

The Comptroller of Public Accounts proposes amendments to §1.37 concerning joint hearings; severance. The section is amended to change the name to Consolidated and Joint Hearings; Severance.

Subsection (a) explains that a party may request the administrative law judge to issue an order to consolidate or join two or more cases docketed at the State Office of Administrative Hearings (SOAH). Hearings may be consolidated or joined if they involve the same taxpayer, or if they involve more than one taxpayer with common issues of law or fact, when a consolidated or joint hearing will promote the fair and efficient handling of the matters. The amendment conforms this subsection to recently adopted SOAH Rule of Procedure 1 TAC §155.155(c), which provides the authority and basis for the administrative law judge to enter an order of consolidation or joinder. Subsection (a) also provides that the administrative law judge may issue an order consolidating or joining the cases absent a request by a party and without prior notice to the parties. This reflects current practice, where an administrative law judge will issue an order to consolidate clearly related contested cases shortly after they are docketed at SOAH. For example, two cases involving the same taxpayer, the same tax, and generally the same contested issues, but involving different tax periods, may be consolidated for purposes of conducting a single hearing absent a request by any party for consolidation.

Subsection (b) allows a party to request the administrative law judge to sever the cases where two or more cases have been consolidated or joined for purposes of a hearing, and provides that the administrative law judge may issue an order severing the cases if separate hearings will promote the fair and efficient handling of the matters.

Public Benefit/Cost; Fiscal Implications for state or local government, small businesses, and individuals.

Comments on the proposal may be submitted to Gina Calviño, Legal Assistant, Office of Special Counsel for Tax Hearings, P.O. Box 13528, Austin, Texas 78711-3528, or SpecialCounsel.Filings@cpa.texas.gov. Comments must be received no later than 30 days from the date of publication of the proposal in the Texas Register.

The section is proposed under Government Code, §2001.004 (Requirement to Adopt Rules of Practice and Index Rules, Orders, and Decisions), which requires state agencies to adopt rules of practice, and Tax Code, §111.002 and §111.0022, which provide the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2, as well as taxes, fees, or other charges which the comptroller administers under other law.

The section implements Government Code, §2001.004 (Requirement to Adopt Rules of Practice and Index Rules, Orders, and Decisions), which requires state agencies to adopt rules of practice, and Tax Code, §111.009 (Redetermination) and §111.105 (Tax Refund: Hearing).

<rule>

§1.37. Consolidated and Joint Hearings; Severance.

(a) A party may request the administrative law judge to consolidate or join[to have] two or more cases docketed at SOAH. See §1.22 of this title (relating to Docketing Oral and Written Submission Hearings.) Hearings may be consolidated or joined if they involve the same taxpayer, or if they involve more than one taxpayer with common issues of law or fact, when a consolidated or joint hearing will promote the fair and efficient handling of the matters (see 1 TAC §155.155(c)). The administrative law judge may issue an order consolidating or joining the cases absent a request by a party and without prior notice to the parties. [joined for purposes of hearing. Proceedings involving more than one taxpayer may not be joined if any party objects.]

(b) Where two or more cases have been consolidated or joined for purposes of hearing, a party may request the administrative law judge to sever the cases. The administrative law judge may issue an order severing the cases if separate hearings will promote the fair and efficient handling of the matters[Severance should be allowed unless the hearing involves an issue which cannot be fully determined in the absence of one or more of the parties].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on

LITA GONZALEZ
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Comptroller of Public Accounts

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