

CAUSE NO. D-1-GN-21-006290

RYAN, LLC,	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	
	§	
v.	§	
	§	
GLENN HEGAR, IN HIS	§	353rd JUDICIAL DISTRICT
OFFICIAL CAPACITY AS	§	
COMPTROLLER OF PUBLIC	§	
ACCOUNTS OF THE STATE	§	
OF TEXAS AND THE OFFICE	§	
OF THE COMPTROLLER OF	§	
PUBLIC ACCOUNTS FOR	§	
THE STATE OF TEXAS,	§	
	§	
Defendants.	§	TRAVIS COUNTY, TEXAS

**PLAINTIFF’S RESPONSE TO DEFENDANTS’ FIRST AMENDED  
MOTION FOR SUMMARY JUDGMENT**

The Comptroller’s First Amended Motion for Summary Judgment is identical to the Motion for Summary Judgment the Comptroller filed on May 25, 2022, except that the Comptroller (1) added a response to Ryan, LLC’s (“Ryan”) request for an injunction, (2) removed arguments regarding rule sections that Ryan is no longer challenging, and (3) argued that Ryan’s challenges to Rules 3.340(a)(6), 3.599(b)(5), and 3.599(d)(5) are moot now that the Comptroller has adopted amendments to those sections.

This response addresses the Comptroller's arguments regarding injunctive relief. Ryan addressed the Comptroller's other arguments in the Response to Defendants' Motion for Summary Judgment it filed on June 17, 2022, which is incorporated as if set forth in full herein.

**I. The Court has jurisdiction to grant the relief Ryan seeks.**

In its Second Amended Petition, Ryan asked the Court to issue a permanent injunction against the Comptroller from enforcing the rule sections the Court holds are invalid. As part of that permanent injunction, Ryan asked the Court to order the Comptroller to propose and adopt amendments to the rules that remove the invalid sections.

The Comptroller argues that the Court lacks jurisdiction to order the Comptroller to propose and adopt amendments because such relief may only be issued by the Texas Supreme Court pursuant to Tex. Gov't Code § 22.002(c), which provides as follows:

Only the supreme court has the authority to issue a writ of mandamus or injunction, or any other mandatory or compulsory writ or process, against any of the officers of the executive departments of the government of this state to order or compel the performance of a judicial, ministerial, or discretionary act or duty that, by state law, the officer or officers are authorized to perform.

That section, however, does not apply to the injunction Ryan seeks. The injunction Ryan requested was to prohibit the Comptroller from enforcing the rule sections the Court holds are invalid. “A district court has original jurisdiction to issue an injunction prohibiting unlawful action.” *Canales v. Paxton*, No. 03-19-00259-CV, 2020 WL 5884123, at \*2 (Tex. App.—Austin Sept. 30, 2020, pet. denied) (mem. op.) (citing *Witt v. Whitehead*, 900 S.W.2d 374, 375-76 (Tex. App.—Austin 1995, writ denied) (holding that where state executive’s delegation of responsibility was beyond officer’s authority, district court “can grant permanent injunctive relief to prohibit enforcement” of that unlawful delegation); *Kaufman Cty. v. McGaughey*, 21 S.W. 261, 262 (Tex. App.—Austin 1893, writ ref’d) (holding that predecessor to Tex. Gov’t Code § 22.002(c), identical in relevant respects, applied to orders compelling action that state executives “are authorized to perform,” but not orders prohibiting acts that “have been, or will be, committed without and in excess of lawful authority”)).

A component of the injunction Ryan seeks is for the Comptroller to remove any unlawful sections from the rules. A rule is a statement of general applicability from a state agency that implements, interprets, or

prescribes law or policy. Tex. Gov't Code § 2001.003(6)(A). If the Court finds any of the challenged rule sections invalid and the Comptroller does not remove those sections from the rule, then the Comptroller is continuing to publicly state requirements to obtain the R&D tax incentives that the Court determined are unlawful. A taxpayer that is ignorant of this proceeding and reviews the rules will likely conclude that it must satisfy requirements this Court found to be unlawful. The failure to propose and adopt amendments, therefore, is enforcing those unlawful rule sections. Accordingly, this Court has jurisdiction to grant the injunctive relief Ryan seeks.

**II. Ryan is entitled to the requested injunctive relief if any of the challenged rule sections are invalid.**

A permanent injunction is necessary to make effective a declaration that some or all the challenged rule sections are invalid. *Texas Dept. of State Health Servs. v. Balquinta*, 429 S.W.3d 726, 750 (Tex. App.—Austin 2014, pet. dism'd). Injunctive relief is necessary to effectuate a declaratory judgment because “[a]llowing plaintiffs to challenge the validity of an agency rule but barring injunctive relief preventing application of the challenged rule would defeat the purpose of section

2001.038, which ‘is to obtain a final declaration of a rule’s validity *before* the rule is applied.’” *Texas Dept. of Pub. Safety v. Salazar*, 304 S.W.3d 896, 903 (Tex. App.—Austin 2009, no pet.) (quoting *Rutherford Oil Corp. v. General Land Office*, 776 S.W.2d 232, 235 (Tex. App.—Austin 1989, no writ) (stating that to hold that state agency could not be enjoined from applying rule subject to validity challenge would “wholly nullify” predecessor to Tex. Gov’t Code § 2001.038)).

The Comptroller argues that this discussion in *Salazar* only concerns temporary injunctions because that was what was at issue in that case. According to the Comptroller, a permanent injunction would not effectuate a declaratory judgment in this case because “[t]he rules have already gone into effect, and the Comptroller is currently applying the rules to taxpayers.” First Am. MSJ, p. 28.

The Austin Court of Appeals, however, stated that the purpose of Tex. Gov’t Code § 2001.038, not the specific temporary injunction granted in that case, “is to obtain a final declaration of a rule’s validity *before* the rule is applied.” *Salazar*, 304 S.W.3d at 903. Under the Comptroller’s rationale, a suit brought under Tex. Gov’t Code § 2001.038 would not

serve any purpose if the administrative agency had applied the rule to anyone.

Injunctive relief is necessary to effectuate a declaratory judgment. Accordingly, Ryan is entitled to the injunctive relief it seeks if the Court determines that any of the challenged rule sections are invalid.

**III. A permanent injunction would not be redundant of declaratory judgment.**

The Comptroller's argument on the merits is that an injunction would be redundant of a declaratory judgment. An injunction would be redundant because the "declaration would effectively strike the portion of the rule from the books, preventing the Comptroller from enforcing it." First Am. MSJ p. 27.

A declaratory judgment, however, would not actually strike the portions of the rule the Court determines are invalid. The importance of injunctive relief can be demonstrated by reference to litigation between the same two parties involved in this lawsuit that concerned the validity of several sections of a different Comptroller Rule: *Hegar v. Ryan, LLC*, No. 03-13-00400-CV, 2015 WL 3393917 (Tex. App.—Austin May 20, 2015, no pet.) (mem. op.).

In that case, Ryan challenged a provision in Rule 3.325 that required taxpayers to submit nine categories of transactional detail at the time a refund claim is filed. *Id.* at \*1. The Court of Appeals held that the requirement was unlawful because it imposed “additional burdens, conditions, or restrictions in excess of or inconsistent with” the relevant provision in the Tax Code. *Id.* at \* 14. Ryan did not request injunctive relief in that case. *See id.*

It has been seven years since the Austin Court of Appeals issued its opinion in that case. In that time, the Comptroller has not amended Rule 3.325 to reflect that court’s holding. A taxpayer who consults Rule 3.325 today, therefore, would reasonably believe that it must provide all the information listed in that rule at the time of the filing of a claim. If that information could not be collected in time or was unavailable, then the taxpayer may decide to not pursue the refund. It is impossible to tell how many taxpayers have been misled by the Comptroller’s continued enforcement of that requirement.

That same concern is present in this case. A taxpayer who is considering retaining Ryan to pursue an R&D tax incentive may review

the rules and conclude that it is not worthwhile. Likewise, an auditor may review the rule and deny a claim based upon an invalid rule section.

Injunctive relief preventing the Comptroller from enforcing any of the invalid rule section is necessary to effectuate the Court's declaratory judgment and is not redundant. Otherwise, the Comptroller could continue to enforce the unlawful rule sections with impunity. That situation would render the Court's declaration that the rule sections are invalid ineffective.

**IV. The Comptroller's concerns regarding enforcement of a permanent injunction are unfounded.**

The Comptroller argues that there are practical reasons the Court should not grant Ryan the injunctive relief it seeks. "First, the Comptroller's ongoing duty to administer the R&D tax breaks could be greatly hampered by such an injunction." First Am. MSJ p. 29. "Second, the injunction would be difficult for the Court to enforce." *Id.*

The Comptroller's concerns are unfounded. First, the Comptroller is responsible for administering the R&D tax incentives in a lawful manner. It cannot impose requirements that exceed those the Legislature put in place. Prohibiting the Comptroller from enforcing requirements



that the Court finds are invalid will not prevent the Comptroller from accomplishing that objective. Second, an injunction would be no more difficult to enforce than a declaratory judgment. If the Comptroller denies one of Ryan's clients' request for an R&D tax incentive based upon a requirement the Court holds is invalid, then Ryan will likely argue that this Court's declaratory judgment collaterally estops the Comptroller from imposing those requirements. As a result, if the Comptroller decides to not respect this Court's judgment, then subsequent litigation will likely include a determination of whether the Comptroller's actions fall within the scope of the Court's judgment regardless of whether the Court grants injunctive relief. Injunctive relief would, however, discourage the Comptroller from taking a position that is inconsistent with this Court's ruling.

**V. The scope of the injunctive relief Ryan seeks is appropriate.**

The Texas Supreme Court and Texas Courts of Appeal have upheld injunctions rendered by trial courts and have themselves rendered judgment enjoining a government agency from enforcing requirements that were held to be invalid. *See, e.g., El Paso Hosp. Dist. v. Tex. Health*

*& Human Servs. Comm'n*, 247 S.W.3d 709, 715 (Tex. 2008) (rendering judgment declaring a rule invalid and enjoining its enforcement); *Tex. Tel. Assoc. v. Pub. Util. Comm'n*, No. 03-21-00294-CV, 2022 WL 2374875, at \*27 (Tex. App.—Austin June 30, 2022, no pet. h.) (rendering judgment that included a permanent injunction enjoining “the Commission and the Commissioners from enforcing the December 2020 Contract Amendment.”); *Tex. Dep’t of State Health Servs. v. Crown Distributing LLC*, No. 03-20-00463-CV, 2021 WL 3411551, at \*2-3 & 8 (Tex. App.—Austin August 5, 2021) (affirming the trial court’s grant of a temporary injunction enjoining the enforcement of a rule that prohibited the distribution and retail sale of smokable hemp products), *aff’d* No. 21-1045, 2022 WL 2283170, at \*13 (Tex. June 24, 2022); *Watson v. North Tex. Higher Educ. Auth., Inc.*, No. 03-00-00139-CV, 2000 WL 1534905, at \*9-10 (Tex. App.—Austin Oct. 19, 2000, pet. dism’d by agr.) (mem. op.) (affirming trial court’s order temporarily enjoining agency from enforcing rule); *Univ. Interscholastic League v. Green*, 583 S.W.2d 907, 909 (Tex. App.—Corpus Christi 1979, no writ) (upholding a trial court’s injunction “enjoining the defendants from enforcing the Committee’s ruling of ineligibility during the pendency of the suit.”).

As a result, the scope of injunctive relief Ryan seeks is appropriate.

Respectfully submitted,

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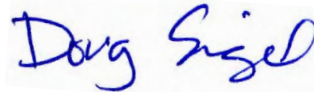
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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing has been served on all counsel of record, as listed below, by electronic service on September 6, 2022.

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