

1-1 By: Bivins S.B. No. 896
1-2 (In the Senate - Filed March 5, 2003; March 11, 2003, read
1-3 first time and referred to Committee on Finance; April 14, 2003,
1-4 reported adversely, with favorable Committee Substitute by the
1-5 following vote: Yeas 13, Nays 0; April 14, 2003, sent to printer.)

1-6 COMMITTEE SUBSTITUTE FOR S.B. No. 896 By: Bivins

1-7 A BILL TO BE ENTITLED
1-8 AN ACT

1-9 relating to tax refunds and credits.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Subsections (b) and (c), Section 111.104, Tax
1-12 Code, are amended to read as follows:

1-13 (b) A tax refund claim may be filed with the comptroller
1-14 only by the person who directly paid the tax to this state or by the
1-15 person's attorney, assignee, or other successor.

1-16 (c) A claim for a refund must:

1-17 (1) be written;

1-18 (2) state fully and in detail each reason or ground
1-19 [~~the grounds~~] on which the claim is founded; and

1-20 (3) be filed before the expiration of the applicable
1-21 limitation period as provided by this code or before the expiration
1-22 of six months after a jeopardy or deficiency determination becomes
1-23 final, whichever period expires later.

1-24 SECTION 2. Section 111.1042, Tax Code, is amended by adding
1-25 Subsection (d) to read as follows:

1-26 (d) If the right to a hearing is not exercised on a full or
1-27 partial denial of a claim for refund, the period during which the
1-28 comptroller informally reviewed the claim for refund does not toll
1-29 the limitation period for any subsequent claim for refund on the
1-30 same period and type of tax for which the claim for refund was fully
1-31 or partially denied.

1-32 SECTION 3. Section 111.105, Tax Code, is amended by
1-33 amending Subsection (a) and adding Subsection (e) to read as
1-34 follows:

1-35 (a) A person claiming a refund under Section 111.104 [~~of~~
1-36 ~~this code~~] is entitled to a hearing on the claim if the person
1-37 requests a hearing on or before the 30th day after the date [~~in~~
1-38 ~~accordance with procedures prescribed by~~] the comptroller issues a
1-39 letter denying the claim for refund. The person is entitled to 20
1-40 days' notice of the time and place of the hearing.

1-41 (e) During the administrative hearing process, a person
1-42 claiming a refund under Section 111.104 must submit documentation
1-43 to enable the comptroller to verify the claim for refund. The
1-44 comptroller may issue a notice of demand that all evidence to
1-45 support the claim for refund must be produced before the expiration
1-46 of a specified date in the notice. The specified date in the notice
1-47 may not be less than 180 days. The comptroller may not consider
1-48 evidence produced after the specified date in the notice in an
1-49 administrative hearing. The limitation provided by this subsection
1-50 does not apply to a judicial proceeding filed in accordance with
1-51 Chapter 112.

1-52 SECTION 4. Section 111.107, Tax Code, is amended to read as
1-53 follows:

1-54 Sec. 111.107. WHEN REFUND OR CREDIT IS PERMITTED.

1-55 (a) Except as otherwise expressly provided, a person may request a
1-56 refund or a credit or the comptroller may make a refund or issue a
1-57 credit for the overpayment of a tax imposed by this title at any
1-58 time before the expiration of the period during which the
1-59 comptroller may assess a deficiency for the tax and not thereafter
1-60 unless the refund or credit is requested:

1-61 (1) under Subchapter B of Chapter 112 and the refund is
1-62 made or the credit is issued under a court order;

1-63 (2) under the provision of Section 111.104(c)(3)

2-1 applicable to a refund claim filed after a jeopardy or deficiency
2-2 determination becomes final; or

2-3 (3) under Chapter 153, except Section 153.1195(e),
2-4 153.121(d), 153.2225(e), or 153.224(d).

2-5 (b) A person may not refile a refund claim for the same
2-6 transaction or item, tax type, period, and ground or reason that was
2-7 previously denied by the comptroller.

2-8 (c) If the Railroad Commission of Texas certifies under
2-9 Section 201.057 that a well produces high-cost gas, a person may not
2-10 request a refund or a credit for overpayment of the tax imposed by
2-11 Chapter 201 on gas that was produced from that well more than two
2-12 years before the date the application for certification was filed
2-13 with the Railroad Commission of Texas.

2-14 SECTION 5. Subsections (b), (c), and (d), Section 111.206,
2-15 Tax Code, are amended to read as follows:

2-16 (b) A final determination that affects the amount of
2-17 liability of a tax imposed by this title shall be reported to the
2-18 comptroller before the expiration of 120 [~~60~~] days after the day on
2-19 which the determination becomes final. The report must include a
2-20 detailed statement of the reasons for the difference in tax
2-21 liability as required by the comptroller.

2-22 (c) Notwithstanding the expiration of a period of
2-23 limitation provided in this title, the comptroller may assess and
2-24 collect or bring suit for the collection of any tax deficiency,
2-25 including penalties and interest, resulting from a final
2-26 determination [~~or from investigation~~] at any time before the
2-27 expiration of one year after:

2-28 (1) the later of the day the report is required to be
2-29 filed as provided by Subsection (b) or the day [~~of this section is~~
2-30 ~~received, if~~] the report is received [~~filed within the 60-day~~
2-31 ~~period~~]; or

2-32 (2) [~~if the report is not made or is made after the~~
2-33 ~~60-day period, the day the report is received or~~] the day the final
2-34 determination is discovered, if a report is not filed [~~whichever~~
2-35 ~~period is the shorter~~].

2-36 (d) If a final determination [~~or investigation~~] results in
2-37 the taxpayer having overpaid the amount of tax due the state, the
2-38 taxpayer may file a claim for refund with the comptroller [~~shall~~
2-39 ~~refund or issue a credit~~] for the amount of the overpayment before
2-40 the first anniversary of the date the final determination becomes
2-41 final. If the comptroller assesses tax by issuing a deficiency
2-42 determination within the [~~at any time during the one-year~~] period
2-43 provided by [~~during which assessments may be made under~~] Subsection
2-44 (c), the taxpayer may file a claim for refund for an amount of tax
2-45 that has been found due in a deficiency determination before the
2-46 180th day after the deficiency determination becomes final, but the
2-47 claim is limited to the items and the tax payment period for which
2-48 the determination was issued [~~of this section~~].

2-49 SECTION 6. Subsections (a) and (b), Section 111.207, Tax
2-50 Code, are amended to read as follows:

2-51 (a) In determining the expiration date for a period when a
2-52 tax imposed by this title may be assessed, [~~or~~] collected, or
2-53 refunded, the following periods are not considered:

2-54 (1) the period following the date of a tax payment made
2-55 under protest, but only if a lawsuit is timely filed in accordance
2-56 with Chapter 112;

2-57 (2) the period during which a judicial proceeding is
2-58 pending in a court of competent jurisdiction to determine the
2-59 amount of the tax due; and

2-60 (3) the period during which an administrative
2-61 redetermination or refund hearing [~~proceeding~~] is pending before
2-62 the comptroller [~~for a redetermination of the tax liability~~].

2-63 (b) The suspension of a period of limitation under
2-64 Subsection (a) is limited [~~of this section applies only~~] to the
2-65 issues that were contested [~~amount of taxes in issue~~] under
2-66 Subdivision (1), (2), or (3) of that subsection.

2-67 SECTION 7. Subsection (d), Section 111.207, Tax Code, is
2-68 repealed.

2-69 SECTION 8. (a) This Act takes effect immediately if it

3-1 receives a vote of two-thirds of all the members elected to each
3-2 house, as provided by Section 39, Article III, Texas Constitution.
3-3 If this Act does not receive the vote necessary for immediate
3-4 effect, this Act takes effect September 1, 2003.

3-5 (b) This Act applies only to a claim for a refund made on or
3-6 after the effective date of this Act without regard to whether the
3-7 taxes that are the subject of the claim were due before, on, or
3-8 after that date.

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