By:  Huffman S.B. No. 769

A BILL TO BE ENTITLED

AN ACT

relating to taxpayers' suits.

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

SECTION 1.  Section 403.202(a), Government Code, is amended to read as follows:

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

SECTION 2.  Subchapter J, Chapter 403, Government Code, is amended by adding Section 403.222 to read as follows:

Sec. 403.222.  APPLICABILITY. This subchapter does not apply to a suit under Chapter 112, Tax Code.

SECTION 3.  Section 111.207(a), Tax Code, is amended to read as follows:

(a)  In determining the expiration date for a period when a tax imposed by this title may be assessed, collected, or refunded, the following periods are not considered:

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

[~~(2)~~]  the period during which a judicial proceeding is pending in a court of competent jurisdiction to determine the amount of the tax due;

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

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

SECTION 4.  Subchapter A, Chapter 112, Tax Code, is amended by adding Section 112.003 to read as follows:

Sec. 112.003.  ATTORNEY FEES. Except for a sanction under Chapter 10, Civil Practice and Remedies Code, or the Texas Rules of Civil Procedure, attorney's fees may not be 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 this title or Title 3 or collected by the comptroller under any other law.

SECTION 5.  The heading to Subchapter B, Chapter 112, Tax Code, is amended to read as follows:

SUBCHAPTER B. SUIT AFTER REDETERMINATION [~~PROTEST PAYMENT~~]

SECTION 6.  Subchapter B, Chapter 112, Tax Code, is amended by adding Sections 112.061, 112.062, 112.063, 112.064, 112.065, 112.066, 112.067, and 112.068 to read as follows:

Sec. 112.061.  SUIT AFTER REDETERMINATION. (a) A person may sue the comptroller to dispute an amount of tax, penalty, or interest assessed in a deficiency redetermination or jeopardy redetermination under Chapter 111 if the person has:

(1)  filed a request for redetermination under Chapter 111;

(2)  obtained a redetermination under Chapter 111 that includes a finding by the comptroller of the disputed and undisputed amounts; and

(3)  filed a motion for rehearing of the redetermination that complies with Chapter 2001, Government Code, and that states the specific grounds of error and the disputed amounts associated with the grounds of error.

(b)  A person bringing a suit under this subchapter shall pay, as provided by Chapter 111, the redetermination amounts that are not disputed in the motion for rehearing. The failure to pay an undisputed amount does not affect the jurisdiction of a court to consider a suit that complies with Subsection (a).

(c)  A person bringing a suit under this subchapter may pay the disputed amounts as provided by Chapter 111. A disputed amount that is not paid as provided by Chapter 111 and that is determined to be due in a final judgment accrues penalties and interest as provided by Chapter 111. After the comptroller has been timely served in a suit that complies with this subchapter, the comptroller and the attorney general are enjoined from collecting disputed amounts during the pendency of the suit but are not enjoined from asserting tax liens. Damages may be awarded under Chapter 65, Civil Practice and Remedies Code, if the court determines that all or part of the enjoined collection amounts were disputed solely for delay.

(d)  A suit under this subchapter must be brought against both the comptroller and the attorney general.

(e)  A suit under this subchapter must be filed before the expiration of 60 days after the issue date of the denial of the motion for rehearing or it is barred.

(f)  The disputed and undisputed amounts of the redetermination must be set out in the original petition. A copy of the motion for rehearing must 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.

(g)  A person may not intervene in a suit under this subchapter.

Sec. 112.062.  RECORDS. A person shall produce, in connection with a suit under this subchapter, contemporaneous records and supporting documentation appropriate to the tax or fee for the transactions in question to substantiate and enable verification of the person's claim relating to the amount of the tax, penalty, or interest that has been assessed or collected, as required by Section 111.0041.

Sec. 112.063.  COUNTERCLAIM. (a) The state may bring a counterclaim in a suit under this subchapter if:

(1)  the counterclaim relates to taxes or fees imposed under the same statute and during the same period as the taxes or fees that are the subject of the suit; and

(2)  the counterclaim is filed not later than the 30th day before the date set for trial on the merits of the suit.

(b)  The state is not required to make an assessment of the taxes or fees subject to the counterclaim under any other statute, and the period of limitation applicable to an assessment of the taxes or fees does not apply to a counterclaim brought under this section.

Sec. 112.064.  ISSUES IN SUIT. (a) The grounds of error contained in the motion for rehearing are the only issues that may be raised in a suit under this subchapter.

(b)  A suit under this subchapter applies only to a tax liability period considered in the comptroller's redetermination.

Sec. 112.065.  ATTORNEY GENERAL TO REPRESENT COMPTROLLER. The attorney general shall represent the comptroller in a suit under this subchapter.

Sec. 112.066.  TRIAL DE NOVO. In a suit under this subchapter, the issues shall be tried de novo as are other civil cases.

Sec. 112.067.  JUDGMENT. (a) The amount of a judgment refunding disputed taxes, penalties, or interest paid to the comptroller shall be credited against any tax, penalty, or interest imposed by this title and due from the plaintiff.

(b)  The remainder of the amount of a judgment not credited against a tax, penalty, or interest shall be refunded to the plaintiff.

(c)  The plaintiff is entitled to interest on the amount of tax refunded in a judgment for the plaintiff equal to the amount of interest that would be due if the tax had been deposited in the suspense account of the comptroller. The interest accrues beginning from the date that the tax was paid until:

(1)  the date that the amount is credited against the plaintiff's tax liability; or

(2)  a date determined by the comptroller that is not sooner than 10 days before the actual date on which a refund warrant is issued.

Sec. 112.068.  RES JUDICATA. The rule of res judicata applies in a suit under this subchapter only if the issues and the tax liability periods in controversy are the same as were decided in a previous final judgment entered in a Texas court of record in a suit between the same parties.

SECTION 7.  The following provisions are repealed:

(1)  Section 403.212(e), Government Code;

(2)  Sections 112.051, 112.052, 112.053, 112.054, 112.055, 112.056, 112.057, 112.058, 112.059, and 112.060, Tax Code; and

(3)  Subchapter C, Chapter 112, Tax Code.

SECTION 8.  The changes in law made by this Act apply only to a suit to dispute an amount of tax, penalty, or interest that becomes due and payable on or after the effective date of this Act. A suit to dispute an amount of tax, penalty, or interest that became due and payable before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

SECTION 9.  This Act takes effect September 1, 2021.