

By: Perry

S.B. No. 952

A BILL TO BE ENTITLED

AN ACT

relating to certain tax and fee collection procedures and taxpayer suits.

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

SECTION 1. The heading to Section 111.0041, Tax Code, is amended to read as follows:

Sec. 111.0041. RECORDS [~~, BURDEN TO PRODUCE AND SUBSTANTIATE CLAIMS~~].

SECTION 2. Section 111.0041(b), Tax Code, is amended to read as follows:

(b) A taxpayer is required to keep records [~~, as provided by Subsection (c) with respect to the taxpayer's claim,~~] open for inspection under Subsection (a) for more than four years throughout any period when:

(1) any tax, penalty, or interest may be assessed, collected, or refunded by the comptroller; or

(2) an administrative hearing is pending before the comptroller, or a judicial proceeding is pending, to determine the amount of the tax, penalty, or interest that is to be assessed, collected, or refunded.

SECTION 3. Section 111.008(a), Tax Code, is amended to read as follows:

(a) If the comptroller is not satisfied with a tax report, [~~or~~] the amount of the tax required to be paid to the state by a

1 person, or the amount of an overpayment of tax identified in a tax  
2 report or an audit, including a managed audit, the comptroller may  
3 compute and determine the amount of tax to be paid or the amount to  
4 be credited or refunded from information contained in the report or  
5 from any other information available to the comptroller.

6 SECTION 4. Section 111.009, Tax Code, is amended by  
7 amending Subsection (b) and adding Subsection (b-1) to read as  
8 follows:

9 (b) A petition for redetermination must be filed before the  
10 expiration of 60 days after the date the notice of determination is  
11 issued or the redetermination is barred.

12 (b-1) If a petition for redetermination is not filed before  
13 the expiration of the period provided by Subsection (b) and a suit  
14 is not filed before the expiration of the period provided by Section  
15 112.251 [this subsection], the determination is final on the  
16 expiration of the later of those periods [~~period~~].

17 SECTION 5. Section 111.104(c), Tax Code, is amended to read  
18 as follows:

19 (c) A claim for a refund must:

20 (1) be written;

21 (2) state [~~fully and in detail~~] each reason or ground  
22 on which the claim is founded; and

23 (3) be filed before the expiration of the applicable  
24 limitation period as provided by this code or before the expiration  
25 of six months after a jeopardy or deficiency determination becomes  
26 final, whichever period expires later.

27 SECTION 6. Sections 112.051(a) and (b), Tax Code, are

1 amended to read as follows:

2 (a) If a person [~~who is required to pay a tax imposed by this~~  
3 ~~title or collected by the comptroller under any law, including a~~  
4 ~~local tax collected by the comptroller,~~] contends that a [the] tax  
5 imposed by this title or collected by the comptroller under any law,  
6 including a local tax collected by the comptroller, is unlawful,  
7 [~~or~~] that the public official charged with the duty of collecting  
8 the tax may not legally demand or collect the tax, or that an order,  
9 rule, or policy unlawfully or erroneously establishes or implies an  
10 obligation to pay or collect the tax, the person shall pay the  
11 amount [~~claimed by the state~~], and if the person intends to bring  
12 suit under this subchapter, the person must submit with the payment  
13 a protest.

14 (b) The protest must be in writing and must state [~~fully and~~  
15 ~~in detail~~] each reason or ground for recovering the payment.

16 SECTION 7. Section [112.052](#)(a), Tax Code, is amended to read  
17 as follows:

18 (a) A person may bring suit against the state to recover a  
19 tax that [~~required to be paid to the state if~~] the person has first  
20 paid [~~the tax~~] under protest as required by Section [112.051](#).

21 SECTION 8. Chapter [112](#), Tax Code, is amended by adding  
22 Subchapter F to read as follows:

23 SUBCHAPTER F. SUIT AFTER DETERMINATION

24 Sec. 112.251. SUIT TO CHALLENGE DETERMINATION. (a) A  
25 person may sue the comptroller to challenge the amount of an  
26 underpayment or overpayment of tax, penalty, or interest that has  
27 been the subject of a jeopardy or deficiency determination.

1        (b) The suit must be brought against both the comptroller  
2 and the attorney general and must be filed in a district court.

3        (c) Except as provided by Subsection (d), the suit must be  
4 filed not later than the 60th day after the issue date of the  
5 determination or it is barred.

6        (d) If the person filed a petition for redetermination under  
7 Section 111.009, the suit must be filed not later than the 60th day  
8 after the issue date of the denial of the motion for rehearing or it  
9 is barred.

10       Sec. 112.252. APPLICABLE PERIOD. The suit applies only to a  
11 tax liability period that is the subject of the determination.

12       Sec. 112.253. COLLECTION ACTIONS ENJOINED. After the  
13 comptroller has been timely served in a suit that complies with this  
14 subchapter, the comptroller and the attorney general are enjoined  
15 from collecting disputed amounts from the person bringing the suit  
16 during the pendency of the suit.

17       Sec. 112.254. ATTORNEY GENERAL TO REPRESENT COMPTROLLER.  
18 The attorney general shall represent the comptroller in a suit  
19 under this subchapter.

20       Sec. 112.255. TRIAL DE NOVO. In a suit under this  
21 subchapter, the issues shall be tried de novo as are other civil  
22 cases.

23       Sec. 112.256. JUDGMENT. (a) The amount of a judgment for  
24 the plaintiff shall be credited against any tax, penalty, or  
25 interest imposed by this title and due from the plaintiff.

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

1 plaintiff.

2 (c) The plaintiff is entitled to interest on the amount of  
3 tax included 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  
6 beginning 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 SECTION 9. The following provisions of the Tax Code are  
13 repealed:

14 (1) Sections 111.0041(c) and (d);

15 (2) Section 111.105(e);

16 (3) Section 112.003;

17 (4) Section 112.052(d);

18 (5) Section 112.151(f); and

19 (6) Subchapter E, Chapter 112.

20 SECTION 10. The repeal by this Act of Subchapter E, Chapter  
21 112, Tax Code, does not apply to a suit brought under that  
22 subchapter before the effective date of this Act. That suit is  
23 governed by the law as it existed immediately before the effective  
24 date of this Act, and the former law is continued in effect for that  
25 purpose.

26 SECTION 11. This Act applies to a claim for refund, a  
27 determination, or an administrative proceeding that is pending or

1 in progress on or after the effective date of this Act, without  
2 regard to whether the taxes that are the subject of the claim,  
3 determination, or proceeding were due before, on, or after that  
4 date.

5 SECTION 12. This Act takes effect September 1, 2023.