

BILL ANALYSIS

Senate Research Center
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S.B. 1639
By: Williams
Finance
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

According to the Council of State Chambers of Commerce, Texas ranks last among the 50 states when graded on fairness and efficiency of the administration of its tax system.

As proposed, S.B. 1639 codifies fairness and balanced treatment principles to govern the enforcement of state tax laws. This bill ensures that the laws governing the state's tax administration system are fair, efficient, and consumer-focused.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 101, Tax Code, by adding Section 101.0021, as follows:

Sec. 101.0021. EFFECT OF CHAPTER 102; FAIRNESS AND EQUAL TREATMENT IN TAXATION. Requires the tax laws of Texas to be construed and interpreted to further the rights stated under Chapter 102.

SECTION 2. Amends Subtitle A, Title 2, Tax Code, by adding Chapter 102, as follows:

CHAPTER 102. FAIRNESS AND EQUAL TREATMENT IN TAXATION

Sec. 102.001. SHORT TITLE. Authorizes this chapter to be cited as the Texas Fairness and Equal Treatment in Taxation Act.

Sec. 102.002. LEGISLATIVE INTENT. Provides that it is the intent of the legislature that this chapter govern in all respects the enforcement of tax laws of this state.

Sec. 102.003. SCOPE OF CHAPTER. Provides that this chapter protects all taxpayers and their property and governs the assessment, collection, and enforcement of every tax imposed by the state.

Sec. 102.004. RIGHTS OF TAXPAYERS. Sets forth certain rights that a person subject to a tax imposed by this state is required to have.

SECTION 3. Amends Section 111.009(b), Tax Code, to increase the number of days in which a petition for redetermination is required to be filed from 30 days to 90 days.

SECTION 4. Amends Sections 111.064(a) and (c), Tax Code, as follows:

(a) Provides that, for a refund under this chapter (Collection Procedures), interest is at the rate set in Section 111.060 (Interest on Delinquent Tax), and accrues on the amount found to be erroneously paid for a certain period of time, except as provided by Subsections (b) and (c), rather than otherwise provided by this section (Interest on Refund or Credit). Deletes existing text providing the option that interest is at the rate that is lesser of the annual rate of interest earned on deposits in the state treasury during

December of the previous calendar year, as determined by the comptroller of public accounts (comptroller).

(c) Provides that the rate is the rate that is the lesser of the annual rate of interest earned on deposits in the state treasury during December of the previous calendar year, as determined by the comptroller, or the rate set in Section 111.060 (Interest on Delinquent Tax) for a refund claimed after, rather than before, September 1, 2005, and before September 1, 2007, and granted for a report period due on or after January 1, 2000.

SECTION 5. Amends Section 111.104, Tax Code, by amending Subsections (a), (c), and (d) and adding Subsection (c-1), as follows:

(a) Requires, rather than authorizes, the remainder of amount of any tax, penalty, or interest that was unlawfully or erroneously collected to be promptly refunded to the taxpayer from money appropriated for tax refund purposes.

(c) Sets forth certain characteristics required of a claim for a refund.

(c-1) Prohibits a claim for a refund from being filed after the eighth anniversary of the date the tax was due, notwithstanding Sections 111.104(c), 111.206(d), and 111.207(c).

(d) Deletes existing text providing that a refund claim for an amount of tax that has been found due in a jeopardy or deficiency determination is limited to the amount of tax, penalty, and interest and to the tax payment period for which the determination was issued.

SECTION 6. Amends Section 111.1042(b), Tax Code, to provide that an informal review of a refund claim is an administrative proceeding for purposes of this title (State Taxation).

SECTION 7. Amends Section 111.105(e), Tax Code, as follows:

(e) Authorizes the comptroller, after discovery has been completed, to issue a notice of demand that all evidence to support the claim for refund be produced before the expiration of a specified date in the notice. Prohibits the specified date in the notice from being earlier than 180 days after the date of the notice, rather than the date the refund is claimed.

SECTION 8. Amends Section 111.107(a), Tax Code, to authorize a person to request a refund or credit at any time before the expiration of the specific time period unless the refund or credit is requested in a certain manner, including on or before the second anniversary of the date the comptroller issues a deficiency or jeopardy determination or the eighth anniversary of the date the tax was due, whichever is later, and the refund or credit is limited to the reporting periods for which the deficiency or jeopardy determination was issued.

SECTION 9. Amends Section 111.206, Tax Code, by adding Subsection (c-1) and amending Subsection (d), as follows:

(c-1) Requires the comptroller's assessment or suit for collection authorized under this section (Exception To Limitation: Determination Resulting From Administrative Proceeding) to be limited to the items and periods for which the final determination was issued.

(d) Makes conforming changes.

SECTION 10. Amends Section 111.207, Tax Code, as follows:

Sec. 111.207. TOLLING OF LIMITATION PERIOD. (a) Provides that the period during which an administrative redetermination or refund proceeding, rather than hearing, is pending before the comptroller is not considered when determining the expiration date for a period when a tax is imposed by this title may be assessed, collected, or refunded.

(b) Redesignated from existing Subsection (c). Deletes existing Subsection (b) relating to the suspension of a period of limitation.

(c) Provides that, in determining the expiration date for filing a refund claim for a tax imposed by this title, the period during which an administrative proceeding is pending before the comptroller or the state office of administrative hearings for the same period and type of tax is not considered.

SECTION 11. Amends Chapter 112, Tax Code, by adding Subchapter B-1, as follows:

SUBCHAPTER B-1. SUITS TO CONTEND PAYMENT OF ANY TAX OR FEE COLLECTED BY COMPTROLLER

Sec. 112.071. **APPLICABILITY.** Provides that this subchapter applies to any lawsuit to contend the payment of any tax or fee imposed by this title or collected by the comptroller under any law, including local tax collected by the comptroller.

Sec. 112.072. **PAYMENT UNDER PROTEST NOT REQUIRED.** (a) Prohibits a person from being required to pay a disputed tax under protest as a prerequisite to filing a lawsuit contending any tax or fee imposed by this title or collected by the comptroller under any law, including a local tax collected by the comptroller.

(b) Prohibits a person from being required to pay a disputed tax as a prerequisite to an appeal.

Sec. 112.073. **NOTICE OF TAX ABATEMENT.** (a) Requires a person who wishes to file a lawsuit under this subchapter to first file a notice of tax abatement (notice) with the comptroller.

(b) Prohibits abatement of the tax from being refused, provided that the taxpayer satisfies the requirements of this subchapter and timely files a lawsuit.

(c) Requires the notice to be in writing on a form approved by the comptroller.

(d) Requires the notice to be filed with the comptroller within the period stated in Section 111.104(c)(3) for the filing of a refund claim.

(e) Requires a statement of the grounds that states fully and in detail each reason for contending the tax or fee that is the subject of the notice to accompany the notice.

Sec. 112.074. **LIMITATIONS.** (a) Requires a suit under this subchapter to be filed before the 91st day after the date the notice was filed, or the suit is barred, except as provided by Subsection (b).

(b) Authorizes the notice required by this subchapter to be filed with the report to cover the entire amount of tax paid for the period, and the suit for the recovery of the entire amount of tax paid for the period is authorized to be filed before the 91st day after the date the report is filed, if an extension is granted to the taxpayer under Section 117.202(c) for filing the report and taxpayer files the report on or before the last date of the extension period.

Sec. 112.075. **CLASS ACTIONS.** (a) Provides that this subchapter applies to a class action.

(b) Provides that a class action, for purposes of this section, includes a suit brought under this subchapter by at least two persons who have filed a notice as required by this subchapter.

(c) Provides that all taxpayers who are within the same class as the persons bringing the suit brought under this subchapter, who are represented in the class

action, and who have abated payment of the disputed tax under this section are not required to file separate suits, but are entitled to and are governed by the decision rendered in the class action.

Sec. 112.076. **SUIT AGAINST PUBLIC OFFICIALS.** Requires a suit under this subchapter to be brought against the public officials charged with the duty of collecting the tax or fee, the comptroller, and the attorney general.

Sec. 112.077. **COPY OF WRITTEN STATEMENT OF GROUNDS.** Requires a copy of the written statement of grounds as originally filed with the notice to be attached to the original petition filed by the person contending the tax or fee with the court and to the copies of the original petition served on the comptroller, the attorney general, and the public official charged with the duty of collecting the tax or fee.

Sec. 112.078. **TRIAL DE NOVO.** Provides that the trial of the issues in a lawsuit under this subchapter is de novo.

SECTION 12. Amends Subchapter C, Chapter 112, Tax Code, by adding Section 112.10101, as follows:

Sec. 112.10101. **REQUIREMENTS BEFORE INJUNCTION.** (a) Prohibits certain actions for a restraining order or injunction from being brought against the public official charged with the duty of collecting the tax or fee or a representative of the public official unless the applicant for the order or injunction first files a certain statement or notice.

(b) Prohibits a person from being required to pay a disputed tax or fee under protest or post a bond to guarantee the payment of any disputed tax or fee as a prerequisite to filing an action under this section.

SECTION 13. Amends Section 112.1011(a), Tax Code, to refer to an amount described by Section 112.10101(a), rather than Section 112.101(a).

SECTION 14. Amends Section 112.108, Tax Code, as follows:

Sec. 112.108. **OTHER ACTIONS PROHIBITED.** Deletes existing text prohibiting the court from issuing a declaratory judgment against the state or a state agency relating to a tax or fee covered by this subchapter (Injunctions) or the amount of the tax or fee due. Deletes existing text providing that after filing an oath of inability to pay the tax, penalties, and interest due, a party may be excused from the requirement of prepayment of tax as a prerequisite to appeal if the court, after notice and hearing, finds that such prepayment would constitute an unreasonable restraint on the party's right of access to the courts.

SECTION 15. Amends Section 151.508, Tax Code, as follows:

Sec. 151.508. **OFFSETS.** Requires, rather than authorizes, the comptroller, in making a determination, to offset an overpayment for one or more periods against an underpayment, penalty, and interest accrued on the underpayment for the same period or one or more other periods, provided the taxpayer may elect not to accept the offset.

SECTION 16. Amends Section 151.511(c), Tax Code, to entitle the petitioner to a 90-day, rather than a 30-day, continuance of the hearing to permit the petitioner to obtain and present evidence applicable to the items on which the additional claim is based if an additional claim is asserted.

SECTION 17. Repealer: Sections 111.1042(d) (relating to the result of the right to a hearing not being exercised on a full or partial denial of a claim for refund), Section 111.107(b) (relating to prohibiting a person from refiling a refund claim that was previously denied by the comptroller), Subchapter B, Chapter 112 (Suit After Protest Payment), Section 112.101 (Requirements Before Injunction), and Section 112.104 (Additional Payments or Bond), Tax Code.

SECTION 18. (a) Makes application of this Act prospective.

(b) Makes application of this Act, including Subchapter B-1, Chapter 112, Tax Code, as added by this Act, and Section 112.10101, Tax Code, as added by this Act, prospective.

SECTION 19. Effective date: September 1, 2007.