-free hotline. This publication is also available online at www.window.state.tx.us/taxinfo/taxpubs/tx96_145.pdf.

The Comptroller's office also publishes many brochures and booklets that detail Texas tax laws and how to comply with them.

You can request copies of these publications and get answers to questions on specific state taxes by calling one of the toll-free numbers listed on the back of this publication. The local Austin number is (512) 463-4600.

For more information, visit our Web site www.window.state.tx.us. Receive tax help via e-mail at tax.help@cpa.state.tx.us.

A If you are unable to resolve your case with the Tax Administration Division, you may request to have your case decided by an Administrative Law Judge (ALJ) at SOAH. You have two options: If you want an oral hearing, you will receive a notice indicating the date and time you are to appear to present evidence and argument. If you want your case considered on the basis of written submissions, the ALJ will review your written evidence and argument. After the oral hearing or review of the written materials, the ALJ will propose a decision to you and to the Tax Administration Division. The comptroller will render the final decision. If you plan to challenge the decision in court by filing a refund or protest suit, you should consider consulting immediately with a private attorney who can advise you on how to preserve your rights.



Comptroller's Authority

Freezing Assets: The comptroller may freeze a taxpayer's assets, including bank accounts, for delinquent taxes without notifying the taxpayer before the assets are frozen.

Seizure and Sale of Assets: The comptroller has authority to seize and sell the non-exempt real and personal property of a delinquent taxpayer. This may be done if other collection efforts fail.

Corporate Forfeiture: The comptroller has authority to forfeit a corporation's corporate privileges in Texas for failure to file required franchise tax reports or for failure to pay the taxes due. Forfeiture of the corporation's corporate privileges could expose the corporate officers or directors to personal liability for all debts, including taxes.

If you have any other questions about this process, please call the Comptroller's office at (800) 531-5441 or e-mail us at tax.help@cpa.state.tx.us.

You may request to have your case decided by an Administrative Law Judge (ALJ) at SOAH.

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22 Comptroller Audit offices in 19 cities provide convenient, courteous tax help near you...

Abilene

209 S. Danville Drive, Suite C222
79605-1464
(325) 695-4323

Amarillo

Park West Office Centre, Building A
7120 I-40 West, Suite 240 79106-2500
(806) 358-0148

Austin

1711 San Jacinto, Suite 410
Central Services Building 78701-3003
(512) 305-9800

Austin-Business Activity Research Team

1700 North Congress, Suite 300
Stephen F. Austin Building 78701-1436
(512) 305-9899

Beaumont

6442 Concord
77708-4315
(409) 899-4650

Chicago

2809 Butterfield Road, Suite 340
Oak Brook, IL 60523-1196
(630) 574-5120

Corpus Christi

400 Mann Street, Suite 608
78401
(361) 882-1234

Dallas East

9221 LBJ Freeway, Suite 200
75243-3455
(972) 792-5800

Dallas West

2655 Villa Creek Drive, Suite 270
75234-7316
(972) 888-5300

El Paso

401 East Franklin Avenue, Suite 170
79901
(915) 533-0506

Fort Worth

6320 Southwest Boulevard, Suite 201
Crosslands Plaza 76109
(817) 377-8855

Houston North

1919 North Loop West, Suite 311
77008-1394
(713) 426-8200

Houston South

2656 South Loop West, Suite 400
77054-2600
(713) 314-5700

Los Angeles

17777 Center Court Drive N., Suite 700
Cerritos, CA 90703-9356
(562) 402-2000

Lubbock

6202 Iola Avenue, Suite 900B
79424-2733
(806) 783-0316

McAllen

3231 North McColl Road
78501-5538
(956) 687-9227

New York

215 Lexington Avenue, 19th Floor
New York, NY 10016
(646) 742-1155

Odessa

4682 East University, Suite 200
79762-8104
(432) 550-3027

San Antonio

6875 Bandera Road
78238-1359
(210) 257-4600

Tulsa

10830 East 45th Street, Suite 201
Building C, Towne Centre
Tulsa, OK 74146-3809
(918) 622-4311

Tyler

3800 Paluxy Drive, Suite 300
75703-1661
(903) 534-0333

Waco

801 Austin Avenue, Suite 940
76701-1941
(254) 752-3147

We're Here To Help! *Call Toll-Free!*

If you have questions or need information on a specific tax, please call our toll-free numbers:

(800) 252-5555

911 Emergency Service/Equalization Surcharge
Automotive Oil Fee
Battery Fee
Boat and Boat Motor Sales Tax
Customs Broker
Fireworks Tax
Mixed Beverage Tax
Off-Road, Heavy-Duty Diesel Equipment Surcharge
Oyster Fee
Sales and Use Taxes
Telecommunications Infrastructure Fund

(800) 531-5441

Cement Tax
Inheritance Tax
Local Revenue
Miscellaneous Gross Receipts Taxes
Oil Well Servicing Tax
Sulphur Tax

(800) 531-5441, ext. 3-3630

WebFile Help

(800) 252-1381

Bank Franchise
Franchise Tax

(800) 252-7875

Spanish

(800) 531-1441

Fax on Demand (Most frequently requested Sales and Franchise tax forms)

(800) 252-1382

Clean Vehicle Incentive Program
Manufactured Housing Tax
Motor Vehicle Sales Surcharge,
Rental and Seller Financed Sales Tax
Motor Vehicle Registration Surcharge

(800) 252-1383

Fuels Tax
IFTA
LG Decals
Petroleum Products Delivery Fee
School Fund Benefit Fee

(800) 252-1384

Coastal Protection
Crude Oil Production Tax
Natural Gas Production Tax

(800) 252-1387

Insurance Tax

(800) 252-1385

Coin Operated Machine Tax
Hotel Occupancy Tax

(800) 252-1386

Certificates of Account Status/Good Standing
Officer and Director Information

(800) 862-2260

Cigarette and Tobacco

(888) 4-FILING (888-434-5464)

TELEFILE: To File by Phone

(800) 252-1389

GETPUB: To Order Forms and Publications

(800) 654-FIND (800-654-3463)

Treasury Find

(800) 321-2274

Unclaimed Property Claimants
Unclaimed Property Holders
Unclaimed Property Name Searches
(512) 463-3120 in Austin

(877) 44RATE4 (877-447-2834)

Interest Rate

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Texas Comptroller of Public Accounts
111 E. 17th Street
Austin, Texas 78774-0100
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(512) 463-4600 in Austin
(512) 475-0900 (FAX).