CONTESTING DISAGREED AUDITS, EXAMINATIONS AND REFUND DENIALS

DECEMBER 2022

Glenn Hegar

Texas Comptroller of Public Accounts

At the Comptroller's office, we want to be fair and give taxpayers full consideration in every case. This publication explains how to exercise your rights as a taxpayer if you disagree with the Comptroller's position in your audit, examination or refund verification.

YOUR OPTIONS BEFORE RECEIVING A TEXAS NOTIFICATION OF AUDIT OR EXAM RESULTS

We encourage you to provide all records and information requested by the auditor, and to work with the auditor to resolve disagreements as they arise. You can speak with the auditor's supervisor or manager at any time during the process. If you cannot resolve your disagreements in this manner, you have the following options.

RECONCILIATION CONFERENCE

You can ask for a reconciliation conference with the audit supervisor or manager to discuss and attempt to resolve disagreements. This informal conference can be held at either your location or the audit office.

REQUESTING TAXABILITY GUIDANCE

During the course of the audit, examination or refund verification, you and the auditor can ask the Tax Policy Division for taxability guidance on an agreed set of facts.

To request taxability guidance from Tax Policy, work with the auditor to prepare a document that outlines the taxability issue and requests guidance. Tax Policy can only provide assistance when you and the auditor agree on the underlying facts. The auditor will submit that document through Audit Headquarters to Tax Policy. Tax Policy will respond to the auditor, who will share the findings with you.

If Tax Policy issues a written taxability determination, you cannot have an Independent Audit Review Conference (IARC) on the same subject.

INDEPENDENT AUDIT REVIEW CONFERENCE

If disputed issues remain after the reconciliation conference, you can request an IARC.

The IARC allows you to meet with a person who has not been involved in the audit, examination or refund verification process to attempt to resolve disagreed issues. The IARC is an informal meeting between you, the auditor, and an Independent Audit Reviewer (IAR). The IAR will conduct the meeting by asking questions of both you and the auditor to gather information. Matters that can be

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FOR MORE INFORMATION, SEARCH OUR WEBSITE AT Comptroller.Texas.Gov

This publication is intended as a general guide and not as a comprehensive resource on the subjects covered. It is not a substitute for legal advice.

Interest will continue to accrue on all proposed assessments.

addressed in the conference include taxability issues, sampling issues, accounting disputes and waiver of penalty and interest.

IARs are Comptroller employees who are very knowledgeable about Audit Division policies, procedures and taxability issues, but are not employees of the Audit Division.

To request an IARC, simply let the auditor know the issues that you disagree with and that you want to have an IARC. You must make the request after the fieldwork is complete but before the audit or examination has been billed. The billing is called the Texas Notification of Audit Results for audits, or Texas Notification of Exam Results for other types of examinations. For refund verification, you must request an IARC after the fieldwork is complete but before the denial letter or refund results letter is issued.

You can request an IARC on an issue that arose from an examination conducted by the Business Activity Research Team (BART) if you have provided the records, returns and data the BART examiner requested and if you make the request before the assessment has been billed.

Audit staff will contact the IAR, who will work with you to set up a mutually acceptable date and location for the conference. The IARC will not occur until after your exit conference. There is no charge for the IARC.

An IARC is not available when:

- records to verify a refund request or to verify a previously paid refund are not provided;
- records to perform the audit or examination are not provided and the liability must be estimated, even if the dispute concerns how the estimate is calculated;
- the Tax Policy Division has issued a written taxability determination on the issue(s) in dispute;
- an IARC has already taken place and a decision was rendered;
- a conference cannot be held timely and you decline to sign a statute waiver;
- to address any additional penalty assessment that may have been approved;

- the audit is already in the redetermination process, or
- the agency determines that a particular issue is not appropriate for an IARC.

An IARC does not stop interest from accruing on a proposed assessment. You can pay all of the assessment or any part of it to stop interest from accruing on that amount.

An IARC is *your meeting* to discuss the disputed issues. We recommend that you submit to the IAR any records, contracts or other relevant documentation along with a written statement of your position in advance, but you can also simply bring the information to the conference. An attorney, accountant or other person can come to the IARC with you to help explain your position. You can also audiotape the conference.

After the conference is over, the IAR will submit a written report to the IAR Team Leader with recommendations of how to resolve the disputed items. The Tax Policy Division may review draft IAR recommendations concerning taxability issues to make sure they are consistent with applicable law and agency policy. Once the recommendations are approved, the IAR will notify you and the auditor of the agency's decision and send everyone a copy of the IAR report.

After the report has been issued, you can still request a redetermination or refund hearing on any issue considered in an IARC. We have listed information about redetermination and refund hearings under the heading *Your Options after Receiving a Notification of Audit Results* or *Texas Notification of Exam Results* below.

THE

TEXAS TAXPAYER

Bill of Rights

As the **TEXAS COMPTROLLER OF PUBLIC ACCOUNTS**, *I know that our state's vibrant economy is not the result of luck; it is the result of your hard work, your initiative and your investment in our state. That hard work, initiative and investment should be rewarded, and as taxpayers you should expect the best possible government at the lowest possible cost – a government that creates an atmosphere where economic growth can continue and businesses and families can be successful and flourish.*

Achieving that goal starts with customer service. When I was sworn in as Comptroller, I promised the taxpayers of this state an agency that put their needs first, addressed concerns and issues in an efficient and respectful manner, fostered an environment of transparency and accountability and focused on the core responsibilities of the Texas Comptroller's office.

Primarily this agency is tasked with the responsibility of collecting and safeguarding taxpayer dollars. But in doing so, we must never lose sight of the fact that we are here to serve you. My Taxpayer Bill of Rights is designed to ensure that the service you receive from our agency not only meets your needs, but exceeds your expectations.

AS A TEXAS TAXPAYER...

1. **YOU HAVE THE RIGHT TO FAIR AND EQUITABLE TREATMENT –** *We will treat you with the courtesy and respect you deserve, and we will give our full attention to your issue. No matter how large or how small the issue is, if it's important to you, it's important to us.*
2. **YOU HAVE THE RIGHT TO PRIVACY AND CONFIDENTIALITY –** *We will protect your privacy and safeguard the confidentiality of taxpayer information to the fullest extent allowed by law.*
3. **YOU HAVE THE RIGHT TO UNDERSTAND THE TAXES YOU PAY –** *We will provide you with information to better understand the taxes you pay through a well-organized, easy-to-navigate website. You will find useful information including tax laws and rules, policies and procedures, forms, due dates and helpful publications.*
4. **YOU HAVE THE RIGHT TO PAY ONLY WHAT YOU OWE –** *We recognize that you work hard for every dollar you earn. We will respect that work, and our professionals will never be paid, promoted or rewarded on the basis of how much tax they collect or assess.*
5. **YOU HAVE THE RIGHT TO REPRESENTATION –** *We recognize that audits can be intimidating, and every taxpayer has the right to engage the person of their choice to represent them during that process.*
6. **YOU HAVE THE RIGHT TO CONTEST A DECISION –** *We know that every issue may not be resolved during the audit process and that you may wish to dispute a decision. Our publication, Contesting Disagreed Audits, outlines in detail how you can exercise your right to contest a decision.*
7. **YOU HAVE THE RIGHT TO REQUEST A WAIVER OF PENALTIES –** *We understand that extraordinary circumstances may cause an unavoidable late filing or payment of taxes, or the need to amend reports due to an error. We will give consideration to waiving penalties if you have not previously paid or filed late, or in a first-time audit situation.*
8. **YOU HAVE THE RIGHT TO SIMPLER TAX FILING –** *We offer a fast, secure electronic reporting system for many of the taxes we administer. Our WebFile system has built-in edits that can help prevent costly mistakes.*
9. **YOU HAVE THE RIGHT TO COURTEOUS, ACCESSIBLE ASSISTANCE FROM A REAL PERSON–** *We know that you may not always be able to find the answer to your question or may want to deal directly with a person in our office. We will maintain dedicated phone lines, email accounts and conveniently located offices throughout the state where you will find staff ready, willing and able to promptly assist you.*
10. **YOU HAVE THE RIGHT TO KNOW HOW GOVERNMENT SPENDS YOUR TAX DOLLARS –** *We know how hard you work to earn every tax dollar you send to the state, which is why we publish information about how and where those dollars are spent. We provide easy-to-use tools to track state government spending across every state agency, not just our office.*

This Bill of Rights represents my commitment to you, the Texas Taxpayer. If at any time you feel you have not been treated in accordance with this commitment to customer service, please contact our customer service liaison at comptroller.texas.gov/about/contact/customer-service.php *or by calling* **888-334-4112**.

GLENN HEGAR
TEXAS COMPTROLLER OF PUBLIC ACCOUNTS

Taxes and **fees** assessed in an audit are subject to a penalty of **10 percent** of the amount due.

TEXAS NOTIFICATION OF AUDIT RESULTS

The *Texas Notification of Audit Results* is the 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. We will issue a *Notification* that reflects the audit balance due as of the date of the *Notification,* even if you paid the deficiency before the audit was final (if you paid the liability in full, including penalty and interest, the balance will show zero).

The *Notification* balance only shows the results of the audit, and does not include open balances from report periods. Any ongoing collection action will not be affected by an audit.

TEXAS NOTIFICATION OF EXAM RESULTS

The *Texas Notification of Exam Results* is very similar to the *Texas Notification of Audit Results*, but is issued for Comptroller examinations that are not field audits.

PENALTY AND INTEREST OWED, AND CREDIT INTEREST

PENALTY

For most taxes and fees, the amount of taxes and fees assessed in an audit or examination 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 due and payable date shown on the *Texas Notification of Audit Results* or *Texas Notification of Exam Results*.

INTEREST

Interest is calculated on a period-by-period basis and begins accruing 61 days after the date the tax was originally due and payable.

For most taxes due on or after Jan. 1, 2000, the interest rate varies annually, set at 1 percent over the prime rate as published in the *Wall Street Journal* on the first business day of the year.

We publish information about past interest rates at **comptroller.texas.gov/taxes/file-pay/interest.php.**

WAIVERS

When we conduct an audit or examination, we presume you would like us to consider waiving any penalty and interest. You will be notified of our decision on the waiver in the letter sent to you with the audit or examination package. Penalty waivers are usually limited to periods originally filed in a timely manner. If you disagree with our decision, you can request a redetermination hearing. For International Fuel Tax Agreement assessments, we cannot waive penalty or interest on amounts due to another jurisdiction. Rule 3.5 explains more about the factors the Comptroller considers in making a decision about penalty or interest waivers.

CREDIT INTEREST

Credit interest is also calculated on a period-by-period basis, but at a different rate. Effective Sept. 1, 2021, the rate of credit interest paid on overpaid taxes and fees is the lower of the prime rate, as published in the *Wall Street Journal* plus 1 percent; or the annual rate of interest earned on deposits in the state treasury during November of the previous calendar year.

YOUR OPTIONS AFTER RECEIVING A *TEXAS NOTIFICATION OF AUDIT RESULTS* OR *TEXAS NOTIFICATION OF EXAM RESULTS*

After receiving the *Notification*, you have several options:

- **if you agree** with the audit or examination results, send a check or money order payable

FOR MORE INFORMATION, SEARCH OUR WEBSITE AT Comptroller.Texas.Gov

to the State Comptroller for the total liability as calculated on the *Notification*, plus any additional interest that has accrued from the statement date on the *Notification*. A deficiency determination becomes final 60 days after the statement date on the *Notification,* and is the Comptroller's official determination. Full payment is due within 10 days after the day it becomes final. If the amount of the determination is not paid within 10 days after it becomes final, an additional penalty of 10 percent of the amount of the determination will be added. Interest continues to accrue on the tax/fee until paid.

- if the Comptroller determines the state's interest is in jeopardy, an audit or examination can be billed as a jeopardy determination. A jeopardy determination becomes final 20 days after the determination is issued, and full payment is due within 10 days after the day it becomes final. If the amount of the determination is not paid within 10 days after it becomes final, an additional penalty of 10 percent of the amount of the determination will be added. Interest continues to accrue on the tax/fee until paid.
- **if you do not agree** with the audit or examination results, you can request a hearing or a refund, whether the result is no tax due, an assessment, or an overall credit. You must send a letter with a statement of grounds as described below. Find the date the determination becomes final on the *Notification* (final date). Your letter must be received:
- **on or before the final date**, you can request a redetermination hearing, which can include requests to reduce or remove any tax assessed in the audit and refund requests for the same tax type audited for any transactions within the audited period. You are not required to pay the assessment with your redetermination request, but interest continues to accrue on the amount of tax/fee ultimately determined to be due.
- **within 6 months after the final date** and you have paid the entire liability, including penalty and interest, you can request a refund hearing, which can include requests for refunds of all tax actually assessed and paid in the audit, plus refunds for any report periods that are still within the four-year statute of limitations at the time the refund hearing request is filed (generally four years from the due and payable date).
- **more than 6 months after the final date** and you have paid the entire liability, including penalty and interest, you can request a refund for any report period that is still within the statute of limitations at the time the refund request is filed (generally four years from the due and payable date).
- After the case has been referred for a formal hearing, you can request settlement with the Chief Settlement Officer. You can make the request through the Director or Assistant Director of Audit Division. If the audit has been sent to the Administrative Hearings Section (AHS) and has been assigned a hearing number, you can make the request through the Deputy General Counsel of the Administrative Hearings Section.

YOUR OPTIONS AFTER RECEIVING A REFUND RESULTS LETTER

We communicate the results of all refund verifications by letter. The letter includes information about the right to file for an administrative refund hearing or the right to waive the right to an administrative hearing and file suit on the refund claim in district court, either of which must be received by the Comptroller within 60 days of the letter date. These two options are available to you if you disagree with the results of the refund verification. If the Comptroller does not receive either a Statement of Grounds to request an administrative hearing or a Notice of Intent to Bypass the Hearing within 60 days of the refund denial letter, the refund results become final. A refund that has been denied by the Comptroller cannot be requested again at a later date, even if the period is still within the statute of limitations and cannot be included as a credit on a return, report, audit or examination.

Taxes and **fees** assessed in an audit are subject to the hearings process despite the final results.

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.

The Statement of Grounds or Notice of Intent to Bypass the Hearing must be signed by you or your authorized representative. A power of attorney, or other written authorization, must be included with all requests from third parties.

Please send your signed requests by mail to:

Texas Comptroller of Public Accounts Audit Processing Section

P.O. Box 13528

Austin, Texas 78711-3528

Or by email to:

Audit.Processing@cpa.texas.gov

If emailing, please include either "Administrative Hearing Request" or, if you intend to waive your right to a hearing, "Notice of Intent to Bypass Hearing" in the subject line.

STATEMENT OF GROUNDS FOR ADMINISTRATIVE HEARING REQUESTS

If you disagree with the results of an audit, examination or refund verification, your Statement of Grounds must list the items with which you disagree, either individually or by category, and state the factual basis and the legal grounds to support your position. If you disagree with the agency's interpretation of the law, you must cite legal authority for your position.

If your Statement of Grounds is timely and complete, we will send you a letter acknowledging the receipt of the request and providing further instructions. If the Statement of Grounds was not timely or was incomplete, we will send you a letter explaining what your next options are and how your request was deficient.

The auditor will be sent the timely and complete request to review any additional documentation to support the contentions raised. If you agree with the changes made, you will be required to sign the Taxpayer's Withdrawal of Request for a Hearing and Consent to Contested Case Dismissal form and will receive an Amended Notification of Audit Results. However, if you still disagree with the results, the audit, examination or refund assignment will be assigned to an attorney in the Hearings and Tax Litigation Division who will contact you or your representative to try to resolve the contested case. The attorney will review your case and under most circumstances will issue a Position Letter explaining the division's position. You can accept this position, which will conclude the contested case and cause the audit, examination or refund to be adjusted as stated in the Position Letter.

Alternatively, you can submit a Reply to the Position Letter explaining your disagreement with the Position Letter and ask to have your case heard by an Administrative Law Judge (ALJ) at the State Office of Administrative Hearings (SOAH). At any time after the case is assigned to an attorney, but before the case is referred to SOAH, the parties may also discuss and agree to a settlement. If the parties agree to a settlement, the attorney will prepare a Compromise and Settlement Agreement (CSA). The CSA will be signed by both parties and state the terms of the settlement, including the adjustments agreed to by both parties and your acknowledgment that by signing the CSA you agree to withdraw your request for a hearing and to dismiss the contest case.

COMPTROLLER'S DECISION

If you request a SOAH Hearing, the Hearings and Tax Litigation attorney will send you a Notice of Hearing indicating the date and time you are to appear to present evidence and oral argument. If you do not want an oral hearing, and instead want your case to be considered based on written submissions, the ALJ will review your written evidence and argument. After the hearing, whether oral or based on written submissions, the ALJ will issue a Proposal for Decision to you and the Hearings and Tax Litigation Division. The Comptroller will then render the final decision. If you plan to challenge the decision in district 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. Taxability rulings/letters, position letters and Comptroller's Decisions on various topics are available online at **https://star.comptroller.texas.gov/.**

NOTICE OF INTENT TO BYPASS THE HEARING

If you disagree with the results of a refund verification, you may waive your right to an administrative tax refund hearing and file suit on your refund claim in district court. When selecting this option, you must file a Notice of Intent to Bypass the Hearing, which must be received by the Comptroller within 60 days from the date of the refund denial letter. The notice must be titled, "Notice of Intent to Bypass the Hearing" and must assert the material facts and each specific legal basis on which the refund is claimed and specify the dollar amount of the claim. **Please be advised that when you file a Notice of Intent, you waive all rights to an administrative hearing.**

Within 30 days from the date the Notice of Intent to Bypass the Hearing is received by the Comptroller, the Comptroller may require a conference between the person who filed the Notice of Intent and a designated officer or employee of the Comptroller to clarify the issues in dispute and discuss availability of any additional supporting documentation that may assist in resolving issues in the claim. The notice of conference will be in writing and will include a date and time for the conference. The conference must be held within 90 days from the date the Notice of Intent was received by the Comptroller. If necessary, you may request that the conference be rescheduled to another date, and the Comptroller will make a good faith effort to accommodate that request. However, if a date cannot be agreed upon by the 90th day after the date the Notice of Intent was received by the Comptroller, you may rescind the Notice within 120 days after the date the Notice of Intent was received and request an administrative hearing.

If a conference is held, you or your authorized representative will work directly with the designated officer or employee of the Comptroller to resolve any issues. If the Comptroller agrees, the person who submitted the Notice of Intent may amend a material fact or legal basis included in the Notice of Intent after the conference. If the refund is not resolved after the conference, the person who filed the Notice of Intent may then bring suit on the refund in district court; however, the suit must be filed within 60 days after the date the conference concludes, or a later date if agreed to by the Comptroller.

If the Comptroller does not provide notice of conference within 30 days from the date the Notice of Intent is received by the Comptroller, the person who filed the Notice of Intent may file suit in district court on or before the 90th day after the date the Notice of Intent was received.

COMPTROLLER'S AUTHORITY TO COLLECT PAST-DUE TAXES

The Comptroller has legal authority (See Texas Tax Code Chapter 111, Collection Procedures) to take various actions to collect taxes that are past due.
If taxpayers do not pay or make arrangements to pay taxes that are owed, the Comptroller can:

- require a security bond to be posted;
- file a tax lien in applicable counties;
- freeze and/or seize non-exempt assets;
- suspend permits;
- file criminal charges; and/or
- place a hold on any state warrants payable to the taxpayer.

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 comptroller.texas.gov/taxes/publications/96-145.pdf.

A limited power of attorney form is available online at comptroller.texas.gov/forms/01-137.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.

21 COMPTROLLER AUDIT OFFICES IN 17 CITIES PROVIDE CONVENIENT, COURTEOUS TAX HELP NEAR YOU...

Austin
2015 S. Interstate 35, Suite 202
Southcliff Building 78741-3811
512-305-9800

Austin–Business Activity Research Team
1700 North Congress, Suite 240
Stephen F. Austin Building 78701-1436
512-305-9899

Chicago
1411 Opus Place, Suite 165
Downers Grove, IL 60515-1488
630-963-0761

Corpus Christi
500 North Shoreline Blvd, Suite 1015
78401-0399
361-882-1234

Dallas East
10300 North Central Expwy, Suite 500
75231-8647
972-792-5900

Dallas North
5201 Tennyson Parkway, Suite 208
Plano, TX 75024-4129
972-943-7624

Dallas West
2655 Villa Creek Drive, Suite 270
75234-7316
972-888-5300

El Paso
401 East Franklin Avenue, Suite 170
79901-1215
915-401-8066

Fort Worth
4500 Mercantile Plaza Drive, Suite 105
76137-4226
817-377-8855

Houston Central
1919 North Loop West, Suite 311
77008-1394
713-803-8600

Houston North
4201 Cypress Creek Pkwy, Suite 460
77068-3412
281-586-4100

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

Houston West
1260 Pin Oak Road, Suite 210
Katy, TX 77494-5600
281-371-5500

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

Lubbock
6104 66th St., Suite. 300
79424-5935
806-794-4012

McAllen
200 South 10th Street, Suite 801
78501-5538
956-542-0260

New York
475 Park Avenue South, 19th Floor
New York, NY 10016-6940
646-742-1155

Odessa
One Professional Plaza Building
6005 Eastridge Road, Suite 240
79762-5380
432-227-6500

San Antonio
5710 W. Hausman Road, Suite 105
78249-1646
210-257-4600

Tulsa
1323 E. 71st Street, Suite 103
Tulsa, OK 74136-5036
918-622-4311

Tyler
3800 Paluxy Drive, Suite 594
75703-1619
903-939-0567

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WE'RE HERE TO HELP!

If you have questions or need information, contact us:

For more information, search our website at
Comptroller.Texas.Gov

Texas Comptroller of Public Accounts
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Austin, Texas 78711-1440

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800-252-5555
911 Emergency Service/ Equalization Surcharge
Automotive Oil Fee
Battery Fee
Boat and Boat Motor Sales Tax
Customs Broker
Mixed Beverage Taxes
Off-Road, Heavy-Duty Diesel Equipment Surcharge
Oyster Fee
Sales and Use Taxes

800-531-5441
Cement Tax
Inheritance Tax
Local Revenue
Miscellaneous Gross Receipts Taxes
Oil Well Servicing Tax
Sulphur Tax

800-442-3453
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

800-531-5441
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

800-862-2260
Coin-Operated Machines Tax
Hotel Occupancy Tax

800-252-1386
Account Status
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

Publication #96-1253 · December 2022