

By: Bivins

S.B. No. 896

A BILL TO BE ENTITLED

AN ACT

relating to tax refunds.

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

SECTION 1. Section 111.104, Tax Code, is amended by amending Subsections (b) and (c) and by adding Subsection (g) to read as follows:

(b) Except as otherwise provided by Subsection (g), a [A] tax refund claim may be filed with the comptroller only by the person who directly paid the tax to this state or by the person's attorney, assignee, or other successor.

(c) A claim for a refund must:

(1) be written;

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

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

(g) Subject to the requirements of Subsection (c), a claim for a refund for tax paid under Chapter 151 may be filed with the comptroller only by:

(1) a permitted seller who collected the tax from a non-permitted purchaser or by the permitted seller's attorney, assignee, or other successor;

1           (2) a permitted purchaser who paid the tax to this  
2 state or to a permitted seller or by the permitted purchaser's  
3 attorney, assignee, or other successor; or

4           (3) a permitted seller who refunded the tax to a  
5 permitted purchaser and who has obtained an assignment of the tax  
6 from the permitted purchaser.

7           SECTION 2. Section 111.1042, Tax Code, is amended by adding  
8 Subsection (d) to read as follows:

9           (d) If the right to a hearing is not exercised on a full or  
10 partial denial of a claim for refund, the period during which the  
11 comptroller informally reviewed the claim for refund is not  
12 considered in determining the expiration date of a limitation  
13 period for any subsequent claim for refund on the same period and  
14 type of tax for which the claim for refund was fully or partially  
15 denied.

16           SECTION 3. Section 111.105, Tax Code, is amended by  
17 amending Subsection (a) and by adding Subsection (e) to read as  
18 follows:

19           (a) A person claiming a refund under Section 111.104 [~~of~~  
20 ~~this code~~] is entitled to a hearing on the claim if the person  
21 requests a hearing on or before the 30th day after the date [~~in~~  
22 ~~accordance with procedures prescribed by~~] the comptroller issues a  
23 letter denying the claim for refund. The person is entitled to 20  
24 days' notice of the time and place of the hearing.

25           (e) During the administrative hearing process, a person  
26 claiming a refund under Section 111.104 must submit documentation  
27 to enable the comptroller to verify the claim for refund. The

1 comptroller may issue a notice of demand that all evidence to  
2 support the claim for refund must be produced before the expiration  
3 of a specified date in the notice. The specified date in the notice  
4 may not be less than 180 days. The comptroller may not consider  
5 evidence produced after the specified date in the notice in an  
6 administrative hearing. The limitation provided by this subsection  
7 does not apply to a judicial proceeding filed in accordance with  
8 Chapter 112.

9 SECTION 4. Section 111.107, Tax Code, is amended to read as  
10 follows:

11 Sec. 111.107. WHEN REFUND OR CREDIT IS PERMITTED. (a)  
12 Except as otherwise expressly provided, a person may request a  
13 refund or a credit or the comptroller may make a refund or issue a  
14 credit for the overpayment of a tax imposed by this title at any  
15 time before the expiration of the period during which the  
16 comptroller may assess a deficiency for the tax and not thereafter  
17 unless the refund or credit is requested:

18 (1) under Subchapter B of Chapter 112 and the refund  
19 is made or the credit is issued under a court order;

20 (2) under the provision of Section 111.104(c)(3)  
21 applicable to a refund claim filed after a jeopardy or deficiency  
22 determination becomes final; or

23 (3) under Chapter 153, except Section 153.1195(e),  
24 153.121(d), 153.2225(e), or 153.224(d).

25 (b) A person may not file a claim for refund for taxes paid  
26 on the same item or transaction for the same tax type and for the  
27 same period that was the subject of a prior refund claim that was

1 denied by the comptroller.

2 SECTION 5. Sections 111.206(b), (c), and (d), Tax Code, are  
3 amended to read as follows:

4 (b) A final determination that affects the amount of  
5 liability of a tax imposed by this title shall be reported to the  
6 comptroller before the expiration of 120 [~~60~~] days after the day on  
7 which the determination becomes final. The report must include a  
8 detailed statement of the reasons for the difference in tax  
9 liability as required by the comptroller.

10 (c) Notwithstanding the expiration of a period of  
11 limitation provided in this title, the comptroller may assess and  
12 collect or bring suit for the collection of any tax deficiency,  
13 including penalties and interest, resulting from a final  
14 determination [~~or from investigation~~] at any time before the  
15 expiration of one year after:

16 (1) the later of the day the report is required to be  
17 filed as provided by Subsection (b) or the day [~~of this section is~~  
18 ~~received, if~~] the report is received [~~filed within the 60-day~~  
19 ~~period~~]; or

20 (2) [~~if the report is not made or is made after the~~  
21 ~~60-day period, the day the report is received or~~] the day the final  
22 determination is discovered, if a report is not filed [~~whichever~~  
23 ~~period is the shorter~~].

24 (d) If a final determination [~~or investigation~~] results in  
25 the taxpayer having overpaid the amount of tax due the state, the  
26 taxpayer may file a claim for refund with the comptroller [~~shall~~  
27 ~~refund or issue a credit~~] for the amount of the overpayment before

1 the first anniversary of the date the final determination becomes  
 2 final. If the comptroller assesses tax by issuing a deficiency  
 3 determination within the [~~at any time during the one-year~~] period  
 4 provided by [~~during which assessments may be made under~~] Subsection  
 5 (c), the taxpayer may file a claim for refund for an amount of tax  
 6 that has been found due in a deficiency determination before the  
 7 180th day after the deficiency determination becomes final, but the  
 8 claim is limited to the items and the tax payment period for which  
 9 the determination was issued [~~of this section~~].

10 SECTION 6. Sections 111.207(a) and (b), Tax Code, are  
 11 amended to read as follows:

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

15 (1) the period following the date of a tax payment made  
 16 under protest, but only if a lawsuit is timely filed in accordance  
 17 with Chapter 112;

18 (2) the period during which a judicial proceeding is  
 19 pending in a court of competent jurisdiction to determine the  
 20 amount of the tax due; and

21 (3) the period during which an administrative  
 22 redetermination or refund hearing [~~proceeding~~] is pending before  
 23 the comptroller [~~for a redetermination of the tax liability~~].

24 (b) The suspension of a period of limitation under  
 25 Subsection (a) is limited [~~of this section applies only~~] to the  
 26 issues that were contested [~~amount of taxes in issue~~] under  
 27 Subdivision (1), (2), or (3) of that subsection.

1           SECTION 7. Section 151.430(c), Tax Code, is amended to read  
2 as follows:

3           (c) The person may obtain reimbursement for amounts  
4 determined to have been overpaid [~~by taking a credit on one or more~~  
5 ~~sales tax returns or~~] by filing a claim for refund with the  
6 comptroller within the limitation period specified by Subchapter D,  
7 Chapter 111.

8           SECTION 8. Section 111.207(d), Tax Code, is repealed.

9           SECTION 9. (a) This Act takes effect immediately if it  
10 receives a vote of two-thirds of all the members elected to each  
11 house, as provided by Section 39, Article III, Texas Constitution.  
12 If this Act does not receive the vote necessary for immediate  
13 effect, this Act takes effect September 1, 2003.

14           (b) This Act applies only to a claim for a refund made on or  
15 after the effective date of this Act without regard to whether the  
16 taxes that are the subject of the claim were due before, on, or  
17 after that date.