

## **BILL ANALYSIS**

Senate Research Center

S.B. 903  
By: Perry  
Finance  
5/24/2021  
Enrolled

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

The Tax Code currently prohibits a taxpayer from appealing the denial of a refund claim directly to a district court. After the Comptroller of Public Accounts of the State of Texas (comptroller) denies a refund claim, the taxpayer must request a refund hearing, complete the hearing process at the State Office of Administrative Hearings (SOAH), and file a motion for rehearing, before filing suit.

Taxpayers claim, however, this process often involves issues that ultimately must be determined by a court (i.e., challenging the constitutionality of a statute, seeking to reverse comptroller policy or precedent). Further, the hearings process at SOAH overwhelmingly finds in favor of the state. For many taxpayers, a mandatory administrative hearing prior to being able to file in a district court is unnecessary, expensive, and unreasonably delays the opportunity to resolve their tax case.

(Original Author's/Sponsor's Statement of Intent)

S.B. 903 amends current law relating to suits for tax refunds.

### **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 Subchapter C, Chapter 111, Tax Code, by adding Section 111.106, as follows:

Sec. 111.106. TAX REFUND: NOTICE OF INTENT TO BYPASS HEARING. (a) Authorizes a person claiming a refund under Section 111.104 (Refunds) to file with the Comptroller of Public Accounts of the State of Texas (comptroller) a notice of intent to bypass the hearing under Section 111.105 (Tax Refund: Hearing). Requires that the notice of intent:

- (1) be filed on or before the 60th day after the date the comptroller issues a letter denying the claim for refund;
- (2) be in writing;
- (3) assert the material facts and each specific legal basis on which a refund is claimed; and
- (4) specify the amount of the refund claimed.

(b) Authorizes a person who files a notice of intent under Subsection (a) to bypass the hearing under Section 111.105 and bring a suit under Subchapter D (Suit for Tax Refund), Chapter 112 (Taxpayers' Suits), if:

(1) the person participated in a conference under Subsection (c), in which case the suit is required to be filed on or before the 60th day after the date the conference concludes or a later date agreed to by the comptroller; or

(2) the comptroller does not provide notice in the time required by Subsection (d) that a conference is required, in which case the suit is required to be filed on or before the 90th day after the date the notice of intent was filed.

(c) Authorizes the comptroller to require a conference between a person who filed a notice of intent under Subsection (a) and a designated officer or employee of the comptroller to clarify any fact or legal issue in dispute regarding the refund claim and to discuss the availability of additional documentation that may assist in resolving outstanding issues regarding the claim. Authorizes the person who filed the notice of intent to amend a material fact or legal basis described by Subsection (a)(3) following the conference if the comptroller agrees in writing to the amendment.

(d) Requires the comptroller, if the comptroller requires a conference under Subsection (c), to notify the person of the conference requirement not later than the 30th day after the date the notice of intent under Subsection (a) was filed. Requires that the notice of the conference requirement be in writing and include a date and time for the conference. Requires that the conference date provided in the notice be no later than the 90th day after the date the notice of intent was filed.

(e) Authorizes the person who filed the notice of intent under Subsection (a) to request to reschedule the conference date provided in the notice under Subsection (d). Requires the comptroller to make a good faith effort to accommodate the request. Authorizes the person, if the comptroller and the person who filed the notice of intent do not agree on or before the 90th day after the date the notice of intent was filed to a rescheduled date for the conference, to rescind the notice of intent on or before the 120th day after the date the notice of intent was filed and request a hearing under Section 111.105.

(f) Provides that except as provided by Subsection (e), a person who files a notice of intent under Subsection (a) waives the person's right to a hearing under Section 111.105.

SECTION 2. Amends Sections 112.151 (a), (c), and (d), Tax Code, as follows:

(a) Authorizes a person to sue the comptroller to recover an amount of tax, penalty, or interest that has been the subject of a tax refund claim if the person:

(1) makes nonsubstantive changes to this subdivision;

(2) either:

(A) creates this paragraph from existing text and makes nonsubstantive changes; or

(B) is authorized to bring the suit under Section 111.106(b); and

(3) makes a nonsubstantive change to this subdivision.

(c) Requires a person who satisfies the requirements of Subsection(a)(2)(A) (relating to filing a certain motion for rehearing that has been denied by the comptroller) to file the suit, rather than requires that the suit be filed, before the expiration of 60 days, rather than the expiration of 30 days, after the issue date of the denial of the motion for rehearing or it is barred. Requires a person who satisfies the requirements of Subsection(a)(2)(B) to file the suit during the time provided by Section 111.106(b) or it is barred.

(d) Requires that a copy of the motion for rehearing filed under Section 111.105 or the notice of intent filed under Section 111.106(a), as applicable, rather than a copy of the motion for rehearing filed under Section 111.105, be attached to the original petition filed with the court and to the copies of the original petition served on the comptroller and the attorney general.

SECTION 3. Amends Section 112.152, Tax Code, as follows:

Sec. 112.152. ISSUES IN SUIT. (a) Provides that the only issues that are authorized to be raised in a suit under Subchapter D are, as applicable, the grounds of error contained in the motion for rehearing or material facts and legal bases contained in the notice of intent filed under Section 111.106(a). Makes a nonsubstantive change.

(b) Provides that the suit applies only to a tax liability period considered in the comptroller's decision or covered by the notice of intent filed under Section 111.106, as applicable, rather than only to a tax liability period considered in the comptroller's decision.

SECTION 4. Provides that this Act applies to a claim for a refund that is pending or filed on or after the effective date of this Act, without regard to whether the taxes that are the subject of the claim were due before, on, or after the date.

SECTION 5. Effective date: September 1, 2021.