

By: Williams

S.B. No. 1639

A BILL TO BE ENTITLED

AN ACT

relating to the collection, administration, and enforcement of state taxes and fees.

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

SECTION 1. Chapter 101, Tax Code, is amended by adding Section 101.0021 to read as follows:

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

SECTION 2. Subtitle A, Title 2, Tax Code, is amended by adding Chapter 102 to read as follows:

CHAPTER 102. FAIRNESS AND EQUAL TREATMENT IN TAXATION

Sec. 102.001. SHORT TITLE. This chapter may be cited as the Texas Fairness and Equal Treatment in Taxation Act.

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

Sec. 102.003. SCOPE OF CHAPTER. This chapter:

(1) protects all taxpayers and their property; and  
(2) governs the assessment, collection, and enforcement of every tax imposed by the state.

Sec. 102.004. RIGHTS OF TAXPAYERS. A person subject to a tax imposed by this state shall have the right:

1           (1) to be treated fairly, courteously, and with  
2 respect;

3           (2) to have access to tax forms, instructions, and  
4 information written in clear, simple language;

5           (3) to obtain prompt, accurate answers to questions  
6 about tax laws and policies and to receive assistance in complying  
7 with those laws and policies;

8           (4) to receive in a timely manner and to review a copy  
9 of the person's tax records;

10          (5) to be free from harassment in audit and collection  
11 actions;

12          (6) to have tax laws enforced by employees or  
13 contractors who are not paid or promoted based on the amount of tax  
14 dollars they assess or collect;

15          (7) to promptly receive a refund of any tax, penalty,  
16 or interest;

17          (8) to self-representation or to be able to authorize  
18 another person to represent or accompany the person in a matter  
19 involving tax administration;

20          (9) to identify and recover any tax overpayments  
21 relating to the period that is the subject of an audit and to  
22 conduct that review within a reasonable time of not less than two  
23 years after the date the written notice is issued;

24          (10) to have reasonable, reciprocal, and enforceable  
25 obligations in an audit and in the administrative hearing process;

26          (11) to the prompt release of any applicable liens  
27 immediately following payments of any taxes, penalty, interest, and

1 filing fees that are due;

2 (12) to relief if the taxpayer relies on erroneous  
3 advice or information given by an employee of the comptroller; and

4 (13) to a fair, impartial, and unbiased administrative  
5 hearing.

6 SECTION 3. Section 111.009(b), Tax Code, is amended to read  
7 as follows:

8 (b) A petition for redetermination must be filed before the  
9 expiration of 90 ~~[30]~~ days after the date on which the service of  
10 the notice of determination is completed or the redetermination is  
11 barred. If a petition for redetermination is not filed before the  
12 expiration of the period provided by this subsection, the  
13 determination is final on the expiration of the period.

14 SECTION 4. Sections 111.064(a) and (c), Tax Code, are  
15 amended to read as follows:

16 (a) Except as ~~[otherwise]~~ provided by Subsections (b) and  
17 (c) [this section], for a refund under this chapter, interest is at  
18 the rate ~~[that is the lesser of the annual rate of interest earned~~  
19 ~~on deposits in the state treasury during December of the previous~~  
20 ~~calendar year, as determined by the comptroller, or the rate]~~ set in  
21 Section 111.060, and accrues on the amount found to be erroneously  
22 paid for a period:

23 (1) beginning on the later of 60 days after the date of  
24 payment or the due date of the tax report; and

25 (2) ending on, as determined by the comptroller,  
26 either the date of allowance of credit on account of the  
27 comptroller's final decision or audit or a date not more than 10

1 days before the date of the refund warrant.

2 (c) For a refund claimed after [~~before~~] September 1, 2005,  
3 and before September 1, 2007, and granted for a report period due on  
4 or after January 1, 2000, the rate of interest is the rate that is  
5 the lesser of the annual rate of interest earned on deposits in the  
6 state treasury during December of the previous calendar year, as  
7 determined by the comptroller, or the rate set in Section 111.060.

8 SECTION 5. Section 111.104, Tax Code, is amended by  
9 amending Subsections (a), (c), and (d) and adding Subsection (c-1)  
10 to read as follows:

11 (a) If the comptroller finds that an amount of tax, penalty,  
12 or interest has been unlawfully or erroneously collected, the  
13 comptroller shall credit the amount against any other amount when  
14 due and payable by the taxpayer from whom the amount was collected.  
15 The remainder of the amount, if any, must [~~may~~] be promptly refunded  
16 to the taxpayer from money appropriated for tax refund purposes.

17 (c) A claim for a refund must:

18 (1) be written;

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

21 (3) be filed before the later of the:

22 (A) expiration of the applicable limitation  
23 period as provided by this code; or

24 (B) [~~before the~~] expiration of two years [~~six~~  
25 months] after the date a jeopardy or deficiency determination or a  
26 notice of audit results indicating that no additional tax is due is  
27 issued [~~becomes final, whichever period expires later~~].

1            (c-1) Notwithstanding Sections 111.104(c), 111.206(d), and  
2 111.207(c), a claim for a refund may not be filed after the eighth  
3 anniversary of the date the tax was due.

4            ~~(d) [A refund claim for an amount of tax that has been found~~  
5 ~~due in a jeopardy or deficiency determination is limited to the~~  
6 ~~amount of tax, penalty, and interest and to the tax payment period~~  
7 ~~for which the determination was issued.]~~ The failure to file a  
8 timely tax refund claim is a waiver of any demand against the state  
9 for an alleged overpayment.

10            SECTION 6. Section 111.1042(b), Tax Code, is amended to  
11 read as follows:

12            (b) An informal review under this section is not a hearing  
13 or contested case under Chapter 2001, Government Code, provided  
14 that an informal review of a refund claim is an administrative  
15 proceeding for purposes of this title.

16            SECTION 7. Section 111.105(e), Tax Code, is amended to read  
17 as follows:

18            (e) During the administrative hearing process, a person  
19 claiming a refund under Section 111.104 must submit documentation  
20 to enable the comptroller to verify the claim for refund. After  
21 discovery has been completed, the ~~[The]~~ comptroller may issue a  
22 notice of demand that all evidence to support the claim for refund  
23 must be produced before the expiration of a specified date in the  
24 notice. The specified date in the notice may not be earlier than  
25 180 days after the date of the notice ~~[refund is claimed]~~. The  
26 comptroller may not consider evidence produced after the specified  
27 date in the notice in an administrative hearing. The limitation

1 provided by this subsection does not apply to a judicial proceeding  
2 filed in accordance with Chapter 112.

3 SECTION 8. Section 111.107(a), Tax Code, is amended to read  
4 as follows:

5 (a) Except as otherwise expressly provided, a person may  
6 request a refund or a credit or the comptroller may make a refund or  
7 issue a credit for the overpayment of a tax imposed by this title at  
8 any time before the expiration of the period during which the  
9 comptroller may assess a deficiency for the tax and not thereafter  
10 unless the refund or credit is requested:

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

13 (2) under the provision of Section 111.104(c)(3)  
14 applicable to a refund claim filed after a jeopardy or deficiency  
15 determination becomes final; ~~or~~

16 (3) under Chapter 153, except Section 153.1195(e),  
17 153.121(d), 153.2225(e), or 153.224(d); or

18 (4) without regard to the expiration of any period of  
19 limitation, a person may request a refund or credit at any time on  
20 or before the second anniversary of the date the comptroller issues  
21 a deficiency or jeopardy determination or the eighth anniversary of  
22 the date the tax was due, whichever is later, and the refund or  
23 credit is limited to the reporting periods for which the deficiency  
24 or jeopardy determination was issued.

25 SECTION 9. Section 111.206, Tax Code, is amended by adding  
26 Subsection (c-1) and amending Subsection (d) to read as follows:

27 (c-1) The comptroller's assessment or suit for collection

1 authorized under this section shall be limited to the items and  
2 periods for which the final determination was issued.

3 (d) If a final determination results in the taxpayer having  
4 overpaid the amount of tax due the state, the taxpayer may file a  
5 claim for refund with the comptroller for the amount of the  
6 overpayment before the first anniversary of the date the final  
7 determination becomes final. If the comptroller assesses tax by  
8 issuing a deficiency determination within the period provided by  
9 Subsection (c), the taxpayer may file a claim for refund for an  
10 amount of tax that has been found due in a deficiency determination  
11 before the 180th day after the deficiency determination becomes  
12 final[, ~~but the claim is limited to the items and the tax payment~~  
13 ~~period for which the determination was issued~~].

14 SECTION 10. Section 111.207, Tax Code, is amended to read as  
15 follows:

16 Sec. 111.207. TOLLING OF LIMITATION PERIOD. (a) In  
17 determining the expiration date for a period when a tax imposed by  
18 this title may be assessed, collected, or refunded, the following  
19 periods are not considered:

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

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

26 (3) the period during which an administrative  
27 redetermination or refund proceeding [~~hearing~~] is pending before

1 the comptroller.

2 (b) ~~[The suspension of a period of limitation under~~  
3 ~~Subsection (a) is limited to the issues that were contested under~~  
4 ~~Subdivision (1), (2), or (3) of that subsection.~~

5 ~~[(c)]~~ A bankruptcy case commenced under Title 11 of the  
6 United States Code suspends the running of the period prescribed by  
7 any section of this title for the assessment or collection of any  
8 tax imposed by this title until the bankruptcy case is dismissed or  
9 closed. After the case is dismissed or closed, the running of the  
10 period resumes until finally expired.

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

16 SECTION 11. Chapter 112, Tax Code, is amended by adding  
17 Subchapter B-1 to read as follows:

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

20 Sec. 112.071. APPLICABILITY. This subchapter applies to  
21 any lawsuit to contend the payment of any tax or fee imposed by this  
22 title or collected by the comptroller under any law, including a  
23 local tax collected by the comptroller.

24 Sec. 112.072. PAYMENT UNDER PROTEST NOT REQUIRED. (a) A  
25 person may not be required to pay a disputed tax under protest as a  
26 prerequisite to filing a lawsuit contending any tax or fee imposed  
27 by this title or collected by the comptroller under any law,



1 including a local tax collected by the comptroller.

2 (b) A person may not be required to pay a disputed tax as a  
3 prerequisite to an appeal.

4 Sec. 112.073. NOTICE OF TAX ABATEMENT. (a) A person who  
5 wishes to file a lawsuit under this subchapter must first file a  
6 notice of tax abatement with the comptroller.

7 (b) Abatement of the tax may not be refused, provided that  
8 the taxpayer satisfies the requirements of this subchapter and  
9 timely files a lawsuit.

10 (c) The notice of tax abatement must be in writing on a form  
11 approved by the comptroller.

12 (d) The notice of tax abatement must be filed with the  
13 comptroller within the period stated in Section 111.104(c)(3) for  
14 the filing of a refund claim.

15 (e) A statement of the grounds that states fully and in  
16 detail each reason for contending the tax or fee that is the subject  
17 of the notice of tax abatement must accompany the notice of tax  
18 abatement.

19 Sec. 112.074. LIMITATIONS. (a) Except as provided by  
20 Subsection (b), a suit under this subchapter must be filed before  
21 the 91st day after the date the notice of tax abatement was filed,  
22 or the suit is barred.

23 (b) For the tax imposed under Chapter 171 for a regular  
24 annual period, if an extension is granted to the taxpayer under  
25 Section 171.202(c) for filing the report and the taxpayer files the  
26 report on or before the last date of the extension period, the  
27 notice of abatement of the tax required by this subchapter may be

1 filed with the report to cover the entire amount of tax paid for the  
2 period, and the suit for the recovery of the entire amount of tax  
3 paid for the period may be filed before the 91st day after the date  
4 the report is filed.

5 Sec. 112.075. CLASS ACTIONS. (a) This subchapter applies  
6 to a class action.

7 (b) For purposes of this section, a class action includes a  
8 suit brought under this subchapter by at least two persons who have  
9 filed a notice of tax abatement as required by this subchapter.

10 (c) In a class action brought under this subchapter, all  
11 taxpayers who are within the same class as the persons bringing the  
12 suit, who are represented in the class action, and who have abated  
13 payment of the disputed tax under this section are not required to  
14 file separate suits, but are entitled to and are governed by the  
15 decision rendered in the class action.

16 Sec. 112.076. SUIT AGAINST PUBLIC OFFICIALS. A suit under  
17 this subchapter must be brought against the public officials  
18 charged with the duty of collecting the tax or fee, the comptroller,  
19 and the attorney general.

20 Sec. 112.077. COPY OF WRITTEN STATEMENT OF GROUNDS. A copy  
21 of the written statement of grounds as originally filed with the  
22 notice of tax abatement must be attached to the original petition  
23 filed by the person contending the tax or fee with the court and to  
24 the copies of the original petition served on the comptroller, the  
25 attorney general, and the public official charged with the duty of  
26 collecting the tax or fee.

27 Sec. 112.078. TRIAL DE NOVO. The trial of the issues in a

1 lawsuit under this subchapter is de novo.

2 SECTION 12. Subchapter C, Chapter 112, Tax Code, is amended  
3 by adding Section 112.10101 to read as follows:

4 Sec. 112.10101. REQUIREMENTS BEFORE INJUNCTION. (a) An  
5 action for a restraining order or injunction that prohibits the  
6 assessment or collection of a tax or fee imposed by this title or  
7 collected by the comptroller under any law, including a local tax  
8 collected by the comptroller, or a statutory penalty assessed for  
9 the failure to pay the tax or fee may not be brought against the  
10 public official charged with the duty of collecting the tax or fee  
11 or a representative of the public official unless the applicant for  
12 the order or injunction first:

13 (1) files with the attorney general not later than the  
14 fifth day before the date the action is filed a statement of the  
15 grounds on which the order or injunction is sought; and

16 (2) files with the comptroller a written notice of  
17 abatement of tax on a form approved by the comptroller.

18 (b) A person may not be required to pay a disputed tax or fee  
19 under protest or post a bond to guarantee the payment of any  
20 disputed tax or fee as a prerequisite to filing an action under  
21 this section.

22 SECTION 13. Section 112.1011(a), Tax Code, is amended to  
23 read as follows:

24 (a) A court may not issue a restraining order or consider  
25 the issuance of an injunction that prohibits the assessment or  
26 collection of an amount described by Section 112.10101(a)  
27 [~~112.101(a)~~] unless the applicant for the order or injunction

1 demonstrates that:

2 (1) irreparable injury will result to the applicant if  
3 the order or injunction is not granted;

4 (2) no other adequate remedy is available to the  
5 applicant; and

6 (3) the applicant has a reasonable possibility of  
7 prevailing on the merits of the claim.

8 SECTION 14. Section 112.108, Tax Code, is amended to read as  
9 follows:

10 Sec. 112.108. OTHER ACTIONS PROHIBITED. Except for a  
11 restraining order or injunction issued as provided by this  
12 subchapter, a court may not issue a restraining order, injunction,  
13 ~~[declaratory judgment,]~~ writ of mandamus or prohibition, order  
14 requiring the payment of taxes or fees into the registry or custody  
15 of the court, or other similar legal or equitable relief against the  
16 state or a state agency relating to the applicability, assessment,  
17 collection, or constitutionality of a tax or fee covered by this  
18 subchapter or the amount of the tax or fee due~~[, provided, however,~~  
19 ~~that after filing an oath of inability to pay the tax, penalties,~~  
20 ~~and interest due, a party may be excused from the requirement of~~  
21 ~~prepayment of tax as a prerequisite to appeal if the court, after~~  
22 ~~notice and hearing, finds that such prepayment would constitute an~~  
23 ~~unreasonable restraint on the party's right of access to the~~  
24 ~~courts].~~ The court may grant such relief as may be reasonably  
25 required by the circumstances. A grant of declaratory relief  
26 against the state or a state agency shall not entitle the winning  
27 party to recover attorney fees.

1 SECTION 15. Section 151.508, Tax Code, is amended to read as  
2 follows:

3 Sec. 151.508. OFFSETS. In making a determination, the  
4 comptroller shall [~~may~~] offset an overpayment for one or more  
5 periods against an underpayment, penalty, and interest accrued on  
6 the underpayment for the same period or one or more other periods,  
7 provided the taxpayer may elect not to accept the offset. Any  
8 interest accrued on the overpayment shall be included in the  
9 offset.

10 SECTION 16. Section 151.511(c), Tax Code, is amended to  
11 read as follows:

12 (c) If an additional claim is asserted, the petitioner is  
13 entitled to a 90-day [~~30-day~~] continuance of the hearing to permit  
14 the petitioner to obtain and present evidence applicable to the  
15 items on which the additional claim is based.

16 SECTION 17. The following provisions of the Tax Code are  
17 repealed:

- 18 (1) Section 111.1042(d);
- 19 (2) Section 111.107(b);
- 20 (3) Subchapter B, Chapter 112;
- 21 (4) Section 112.101; and
- 22 (5) Section 112.104.

23 SECTION 18. (a) This Act applies only to a claim for a  
24 refund made on or after the effective date of this Act, without  
25 regard to whether the taxes that are the subject of the claim were  
26 due before, on, or after that date.

27 (b) This Act, including Subchapter B-1, Chapter 112, Tax

1 Code, as added by this Act, and Section 112.10101, Tax Code, as  
2 added by this Act, applies only to a lawsuit or action filed on or  
3 after the effective date of this Act. A lawsuit or action filed  
4 before the effective date of this Act is governed by the law  
5 applicable to the lawsuit or action immediately before the  
6 effective date of this Act, and that law is continued in effect for  
7 that purpose.

8 SECTION 19. This Act takes effect September 1, 2007.