

By: Huffman

S.B. No. 769

A BILL TO BE ENTITLED

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. Section 111.207(a), Tax Code, is amended to read as follows:

(a) In determining the expiration date for a period when a tax imposed by this title may be assessed, collected, or refunded, the following periods are not considered:

1 (1) ~~[the period following the date of a tax payment~~
2 ~~made under protest, but only if a lawsuit is timely filed in~~
3 ~~accordance with Chapter 112,~~

4 ~~[(2)]~~ the period during which a judicial proceeding is
5 pending in a court of competent jurisdiction to determine the
6 amount of the tax due;

7 (2) ~~[(3)]~~ the period during which an administrative
8 redetermination or refund hearing is pending before the
9 comptroller; and

10 (3) ~~[(4)]~~ the period during which an indictment or
11 information is pending for a felony offense related to the
12 administration of the Tax Code against any taxpayer or any person
13 personally liable or potentially personally liable for the payment
14 of the tax under Section 111.0611.

15 SECTION 4. Subchapter A, Chapter 112, Tax Code, is amended
16 by adding Section 112.003 to read as follows:

17 Sec. 112.003. ATTORNEY FEES. Except for a sanction under
18 Chapter 10, Civil Practice and Remedies Code, or the Texas Rules of
19 Civil Procedure, attorney's fees may not be awarded in a suit
20 seeking legal or equitable relief against the state, a state
21 agency, or an officer of the state relating to the applicability,
22 assessment, collection, constitutionality, or amount of a tax, fee,
23 or penalty imposed by this title or Title 3 or collected by the
24 comptroller under any other law.

25 SECTION 5. The heading to Subchapter B, Chapter 112, Tax
26 Code, is amended to read as follows:

27 SUBCHAPTER B. SUIT AFTER REDETERMINATION [~~PROTEST PAYMENT~~]

1 SECTION 6. Subchapter B, Chapter 112, Tax Code, is amended
2 by adding Sections 112.061, 112.062, 112.063, 112.064, 112.065,
3 112.066, 112.067, and 112.068 to read as follows:

4 Sec. 112.061. SUIT AFTER REDETERMINATION. (a) A person may
5 sue the comptroller to dispute an amount of tax, penalty, or
6 interest assessed in a deficiency redetermination or jeopardy
7 redetermination under Chapter 111 if the person has:

8 (1) filed a request for redetermination under Chapter
9 111;

10 (2) obtained a redetermination under Chapter 111 that
11 includes a finding by the comptroller of the disputed and
12 undisputed amounts; and

13 (3) filed a motion for rehearing of the
14 redetermination that complies with Chapter 2001, Government Code,
15 and that states the specific grounds of error and the disputed
16 amounts associated with the grounds of error.

17 (b) A person bringing a suit under this subchapter shall
18 pay, as provided by Chapter 111, the redetermination amounts that
19 are not disputed in the motion for rehearing. The failure to pay an
20 undisputed amount does not affect the jurisdiction of a court to
21 consider a suit that complies with Subsection (a).

22 (c) A person bringing a suit under this subchapter may pay
23 the disputed amounts as provided by Chapter 111. A disputed amount
24 that is not paid as provided by Chapter 111 and that is determined
25 to be due in a final judgment accrues penalties and interest as
26 provided by Chapter 111. After the comptroller has been timely
27 served in a suit that complies with this subchapter, the

1 comptroller and the attorney general are enjoined from collecting
2 disputed amounts during the pendency of the suit but are not
3 enjoined from asserting tax liens. Damages may be awarded under
4 Chapter 65, Civil Practice and Remedies Code, if the court
5 determines that all or part of the enjoined collection amounts were
6 disputed solely for delay.

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

9 (e) A suit under this subchapter must be filed before the
10 expiration of 60 days after the issue date of the denial of the
11 motion for rehearing or it is barred.

12 (f) The disputed and undisputed amounts of the
13 redetermination must be set out in the original petition. A copy of
14 the motion for rehearing must be attached to the original petition
15 filed with the court and to the copies of the original petition
16 served on the comptroller and the attorney general.

17 (g) A person may not intervene in a suit under this
18 subchapter.

19 Sec. 112.062. RECORDS. A person shall produce, in
20 connection with a suit under this subchapter, contemporaneous
21 records and supporting documentation appropriate to the tax or fee
22 for the transactions in question to substantiate and enable
23 verification of the person's claim relating to the amount of the
24 tax, penalty, or interest that has been assessed or collected, as
25 required by Section 111.0041.

26 Sec. 112.063. COUNTERCLAIM. (a) The state may bring a
27 counterclaim in a suit under this subchapter if:

1 (1) the counterclaim relates to taxes or fees imposed
2 under the same statute and during the same period as the taxes or
3 fees that are the subject of the suit; and

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

6 (b) The state is not required to make an assessment of the
7 taxes or fees subject to the counterclaim under any other statute,
8 and the period of limitation applicable to an assessment of the
9 taxes or fees does not apply to a counterclaim brought under this
10 section.

11 Sec. 112.064. ISSUES IN SUIT. (a) The grounds of error
12 contained in the motion for rehearing are the only issues that may
13 be raised in a suit under this subchapter.

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

16 Sec. 112.065. ATTORNEY GENERAL TO REPRESENT COMPTROLLER.
17 The attorney general shall represent the comptroller in a suit
18 under this subchapter.

19 Sec. 112.066. TRIAL DE NOVO. In a suit under this
20 subchapter, the issues shall be tried de novo as are other civil
21 cases.

22 Sec. 112.067. JUDGMENT. (a) The amount of a judgment
23 refunding disputed taxes, penalties, or interest paid to the
24 comptroller shall be credited against any tax, penalty, or interest
25 imposed by this title and due from the plaintiff.

26 (b) The remainder of the amount of a judgment not credited
27 against a tax, penalty, or interest shall be refunded to the

1 plaintiff.

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

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

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

12 Sec. 112.068. RES JUDICATA. The rule of res judicata
13 applies in a suit under this subchapter only if the issues and the
14 tax liability periods in controversy are the same as were decided in
15 a previous final judgment entered in a Texas court of record in a
16 suit between the same parties.

17 SECTION 7. The following provisions are repealed:

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

19 (2) Sections 112.051, 112.052, 112.053, 112.054,
20 112.055, 112.056, 112.057, 112.058, 112.059, and 112.060, Tax Code;

21 and

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

23 SECTION 8. The changes in law made by this Act apply only to
24 a suit to dispute an amount of tax, penalty, or interest that
25 becomes due and payable on or after the effective date of this Act.
26 A suit to dispute an amount of tax, penalty, or interest that became
27 due and payable before the effective date of this Act is governed by

1 the law as it existed immediately before the effective date of this
2 Act, and the former law is continued in effect for that purpose.

3 SECTION 9. This Act takes effect September 1, 2021.