

ETHICAL POTHOLES AND PITFALLS AT SOAH: INSIGHTS FROM AN ADMINISTRATIVE LAW JUDGE



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CAVEAT

- The views expressed herein and in this presentation represent the views of the presenter and do not reflect the position of the State Office of Administrative Hearings (SOAH) and should not be interpreted as affecting the outcome of any pending or future matter at SOAH.

SPECIAL FRANCHISE TAX STATUTE CRIMINALIZING FRAUD

Texas Tax Code § 171.363 imposes a criminal penalty, not an administrative penalty, on taxable entities and certain individuals who commit fraudulent acts. The penalty is a third degree felony. The individuals covered include a taxable entity's agent, officer, employee, or accountant.

APPLICATION TO TAXABLE ENTITIES

- Texas Tax Code § 171.363(a) makes it a third degree felony for **taxable entities** to:
- Fail to file a report;
- Fail to keep books and records required by Chapter 171;
- File a fraudulent report;
- Violate any rule of the Comptroller for the administration and enforcement of the provisions of Chapter 171; or
- Attempts in any other manner to evade or defeat any tax imposed by Chapter 171 or the payment of the tax.

APPLICATION TO INDIVIDUALS

- Texas Tax Code § 171.363(b) covers specific individuals: the **accountants, agents, officers, and employees of a taxable entity**. This subsection makes it a third degree felony for an accountant or an agent or an officer or an employee of a taxable entity to:

Knowingly enter or provide false information on any report, returns, or other documents filed by the taxable entity under Chapter 171.

INDIVIDUALS ARE ALSO SUBJECT TO ADMINISTRATIVE PENALTIES UNDER CHAPTER 171

An individual, who commits a violation under Section 171.363, may also, in addition to the criminal penalties imposed by this section, be liable for an administrative penalty imposed under Chapter 171.

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