

BILL ANALYSIS

C.S.H.B. 2080
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Ways & Means
Committee Report (Substituted)

BACKGROUND AND PURPOSE

There have been calls for the state to ease the financial burden that accompanies the requirement for taxpayers filing suit in protest of their taxes to first pay the amount under protest. This precondition on such a filing limits access to the courts and is particularly challenging for Texans unable to pay that amount. C.S.H.B. 2080 seeks to ease the burden on taxpayers and ensure that all Texans, regardless of means, are able to access the taxpayer suit processes by establishing a new type of taxpayer protest suit that does not require prior payment of the amount in protest.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

Tax Code Provisions

C.S.H.B. 2080 amends the Tax Code to set out and revise provisions relating to taxpayers' suits.

Suit After Redetermination

C.S.H.B. 2080 establishes procedures with respect to a taxpayer suit in which a person may sue the comptroller of public accounts to dispute an amount of tax, penalty, or interest assessed in a deficiency determination or jeopardy determination if the person has taken the following actions:

- filed a request for redetermination;
- obtained a redetermination that includes a finding by the comptroller of the disputed and undisputed amounts; and
- filed a motion for rehearing of the redetermination that complies with the Administrative Procedure Act and states the specific grounds of error and the disputed amounts associated with those grounds of error.

C.S.H.B. 2080 requires the person bringing the suit to pay the redetermination amounts that are not disputed in the motion for rehearing but establishes that the failure to pay an undisputed amount does not affect the jurisdiction of a court to consider a valid suit. The bill, as follows:

- gives the person bringing the suit the option to pay the disputed amount but establishes that the disputed amount that is not paid and that is ultimately determined to be due in a final judgment accrues penalties and interest;

- provides that, after the comptroller has been timely served in a valid suit, the comptroller and the attorney general are enjoined from collecting disputed amounts from the person bringing the suit during the pendency of the suit but are not enjoined from asserting tax liens; and
- provides that damages may be awarded under applicable state law if the court determines that all or part of the enjoined collection amounts were disputed solely for delay.

C.S.H.B. 2080 does the following with respect to the procedures for a redetermination suit:

- sets out provisions relating to the filing of the suit;
- prohibits a person from intervening in the suit;
- sets out requirements for the original petition and records associated with the suit;
- provides for the state to bring a counterclaim in the suit;
- limits the issues that may be raised in the suit to the grounds of error in the motion for the rehearing;
- establishes that the suit applies only to a tax liability period considered in the comptroller's redetermination;
- establishes that the attorney general represents the comptroller in the suit and that issues in the suit are tried de novo; and
- provides for the applicability of the rule of res judicata in the suit.

C.S.H.B. 2080 does the following with respect to a judgment in a redetermination suit:

- requires the amount of a judgment refunding disputed taxes, penalties, or interest paid to the comptroller to be credited against any state tax, penalty, or interest due from the plaintiff;
- requires the remainder of the amount of a judgment not credited to be refunded to the plaintiff; and
- entitles the plaintiff to interest on the amount of tax refunded in a judgment for the plaintiff that accrues during a specified period in an amount equal to the amount of interest that would be due if the tax had been deposited in the comptroller's suspense account.

Suit After Protest Payment

C.S.H.B. 2080 revises provisions providing for a suit against the state to recover taxes paid under protest to do the following:

- change the scope of the authorized suit from the recovery of an occupation, excise, gross receipts, franchise, license, or privilege tax or fee required to be paid to the state to the recovery of any tax, penalty, or interest assessed in a deficiency determination;
- require the person bringing the suit to pay the amount assessed in the deficiency determination and submit with the payment a written protest stating fully and in detail each reason for recovering the amount paid;
- establish a uniform deadline of six months for submitting a protest after the deficiency determination becomes final;
- remove the provision establishing an exception to the 91-day deadline for a suit to be brought after the date the protest payment was made for protests against the franchise tax on a report for which a filing extension was granted;
- provide that provisions requiring the payment of a protested tax before bringing suit and provisions establishing certain procedural requirements in bringing the suit are not severable from other provisions governing such a suit;
- require the attorney general to represent the comptroller in the suit;
- prohibit a person from intervening in the suit; and
- remove the requirement for the officer who receives a payment made under protest to send daily to the comptroller the payments received, a list of the persons making the payments, and a written statement that the payments were made under protest.

C.S.H.B. 2080 repeals provisions authorizing a petitioner to amend a petition to include additional taxes paid under protest before the hearing. The bill also repeals provisions requiring a person who brought a suit to continue to pay additional taxes under protest as they become due during the appeal of the judgment of the trial court in the suit.

General Provisions

C.S.H.B. 2080 repeals provisions providing for a taxpayer suit to restrain or enjoin the assessment or collection of a state or local tax or fee collected by the comptroller under certain circumstances.

C.S.H.B. 2080 prohibits attorney's fees from being awarded in a suit seeking legal or equitable relief against the state, a state agency, or an officer of the state relating to the applicability, assessment, collection, constitutionality, or amount of a tax, fee, or penalty imposed by the state or an applicable local government or collected by the comptroller under any other law.

Government Code Provisions

C.S.H.B. 2080 amends the Government Code to exempt a redetermination suit or a suit for a tax refund from the applicability of provisions governing suits brought by persons owing taxes or fees.

Repealed Provisions

C.S.H.B. 2080 repeals Section 403.212(e), Government Code, and the following provisions of the Tax Code:

- Section 112.056;
- Section 112.057;
- Sections 112.058(d) and (e); and
- Subchapter C, Chapter 112.

EFFECTIVE DATE

September 1, 2021.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2080 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute does not repeal provisions providing for a type of taxpayer suit under which a taxpayer is required to pay the disputed amount of an applicable tax or fee prior to bringing suit against the state. The substitute instead retains those provisions and revises them to do the following:

- change the scope of the authorized suit;
- establish a uniform deadline for submitting a protest;
- remove a provision establishing an exception to the deadline for a suit to be brought after the date the protest payment was made;
- provide that provisions requiring the payment of a protested tax before bringing suit and provisions establishing certain procedural requirements in bringing the suit are not severable from other provisions governing the suit;
- require the attorney general to represent the comptroller in the suit;
- prohibit a person from intervening in the suit; and

- remove the requirement for the officer who receives a payment made under protest to send daily to the comptroller the payments received, a list of the persons making the payments, and a written statement that the payments were made under protest.

The substitute extends the deadline established in the introduced version to file a suit after redetermination from 60 days after the issue date of the denial of the motion for rehearing to 90 days after that date.