

By: Laubenberg

H.B. No. 4005

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 101.0022 to read as follows:

Sec. 101.0022. 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, evaluated, or promoted based on the  
14 amount of tax 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, 2008, 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 the right to a credit or that no  
27 additional tax is due becomes final [~~, whichever period expires~~

1 later].

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

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

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

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

17 SECTION 7. Section 111.107(a), Tax Code, is amended to read  
18 as follows:

19 (a) Except as otherwise expressly provided, a person may  
20 request a refund or a credit or the comptroller may make a refund or  
21 issue a credit for the overpayment of a tax imposed by this title at  
22 any time before the expiration of the period during which the  
23 comptroller may assess a deficiency for the tax and not thereafter  
24 unless the refund or credit is requested:

25 (1) under Subchapter B-1, [~~B-01~~] Chapter 112, and the  
26 refund is made or the credit is issued under a court order;

27 (2) under the provision of Section 111.104(c)(3)

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

3 (3) under Chapter 162, except Section 162.126(f),  
4 162.128(d), 162.228(f), or 162.230(d); or

5 (4) without regard to the expiration of any period of  
6 limitation, at any time on or before the second anniversary of the  
7 date a jeopardy or deficiency determination becomes final or the  
8 eighth anniversary of the date the tax was due, whichever is later,  
9 and the refund or credit is limited to the reporting periods for  
10 which the jeopardy or deficiency determination was issued.

11 SECTION 8. Section 111.206, Tax Code, is amended by adding  
12 Subsection (c-1) and amending Subsection (d) to read as follows:

13 (c-1) The comptroller's assessment or suit for collection  
14 authorized under this section shall be limited to the items and  
15 periods for which the final determination was issued.

16 (d) If a final determination results in the taxpayer having  
17 overpaid the amount of tax due the state, the taxpayer may file a  
18 claim for refund with the comptroller for the amount of the  
19 overpayment before the first anniversary of the date the final  
20 determination becomes final. If the comptroller assesses tax by  
21 issuing a deficiency determination within the period provided by  
22 Subsection (c), the taxpayer may file a claim for refund for an  
23 amount of tax that has been found due in a deficiency determination  
24 before the 180th day after the deficiency determination becomes  
25 final~~[, but the claim is limited to the items and the tax payment~~  
26 ~~period for which the determination was issued]~~.

27 SECTION 9. Section 111.207, Tax Code, is amended to read as

1 follows:

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

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

9           (2) the period during which a judicial proceeding is  
10 pending in a court of competent jurisdiction to determine the  
11 amount of the tax due;

12           (3) the period during which an administrative  
13 redetermination or refund proceeding [~~hearing~~] is pending before  
14 the comptroller; and

15           (4) the period during which an indictment or  
16 information is pending for a felony offense related to the  
17 administration of the Tax Code against any taxpayer or any person  
18 personally liable or potentially personally liable for the payment  
19 of the tax under Section [111.0611](#).

20           (b) [~~The suspension of a period of limitation under~~  
21 ~~Subsection (a)(1), (2), or (3) is limited to the issues that were~~  
22 ~~contested under those subdivisions.~~

23           [~~(c)~~] A bankruptcy case commenced under Title 11 of the  
24 United States Code suspends the running of the period prescribed by  
25 any section of this title for the assessment or collection of any  
26 tax imposed by this title until the bankruptcy case is dismissed or  
27 closed. After the case is dismissed or closed, the running of the

1 period resumes until finally expired.

2 (c) In determining the expiration date for filing a refund  
3 claim for a tax imposed by this title, the period during which an  
4 administrative proceeding is pending before the comptroller or the  
5 State Office of Administrative Hearings for the same period and  
6 type of tax is not considered.

7 SECTION 10. Chapter 112, Tax Code, is amended by adding  
8 Subchapter B-1 to read as follows:

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

11 Sec. 112.071. APPLICABILITY. This subchapter applies to  
12 any lawsuit to contest the payment of any tax or fee imposed by this  
13 title or collected by the comptroller under any law, including a  
14 local tax collected by the comptroller.

15 Sec. 112.072. PAYMENT UNDER PROTEST NOT REQUIRED. (a) A  
16 person may not be required to pay a disputed tax under protest as a  
17 prerequisite to filing a lawsuit contesting any tax or fee imposed  
18 by this title or collected by the comptroller under any law,  
19 including a local tax collected by the comptroller.

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

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

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



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

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

6       (e) A statement of the grounds that states each reason for  
7 contesting the tax or fee that is the subject of the notice of tax  
8 abatement must accompany the notice of tax abatement.

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

13       (b) For the tax imposed under Chapter 171 for a regular  
14 annual period, if an extension is granted to the taxpayer under  
15 Section 171.202(c) for filing the report and the taxpayer files the  
16 report on or before the last date of the extension period, the  
17 notice of abatement of the tax required by this subchapter may be  
18 filed with the report to cover the entire amount of tax paid for the  
19 period, and the suit for the recovery of the entire amount of tax  
20 paid for the period may be filed before the 91st day after the date  
21 the report is filed.

22       Sec. 112.075. CLASS ACTIONS. (a) This subchapter applies  
23 to a class action.

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

27       (c) In a class action brought under this subchapter, all

1 taxpayers who are within the same class as the persons bringing the  
2 suit, who are represented in the class action, and who have abated  
3 payment of the disputed tax under this section are not required to  
4 file separate suits, but are entitled to and are governed by the  
5 decision rendered in the class action.

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

10 Sec. 112.077. COPY OF WRITTEN STATEMENT OF GROUNDS. A copy  
11 of the written statement of grounds as originally filed with the  
12 notice of tax abatement must be attached to the original petition  
13 filed by the person contesting the tax or fee with the court and to  
14 the copies of the original petition served on the comptroller, the  
15 attorney general, and the public official charged with the duty of  
16 collecting the tax or fee.

17 Sec. 112.078. TRIAL DE NOVO. The trial of the issues in a  
18 lawsuit under this subchapter is de novo.

19 SECTION 11. Subchapter C, Chapter 112, Tax Code, is amended  
20 by adding Section 112.10101 to read as follows:

21 Sec. 112.10101. REQUIREMENTS BEFORE INJUNCTION. (a) An  
22 action for a restraining order or injunction that prohibits the  
23 assessment or collection of a tax or fee imposed by this title or  
24 collected by the comptroller under any law, including a local tax  
25 collected by the comptroller, or a statutory penalty assessed for  
26 the failure to pay the tax or fee may not be brought against the  
27 public official charged with the duty of collecting the tax or fee

1 or a representative of the public official unless the applicant for  
2 the order or injunction first:

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

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

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

12 SECTION 12. Section 112.1011(a), Tax Code, is amended to  
13 read as follows:

14 (a) A court may not issue a restraining order or consider  
15 the issuance of an injunction that prohibits the assessment or  
16 collection of an amount described by Section 112.10101(a)  
17 [~~112.101(a)~~] unless the applicant for the order or injunction  
18 demonstrates that:

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

21 (2) no other adequate remedy is available to the  
22 applicant; and

23 (3) the applicant has a reasonable possibility of  
24 prevailing on the merits of the claim.

25 SECTION 13. Section 112.1012, Tax Code, is amended to read  
26 as follows:

27 Sec. 112.1012. COUNTERCLAIM. The state may bring a

1 counterclaim in a suit for a temporary or permanent injunction  
2 brought under this subchapter if the counterclaim relates to taxes  
3 or fees imposed under the same statute and during the same period as  
4 the taxes or fees that are the subject of the suit and if the  
5 counterclaim is filed not later than the 30th day before the date  
6 set for trial on the merits of the application for a temporary or  
7 permanent injunction. The state is not required to make an  
8 assessment of the taxes or fees subject to the counterclaim under  
9 any other statute~~[, and the period of limitation applicable to an~~  
10 ~~assessment of the taxes or fees does not apply to a counterclaim~~  
11 ~~brought under this section].~~

12 SECTION 14. Section [112.108](#), Tax Code, is amended to read as  
13 follows:

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

1 courts]. The court may grant such relief as may be reasonably  
2 required by the circumstances. A grant of declaratory relief  
3 against the state or a state agency shall not entitle the winning  
4 party to recover attorney fees.

5 SECTION 15. Section 112.1512, Tax Code, is amended to read  
6 as follows:

7 Sec. 112.1512. COUNTERCLAIM. The state may bring a  
8 counterclaim in a suit brought under this subchapter if the  
9 counterclaim relates to taxes or fees imposed under the same  
10 statute and during the same period as the taxes or fees that are the  
11 subject of the suit and if the counterclaim is filed not later than  
12 the 30th day before the date set for trial on the merits of the suit.  
13 The state is not required to make an assessment of the taxes or fees  
14 subject to the counterclaim under any other statute[, and the  
15 ~~period of limitation applicable to an assessment of the taxes or~~  
16 ~~fees does not apply to a counterclaim brought under this section].~~

17 SECTION 16. Section 151.508, Tax Code, is amended to read as  
18 follows:

19 Sec. 151.508. OFFSETS. In making a determination, the  
20 comptroller shall ~~may~~ offset an overpayment for one or more  
21 periods against an underpayment, penalty, and interest accrued on  
22 the underpayment for the same period or one or more other periods,  
23 provided the taxpayer may elect not to accept the offset. Any  
24 interest accrued on the overpayment shall be included in the  
25 offset.

26 SECTION 17. Section 151.511(c), Tax Code, is amended to  
27 read as follows:

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

5 SECTION 18. Section 403.202(a), Government Code, is amended  
6 to read as follows:

7 (a) If a person who is required to pay to any department of  
8 the state government an occupation, excise, gross receipts,  
9 franchise, license, or privilege tax or fee, other than a tax or fee  
10 to which Subchapter B-1 [~~B~~], Chapter 112, Tax Code, applies or a tax  
11 or other amount imposed under Subtitle A, Title 4, Labor Code,  
12 contends that the tax or fee is unlawful or that the department may  
13 not legally demand or collect the tax or fee, the person shall pay  
14 the amount claimed by the state, and if the person intends to bring  
15 suit under this subchapter, the person must submit with the payment  
16 a protest.

17 SECTION 19. Section 2003.101(e), Government Code, is  
18 amended to read as follows:

19 (e) Notwithstanding Section 2001.058, the comptroller may  
20 not change a finding of fact or conclusion of law made by the  
21 administrative law judge or vacate or modify an order issued by the  
22 administrative law judge [~~only if the comptroller:~~

23 [~~(1) determines that the administrative law judge:~~

24 [~~(A) did not properly apply or interpret~~  
25 ~~applicable law, then existing comptroller rules or policies, or~~  
26 ~~prior administrative decisions, or~~

27 [~~(B) issued a finding of fact that is not~~

1 ~~supported by a preponderance of the evidence, or~~  
2  ~~[(2) determines that a comptroller policy or a prior~~  
3  ~~administrative decision on which the administrative law judge~~  
4  ~~relied is incorrect].~~

5 SECTION 20. The following provisions are repealed:

- 6 (1) Section 2003.101(f), Government Code;
- 7 (2) Section 111.0041(c), Tax Code;
- 8 (3) Section 111.1042(d), Tax Code;
- 9 (4) Section 111.105(e), Tax Code;
- 10 (5) Section 111.107(b), Tax Code;
- 11 (6) Subchapter B, Chapter 112, Tax Code;
- 12 (7) Section 112.101, Tax Code;
- 13 (8) Section 112.104, Tax Code; and
- 14 (9) Section 112.151(f), Tax Code.

15 SECTION 21. (a) This Act applies only to a claim for a  
16 refund made on or after the effective date of this Act, without  
17 regard to whether the taxes that are the subject of the claim were  
18 due before, on, or after that date.

19 (b) This Act, including Subchapter B-1, Chapter 112, Tax  
20 Code, as added by this Act, and Section 112.10101, Tax Code, as  
21 added by this Act, applies only to a lawsuit or action filed on or  
22 after the effective date of this Act. A lawsuit or action filed  
23 before the effective date of this Act is governed by the law  
24 applicable to the lawsuit or action immediately before the  
25 effective date of this Act, and that law is continued in effect for  
26 that purpose.

27 SECTION 22. This Act takes effect September 1, 2015.