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Why Texas Is Cheering a Tax Lawsuit Loss.

As gloomy government budget news stacks up in Austin, a state appeals court ruling issued Friday appears to erase a huge worry about the state's business franchise tax.

The parent company of AMC movie theaters sued the state over what it is allowed to include in non-taxable cost of goods sold. An initial ruling in the company's favor in May 2015 contained what the state thought was an overly broad definition of "costs" — one that Comptroller Glenn Hegar feared could require $6 billion in tax refunds to various businesses and a $1.5 billion annual reduction in state franchise taxes.

Friday's ruling from the 3rd Court of Appeals leaves the company's victory in place, but uses a narrower definition of costs of goods that apparently won't apply to most other taxpayers.

The difference could be worth billions to the state, allowing it to continue to collect franchise taxes much the way it does now.

The case turns on a legal definition in the state's tax code? of "tangible personal property" that includes "personal property that can be seen, weighed, measured, felt or touched, or that is perceptible to the senses in any other manner."

AMC takes "perceptible to the senses" to include movies and contends all of its costs for space should be included in its cost of goods sold. The comptroller argued that AMC is selling intangible property or a service and that it shouldn't be considered tangible personal property.

To compute its franchise taxes, the movie chain (like other businesses) subtracts its cost of goods sold from its total revenue and pays taxes based on the difference. Increasing the costs lowers the amount being taxed. The court ruled that AMC can include costs of exhibiting films in that calculation — a decision that means the theater chain will get $1.1 million in refunds for taxes it already paid.

The new ruling relies on a less encompassing definition that includes "films, sound recordings, videotapes, live and prerecorded television and radio programs, books, and other similar property embodying words, ideas, concepts, images, or sound, without regard to the means or methods of distribution or the medium in which the property is embodied…"

The state still lost the case, but according to Lauren Willis, a spokeswoman for the comptroller, this ruling doesn't present the kind of threat to other franchise revenue that the earlier ruling did.

The state will have to refund $1.2 million, plus interest and penalties, to AMC. But other taxpayers looking for the same treatment will have to fit within the narrower definition of tangible personal property to get refunds.

AMC's case is one of two lawsuits that threatened to knock big holes in the state's pocketbook. The other big tax case with potentially large implications — involving Midland-based Southwest Royalties — went to the Texas Supreme Court, with Hegar worrying publicly that an adverse ruling would cost

the state as much as $4.4 billion. The state won that one in June.

On Monday, a day before the legislative session begins, Hegar will unveil his official revenue estimate which will tell lawmakers how much money will be available for them to write the next two-year budget. Money is expected to be tight, but it won’t be because the state lost in court.

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