By:  Perry S.B. No. 903

(In the Senate - Filed March 1, 2021; March 11, 2021, read first time and referred to Committee on Finance; April 12, 2021, reported adversely, with favorable Committee Substitute by the following vote: Yeas 15, Nays 0; April 12, 2021, sent to printer.)

COMMITTEE VOTE

                    Yea Nay Absent  PNV

Nelson               X

Lucio                X

Bettencourt          X

Buckingham           X

Campbell             X

Creighton            X

Hancock              X

Huffman              X

Kolkhorst            X

Nichols              X

Perry                X

Schwertner           X

Taylor               X

West                 X

Whitmire             X

COMMITTEE SUBSTITUTE FOR S.B. No. 903 By:  Perry

A BILL TO BE ENTITLED

AN ACT

relating to suits for tax refunds.

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

SECTION 1.  Subchapter C, Chapter 111, Tax Code, is amended by adding Section 111.106 to read as follows:

Sec. 111.106.  TAX REFUND: NOTICE OF INTENT TO BYPASS HEARING. (a) A person claiming a refund under Section 111.104 may file with the comptroller a notice of intent to bypass the hearing under Section 111.105. The notice of intent must:

(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)  A person who files a notice of intent under Subsection (a) may bypass the hearing under Section 111.105 and bring a suit under Subchapter D, Chapter 112, if:

(1)  the person participated in a conference under Subsection (c), in which case the suit must 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 must be filed on or before the 90th day after the date the notice of intent was filed.

(c)  The comptroller may require a conference between a person who files 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. The person who filed the notice of intent may 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)  If the comptroller requires a conference under Subsection (c), the comptroller shall 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. The notice of the conference requirement must be in writing and include a date and time for the conference. The conference date provided in the notice must be no later than the 90th day after the date the notice of intent was filed.

(e)  The person who filed the notice of intent under Subsection (a) may request to reschedule the conference date provided in the notice under Subsection (d). The comptroller shall make a good faith effort to accommodate the request. 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, the person may 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)  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.  Sections 112.151(a), (c), and (d), Tax Code, are amended to read as follows:

(a)  A person may 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 [~~has~~]:

(1)  has filed a tax refund claim under Section 111.104 [~~of this code~~];

(2)  either:

(A)  has filed, as provided by Section 111.105 [~~of this code~~], a motion for rehearing that has been denied by the comptroller; or

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

(3)  has paid any additional tax found due in a jeopardy or deficiency determination that applies to the tax liability period covered in the tax refund claim.

(c)  A person who satisfies the requirement of Subsection (a)(2)(A) must file the [~~The~~] suit [~~must be filed~~] before the expiration of 60 [~~30~~] days after the issue date of the denial of the motion for rehearing or it is barred. A person who satisfies the requirement of Subsection (a)(2)(B) must file the suit during the time provided by Section 111.106(b) or it is barred.

(d)  The amount of the refund sought must be set out in the original petition. 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, [~~of this code~~] 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.

SECTION 3.  Section 112.152, Tax Code, is amended to read as follows:

Sec. 112.152.  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 are, as applicable, the:

(1)  grounds of error contained in the motion for rehearing; or

(2)  material facts and legal bases contained in the notice of intent filed under Section 111.106(a).

(b)  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.

SECTION 4.  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 that date.

SECTION 5.  This Act takes effect September 1, 2021.

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