

By: Swinford

H.B. No. 20

A BILL TO BE ENTITLED

AN ACT

relating to the governor's budget authority and to the payment of certain tax refunds.

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

SECTION 1. Section 401.046(a), Government Code, is amended to read as follows:

(a) The governor shall deliver a copy of the governor's budget to each member of the legislature before the governor gives the message to the legislature required by Section 9, Article IV, Texas Constitution, at the commencement [~~not later than the sixth day~~] of each regular legislative session.

SECTION 2. (a) Rider 11 under the Fiscal Programs-Comptroller of Public Accounts, Article I, Chapter 1330, Acts of the 78th Legislature, Regular Session, 2003 (pages I-37 and I-38), is amended to read as follows:

11. Appropriation of Tax Refunds. As much of the respective taxes, fees, and charges, including penalties or other financial transactions administered or collected by the Comptroller as may be necessary is hereby appropriated and set aside to pay refunds, interest, and any costs and attorney fees awarded in court cases, as provided by law, subject to the following limitations and conditions:

a. Unless another law, or section of this Act, provides a period within which a particular refund claim must be

1 made, funds appropriated herein may not be used to pay a refund
2 claim made under this section after four years from the latest date
3 on which the amount collected or received by the State was due, if
4 the amount was required to be paid on or before a particular date.
5 If the amount was not required to be paid on or before a particular
6 date, a refund claim may not be made after four years from the date
7 the amount was collected or received. A person who fails to make a
8 refund claim within the period provided by law, or this provision,
9 shall not be eligible to receive payment of a refund under this
10 provision.

11 b. As a specific limitation to the amount of refunds
12 paid from funds appropriated in this Act during the 2004-05
13 biennium, the Comptroller shall not approve claims or issue
14 warrants for refunds in excess of the amount of revenue estimated to
15 be available from the tax, fee, or other revenue source during the
16 biennium according to the Biennial Revenue Estimate of the
17 Comptroller of Public Accounts used for certification of this Act.
18 Any claim or portion of a claim which is in excess of the limitation
19 established by this subsection "b" shall be presented to the next
20 legislature for a specific appropriation in order for payment to be
21 made. The limitation established by this subsection "b" shall not
22 apply to any taxes or fees paid under protest.

23 ~~[c. None of the funds appropriated by this provision~~
24 ~~may be expended to pay a refund claim, a final judgement, or a~~
25 ~~settlement, including any statutory interest thereon or any costs~~
26 ~~and attorney fees awarded by court order, that is in excess of~~
27 ~~\$250,000. Any claim that is in excess of the limitation established~~

1 ~~by this subsection "c" shall be presented to the legislature for a~~
2 ~~specific appropriation in order for payment to be made.~~

3 ~~[d. None of the funds appropriated by this provision~~
4 ~~may be expended to pay a refund claim, a final judgment, or a~~
5 ~~settlement, including any statutory interest thereon or any costs~~
6 ~~and attorney fees awarded by court order, that would cause the~~
7 ~~aggregate amount paid to, or on behalf of, an individual or entity~~
8 ~~pursuant to this provision during the biennium beginning September~~
9 ~~1, 2003, to exceed \$250,000. Any claim that is in excess of the~~
10 ~~limitation established by this subsection "d" shall be presented to~~
11 ~~the legislature for a specific appropriation in order for payment~~
12 ~~to be made.~~

13 ~~[e. The limitations established by subsection "c" and~~
14 ~~subsection "d" do not apply to a payment made:~~

15 ~~[(1) on a final judgment in those cases where the~~
16 ~~judgment order of the trial court was entered prior to the effective~~
17 ~~date of this Act,~~

18 ~~[(2) on a settlement agreement executed prior to~~
19 ~~the effective date of this Act, or~~

20 ~~[(3) on a Comptroller's final decision issued~~
21 ~~prior to the effective date of this Act.~~

22 ~~[f. For purposes of this provision, "final judgment"~~
23 ~~means a judgment rendered in a federal court or a court in this~~
24 ~~state for which an appeal or rehearing, or application therefor, is~~
25 ~~not pending and for which the time limitations for appeal or~~
26 ~~rehearing have expired. For the purposes of this provision, a~~
27 ~~Comptroller's final decision means a decision of the Comptroller~~

1 ~~which is administratively final and for which limitations has~~
2 ~~expired for seeking rehearing or filing a lawsuit in court. For the~~
3 ~~purposes of this provision, a "settlement agreement" must be in~~
4 ~~writing and signed by the necessary parties. A settlement agreement~~
5 ~~shall be deemed to be "executed" on the date upon which the last~~
6 ~~signature of a necessary party is affixed thereon.~~

7 ~~[g. The payment of a settlement or final judgment may~~
8 ~~be made only with a complete release from any and all related claims~~
9 ~~and causes against the State, and in the case of a judgment, the~~
10 ~~payment may be made only in full satisfaction of that judgment.~~

11 ~~[h. Subsection "c" and subsection "d" shall not apply~~
12 ~~to a refund granted pursuant to an informal review under Section~~
13 ~~111.1042 of the Tax Code, if that refund claim is filed with the~~
14 ~~Comptroller no later than 120 days after the original due date of~~
15 ~~the report for the period for which the refund is claimed.~~

16 ~~[i. This provision shall not apply to refunds of~~
17 ~~unclaimed property made pursuant to Title 6 of the Property Code.~~

18 ~~[j. Except pursuant to this provision, none of the~~
19 ~~funds appropriated by this Act may be expended to pay a refund of~~
20 ~~any tax, fee, penalty, charge, or other assessment collected or~~
21 ~~administered by the Comptroller or to pay a judgment, settlement,~~
22 ~~or administrative hearing decision, including any statutory~~
23 ~~interest thereon or any costs and attorney fees awarded by court~~
24 ~~order, relating to a refund of any tax, fee, penalty, charge or~~
25 ~~other assessment collected or administered by the Comptroller.]~~

26 (b) This section applies to a tax refund payable from funds
27 appropriated by H.B. No. 1, Acts of the 78th Legislature, Regular

1 Session, 2003, regardless of whether the refund becomes payable
2 before, on, or after the effective date of this section.

3 (c) This section takes effect immediately if this Act
4 receives a vote of two-thirds of all the members elected to each
5 house, as provided by Section 39, Article III, Texas Constitution.
6 If this Act does not receive the vote necessary for immediate
7 effect, this section takes effect on the 91st day after the last day
8 of the legislative session.

9 SECTION 3. Section 401.047, Government Code, is repealed.

10 SECTION 4. Except as otherwise provided by this Act, this
11 Act takes effect on the 91st day after the last day of the
12 legislative session.