

AN ACT

relating to taxpayers' suits.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 403.202(a), Government Code, is amended to read as follows:

(a) If a person who is required to pay to any department of the state government an occupation, excise, gross receipts, franchise, license, or privilege tax or fee, [~~other than a tax or fee to which Subchapter B, Chapter 112, Tax Code, applies~~] or another [a] tax or [other] amount imposed under Subtitle A, Title 4, Labor Code, contends that the tax or fee is unlawful or that the department may not legally demand or collect the tax or fee, the person shall pay the amount claimed by the state, and if the person intends to bring suit under this subchapter, the person must submit with the payment a protest.

SECTION 2. Subchapter J, Chapter 403, Government Code, is amended by adding Section 403.222 to read as follows:

Sec. 403.222. APPLICABILITY. This subchapter does not apply to a suit under Chapter 112, Tax Code.

SECTION 3. Subchapter A, Chapter 112, Tax Code, is amended by adding Section 112.003 to read as follows:

Sec. 112.003. ATTORNEY'S FEES. Except for a sanction under Chapter 10, Civil Practice and Remedies Code, or the Texas Rules of Civil Procedure, attorney's fees may not be awarded in a suit

1 seeking legal or equitable relief against the state, a state
2 agency, or an officer of the state relating to the applicability,
3 assessment, collection, constitutionality, or amount of a tax, fee,
4 or penalty imposed by this title or Title 3 or collected by the
5 comptroller under any other law.

6 SECTION 4. Section 112.051, Tax Code, is amended by
7 amending Subsection (a) and adding Subsection (d) to read as
8 follows:

9 (a) If a person who is required to pay a tax [~~or fee~~] imposed
10 by this title or collected by the comptroller under any law,
11 including a local tax collected by the comptroller, contends that
12 the tax [~~or fee~~] is unlawful or that the public official charged
13 with the duty of collecting the tax [~~or fee~~] may not legally demand
14 or collect the tax [~~or fee~~], the person shall pay the amount claimed
15 by the state, and if the person intends to bring suit under this
16 subchapter, the person must submit with the payment a protest.

17 (d) This section and Section 112.052 are not severable from
18 the other provisions of this subchapter. If this section or Section
19 112.052 is held invalid for any reason, the entire subchapter is
20 invalid.

21 SECTION 5. Section 112.052, Tax Code, is amended to read as
22 follows:

23 Sec. 112.052. TAXPAYER SUIT AFTER PAYMENT UNDER PROTEST.

24 (a) A person may bring suit against the state to recover a [~~an~~
25 ~~occupation, excise, gross receipts, franchise, license, or~~
26 ~~privilege~~] tax [~~or fee~~] required to be paid to the state if the
27 person has first paid the tax under protest as required by Section

1 [112.051](#) [~~of this code~~].

2 (b) A suit under this section must be brought before the
3 91st day after the date the protest payment was made, or the suit is
4 barred[~~, except that for the tax imposed by Chapter [171](#) for a~~
5 ~~regular annual period, if an extension is granted to the taxpayer~~
6 ~~under Section [171.202](#)(c) for filing the report and the taxpayer~~
7 ~~files the report on or before the last date of the extension period,~~
8 ~~the protest required by Section [112.051](#) may be filed with the report~~
9 ~~to cover the entire amount of tax paid for the period, and suit for~~
10 ~~the recovery of the entire amount of tax paid for the period may be~~
11 ~~filed before the 91st day after the date the report is filed. If the~~
12 ~~report is not filed on or before the last date of the extension~~
13 ~~period, a protest filed with the report applies only to the amount~~
14 ~~of tax, if any, paid when the report is filed].~~

15 (c) The state may bring a counterclaim in a suit brought
16 under this section if the counterclaim relates to taxes [~~or fees~~]
17 imposed under the same statute and during the same period as the
18 taxes [~~or fees~~] that are the subject of the suit and if the
19 counterclaim is filed not later than the 30th day before the date
20 set for trial on the merits of the suit. The state is not required to
21 make an assessment of the taxes [~~or fees~~] subject to the
22 counterclaim under any other statute, and the period of limitation
23 applicable to an assessment of the taxes [~~or fees~~] does not apply to
24 a counterclaim brought under this subsection.

25 (d) A taxpayer shall produce contemporaneous records and
26 supporting documentation appropriate to the tax [~~or fee~~] for the
27 transactions in question to substantiate and enable verification of

1 a taxpayer's claim relating to the amount of the tax, penalty, or
2 interest that has been assessed or collected or will be refunded, as
3 required by Section 111.0041.

4 SECTION 6. Section 112.053, Tax Code, is amended by
5 amending Subsections (a) and (c) and adding Subsections (d) and (e)
6 to read as follows:

7 (a) A suit authorized by this subchapter must be brought
8 against the public official charged with the duty of collecting the
9 tax ~~[or fee]~~, the comptroller, and the attorney general.

10 (c) A copy of the written protest as originally filed must
11 be attached to the original petition filed by the person paying the
12 tax ~~[or fee]~~ with the court and to the copies of the original
13 petition served on the comptroller, the attorney general, and the
14 public official charged with the duty of collecting the tax ~~[or~~
15 ~~fee]~~.

16 (d) The attorney general shall represent the comptroller in
17 a suit under this subchapter.

18 (e) A person may not intervene in a suit under this
19 subchapter.

20 SECTION 7. Section 112.058, Tax Code, is amended by
21 amending Subsection (a) and adding Subsections (b) and (c) to read
22 as follows:

23 (a) ~~[Payments made under protest are to be handled as~~
24 ~~follows:~~

25 ~~[(1) An officer who receives payments made under~~
26 ~~protest as required by Section 112.051 shall each day send to the~~
27 ~~comptroller the payments, a list of the persons making the~~

1 ~~payments, and a written statement that the payments were made under~~
2 ~~protest.~~

3 ~~(2)~~ The comptroller shall, immediately on receipt of
4 a payment made under protest under Section 112.051, deposit each
5 portion of the payment to the credit of the account or fund
6 ~~[payments to each fund]~~ to which the tax ~~[or fee]~~ paid under protest
7 is allocated by law.

8 (b) ~~(3)~~ The comptroller shall maintain detailed records
9 of payments made under protest under Section 112.051.

10 (c) An amount paid ~~(4) A payment~~ under protest under
11 Section 112.051 bears pro rata interest. The pro rata interest is
12 the amount of interest earned by the amount paid under protest
13 ~~[protected funds].~~

14 SECTION 8. Section 112.059, Tax Code, is amended to read as
15 follows:

16 Sec. 112.059. DISPOSITION OF PROTEST PAYMENTS BELONGING TO
17 THE STATE. If a suit authorized by this subchapter is not brought
18 in the manner or within the time required or if the suit is properly
19 filed and results in a final determination that an amount paid under
20 protest ~~[a tax payment or a portion of a tax payment made under~~
21 ~~protest]~~, including the pro rata amount of interest earned on the
22 amount ~~[payment]~~, belongs to the state, the comptroller shall
23 ensure that the proper amount is ~~[has been]~~ deposited to the credit
24 of the appropriate state account or fund.

25 SECTION 9. Sections 112.060(c) and (d), Tax Code, are
26 amended to read as follows:

27 (c) Each ~~[tax]~~ refund warrant shall be drawn against the

1 accounts or funds [~~each fund~~] to which the amounts [~~taxes~~] paid
2 under protest are allocated by law. If there are not sufficient
3 funds in an account or fund [~~each fund to which the taxes paid under~~
4 ~~protest are allocated by law~~] to pay a refund required to be paid
5 under Subsection (a) [~~of this section~~], [~~then~~] the comptroller
6 shall draw the warrant against the General Revenue Fund or other
7 account or fund [~~funds~~] from which refunds [~~refund appropriations~~]
8 may be made, as the comptroller determines appropriate.

9 (d) The comptroller shall issue each [~~tax~~] refund warrant
10 and shall deliver it to the person entitled to receive it.

11 SECTION 10. Chapter 112, Tax Code, is amended by adding
12 Subchapter E to read as follows:

13 SUBCHAPTER E. SUIT AFTER REDETERMINATION

14 Sec. 112.201. SUIT AFTER REDETERMINATION. (a) A person may
15 sue the comptroller to dispute an amount of tax, penalty, or
16 interest assessed in a deficiency redetermination or jeopardy
17 redetermination under Chapter 111 if the person has:

18 (1) filed a request for redetermination under Chapter
19 111;

20 (2) obtained a redetermination under Chapter 111 that
21 includes a finding by the comptroller of the disputed and
22 undisputed amounts; and

23 (3) filed a motion for rehearing of the
24 redetermination that complies with Chapter 2001, Government Code,
25 and that states the specific grounds of error and the disputed
26 amounts associated with the grounds of error.

27 (b) A person bringing a suit under this subchapter shall

1 pay, as provided by Chapter 111, the redetermination amounts that
2 are not disputed in the motion for rehearing. The failure to pay an
3 undisputed amount does not affect the jurisdiction of a court to
4 consider a suit that complies with Subsection (a).

5 (c) A person bringing a suit under this subchapter may pay
6 the disputed amounts as provided by Chapter 111. A disputed amount
7 that is not paid as provided by Chapter 111 and that is determined
8 to be due in a final judgment accrues penalties and interest as
9 provided by Chapter 111. After the comptroller has been timely
10 served in a suit that complies with this subchapter, the
11 comptroller and the attorney general are enjoined from collecting
12 disputed amounts from the person bringing the suit during the
13 pendency of the suit but are not enjoined from asserting tax liens.
14 Damages may be awarded under Chapter 65, Civil Practice and
15 Remedies Code, if the court determines that all or part of the
16 enjoined collection amounts were disputed solely for delay.

17 (d) A suit under this subchapter must be brought against
18 both the comptroller and the attorney general.

19 (e) A suit under this subchapter must be filed before the
20 expiration of 90 days after the issue date of the denial of the
21 motion for rehearing or it is barred.

22 (f) The disputed and undisputed amounts of the
23 redetermination must be set out in the original petition. A copy of
24 the motion for rehearing must be attached to the original petition
25 filed with the court and to the copies of the original petition
26 served on the comptroller and the attorney general.

27 (g) A person may not intervene in a suit under this

1 subchapter.

2 Sec. 112.202. RECORDS. A person shall produce, in
3 connection with a suit under this subchapter, contemporaneous
4 records and supporting documentation appropriate to the tax for the
5 transactions in question to substantiate and enable verification of
6 the person's claim relating to the amount of the tax, penalty, or
7 interest that has been assessed or collected, as required by
8 Section 111.0041.

9 Sec. 112.203. COUNTERCLAIM. (a) The state may bring a
10 counterclaim in a suit under this subchapter if:

11 (1) the counterclaim relates to taxes imposed under
12 the same statute and during the same period as the taxes that are
13 the subject of the suit; and

14 (2) the counterclaim is filed not later than the 30th
15 day before the date set for trial on the merits of the suit.

16 (b) The state is not required to make an assessment of the
17 taxes subject to the counterclaim under any other statute, and the
18 period of limitation applicable to an assessment of the taxes does
19 not apply to a counterclaim brought under this section.

20 Sec. 112.204. ISSUES IN SUIT. (a) The grounds of error
21 contained in the motion for rehearing are the only issues that may
22 be raised in a suit under this subchapter.

23 (b) A suit under this subchapter applies only to a tax
24 liability period considered in the comptroller's redetermination.

25 Sec. 112.205. ATTORNEY GENERAL TO REPRESENT COMPTROLLER.
26 The attorney general shall represent the comptroller in a suit
27 under this subchapter.

1 Sec. 112.206. TRIAL DE NOVO. In a suit under this
2 subchapter, the issues shall be tried de novo as are other civil
3 cases.

4 Sec. 112.207. JUDGMENT. (a) The amount of a judgment
5 refunding disputed taxes, penalties, or interest paid to the
6 comptroller shall be credited against any tax, penalty, or interest
7 imposed by this title and due from the plaintiff.

8 (b) The remainder of the amount of a judgment not credited
9 against a tax, penalty, or interest shall be refunded to the
10 plaintiff.

11 (c) The plaintiff is entitled to interest on the amount of
12 tax refunded in a judgment for the plaintiff equal to the amount of
13 interest that would be due if the tax had been deposited in the
14 suspense account of the comptroller. The interest accrues beginning
15 from the date that the tax was paid until:

16 (1) the date that the amount is credited against the
17 plaintiff's tax liability; or

18 (2) a date determined by the comptroller that is not
19 sooner than 10 days before the actual date on which a refund warrant
20 is issued.

21 Sec. 112.208. RES JUDICATA. The rule of res judicata
22 applies in a suit under this subchapter only if the issues and the
23 tax liability periods in controversy are the same as were decided in
24 a previous final judgment entered in a Texas court of record in a
25 suit between the same parties.

26 SECTION 11. The following provisions are repealed:

27 (1) Section 403.212(e), Government Code;

1 (2) Sections 112.058(d) and (e), Tax Code; and

2 (3) Subchapter C, Chapter 112, Tax Code.

3 SECTION 12. The changes in law made by this Act apply only
4 to a suit to dispute an amount of tax, penalty, or interest that
5 becomes due and payable on or after the effective date of this Act.
6 A suit to dispute an amount of tax, penalty, or interest that became
7 due and payable before the effective date of this Act is governed by
8 the law as it existed immediately before the effective date of this
9 Act, and the former law is continued in effect for that purpose.

10 SECTION 13. This Act takes effect September 1, 2021.

President of the Senate

Speaker of the House

I certify that H.B. No. 2080 was passed by the House on April 15, 2021, by the following vote: Yeas 144, Nays 0, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 2080 on May 24, 2021, by the following vote: Yeas 141, Nays 5, 1 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 2080 was passed by the Senate, with amendments, on May 19, 2021, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor