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Time of Request: February 22, 2005 04:47 PM EST

Number of Lines: 78

Job Number: 1862:33015147

Client ID/Project Name:

Research Information:

TX Comptroller of Public Accounts Hearing Decisions and Administrative Rule  
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TEXAS WORKERS COMPENSATION COMMISSION  
7551 METRO CENTER DR. STE 100  
AUSTIN, TX 78744

2 of 18 DOCUMENTS

**NAME:** IN RE: \* \* \*

**NUMBER:** HEARING NO. 41,042

**COURT:** COMPTROLLER OF PUBLIC ACCOUNTS OF THE STATE OF TEXAS

**CITE:** 2002 Tex. Tax LEXIS 68

**DATE:** July 1, 2002

**PANEL:** [\*1]

JOE GRECO, Administrative Law Judge

**COUNSEL:** ELIAS LORENZANA, Representing Administrative Hearings Section

\* \* \*, Representing Petitioner

**OPINIONBY:** GRECO

TAXPAYER NO.: \* \* \*

AUDIT OFFICE: \* \* \*

AUDIT PERIOD: 01/01/97 through 12/31/00

LIMITED SALES, EXCISE AND USE TAX/RDT

**COMPTROLLER'S DECISION**

**PRELIMINARY DISCUSSION:**

Assistant General Counsel Elias Lorenzana represented the Administrative Hearings Section (AHS) at the oral hearing held in the above-captioned matter on May 2, 2002, and called Gordon Wheeler (GW) as a witness. Mr. Wheeler is assigned to the Comptroller's \* \* \* Audit Office, and is supervisor of the auditor who performed the sales and use tax audit of Petitioner at issue in the instant hearing. Neither Petitioner nor a representative of Petitioner entered an appearance at the hearing

Notice has been taken of the Comptroller's records that relate to Petitioner or issues raised in this hearing. All Section references are to Title 2 of the Texas Tax Code, and references to Rules are to sections of Title 34, Texas Administrative Code.

**PETITIONER'S CONTENTIONS:**

1. Petitioner relied to his detriment on information provided by the Comptroller's office.
2. Alternatively, payment [\*2] of the audit liability would render Petitioner insolvent. Therefore, the liability should be settled pursuant to Section 111.102.

**FINDINGS OF FACT:**

1. Petitioner is a graphic artist.
2. Petitioner was audited for sales and use tax compliance for the above-referenced audit period. As a result, on May 16, 2001, the Comptroller issued a Texas Notification of Audit Results to Petitioner assessing an amount of tax,

penalty, and interest. Petitioner timely requested a redetermination hearing, resulting in the docketing of the instant proceeding.

3. The audit includes two exams: Exam 1 (disallowed deductions) consists of taxable sales by Petitioner on which no tax was collected; Exam 2 (purchases/credit) consists of credit for tax paid in error by Petitioner to vendors.

4. On October 11, 2001, the AHS issued a position letter opposing Petitioner's contentions.

5. On November 6, 2001, Petitioner rejected the AHS' position letter and filed a motion to set for oral hearing. In response to Petitioner's motion to set, a notice of setting of oral hearing was issued informing the parties that the hearing requested by Petitioner would be held on May 2, 2002. The notice of setting also informed [\*3] the parties of the specific time and place of the hearing. The hearing was called to order at the time and place specified in the notice. The AHS appeared and presented its case. Petitioner failed to appeal. n1

n1 The Notification of Audit Results, and the AHS' position letter (both received by Petitioner) were sent to Petitioner at a Sugarland, Texas address. However, Petitioner's Motion to Set was sent by Petitioner from an address on \* \* \* in \* \* \*, Texas. On January 7, 2002, a Notice of Setting of Oral Hearing (Notice) sent to Petitioner's \* \* \* address was returned undeliverable. Later, on January 31, 2002, a copy of the Notice was sent to the \* \* \*, Texas address. That Notice was also returned undeliverable. Two other attempts were made to notify Petitioner of the scheduled oral hearing, but both attempts were unsuccessful.

6. No evidence or argument was submitted by Petitioner in support of his contentions.

#### **DISCUSSION AND CONCLUSIONS OF LAW:**

The AHS, through its Position Letter, the audit, and the balance of the exhibits offered and admitted at the hearing, along with the testimony of GW, has established a prima facie case in support of the audit assessment. As such, [\*4] Petitioner was then required by Rule 1.40(2)(B) to prove, by a preponderance of the evidence, that AHS' position is incorrect, and that his contentions should be granted. The record shows Petitioner's participation in this hearing has, unfortunately, been limited to the raising of the two contentions listed early in this decision, when filing his request for a redetermination of the audit results. Therefore, Petitioner has failed to meet his burden of proof. As noted in numerous Comptrollers' Decisions, bare assertions, without any supporting evidence, are not sufficient to overcome the presumption of validity afforded to the Comptroller's assessment. *Baker v. Bullock*, 529 S.W.2d (Tex. Civ. App. -- Austin 1975, writ ref'd n.r.e.) and *State v. Glass*, 723 S.W.2d 325 (Tex. App. --Austin 1987, writ ref'd n.r.e.). *See, for example*, Decisions Nos. 36,062 (1997) and 38,092 (1999).

#### **RECOMMENDATION:**

Petitioner's contentions should be denied. The audit should be upheld as originally issued.

Signed July 1, 2002.

#### **ORDER OF THE COMPTROLLER**

The above decision of the Administrative Law Judge, resulting in Taxpayer's liability as set out in Attachment "A" which is incorporated [\*5] by reference, is approved and adopted in all respects. This decision becomes final twenty-three (23) days from the date of this Order, and the total sum of the tax, penalty, and interest amounts is due and payable within twenty (20) days thereafter. If such sum is not paid within such time, an additional penalty of ten percent of the taxes due will accrue, and interest will continue to accrue.

If a rehearing is desired, a Motion for Rehearing must be filed with the Administrative Law Judge no later than twenty-three (23) days after the date of this Order, and must state the grounds upon which the motion is based.

RENDERED and ISSUED July 1, 2002.

CAROLE KEETON RYLANDER, Comptroller of Public Accounts of the State of Texas

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