

# SENATE AMENDMENTS

## 2<sup>nd</sup> Printing

By: Leman, Meyer, Thierry, Jetton, Hefner,  
et al.

H.B. No. 2080

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

Sec. 112.003. ATTORNEY'S 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

1 seeking legal or equitable relief against the state, a state  
2 agency, or an officer of the state relating to the applicability,  
3 assessment, collection, constitutionality, or amount of a tax, fee,  
4 or penalty imposed by this title or Title 3 or collected by the  
5 comptroller under any other law.

6 SECTION 4. Section 112.051, Tax Code, is amended to read as  
7 follows:

8 Sec. 112.051. PROTEST PAYMENT REQUIRED. (a) A person may  
9 bring a suit as authorized by Section 112.052 to dispute an amount  
10 of tax, penalty, or interest assessed in a deficiency determination  
11 under Chapter 111 only if the person has:

12 (1) paid the amount assessed in the deficiency  
13 determination; and

14 (2) submitted with the payment a written protest  
15 stating fully and in detail each reason for recovering the amount  
16 paid [~~If a person who is required to pay a tax or fee imposed by this~~  
17 ~~title or collected by the comptroller under any law, including a~~  
18 ~~local tax collected by the comptroller, contends that the tax or fee~~  
19 ~~is unlawful or that the public official charged with the duty of~~  
20 ~~collecting the tax or fee may not legally demand or collect the tax~~  
21 ~~or fee, the person shall pay the amount claimed by the state, and if~~  
22 ~~the person intends to bring suit under this subchapter, the person~~  
23 ~~must submit with the payment a protest].~~

24 (b) The written protest must be submitted and [~~in writing~~  
25 ~~and must state fully and in detail each reason for recovering]~~ the  
26 payment must be made not later than six months after the date the  
27 deficiency determination becomes final.

1           (c) This section and Section 112.052 are not severable from  
2 the other provisions of this subchapter. If this section or Section  
3 112.052 is held invalid for any reason, the entire subchapter is  
4 invalid [~~The protest payment must be made within the period of time~~  
5 ~~set out in Subdivision (3) of Subsection (c) of Section 111.104 of~~  
6 ~~this code for the filing of refund claims)].~~

7           SECTION 5. Section 112.052, Tax Code, is amended to read as  
8 follows:

9           Sec. 112.052. TAXPAYER SUIT AFTER PAYMENT UNDER PROTEST.

10          (a) A person may bring suit against the state to recover an amount  
11 of tax, penalty, or interest assessed in a deficiency determination  
12 under Chapter 111 [~~occupation, excise, gross receipts, franchise,~~  
13 ~~license, or privilege tax or fee required to be paid to the state]~~  
14 if the person has first paid the amount assessed [~~tax~~] under protest  
15 as required by Section 112.051 [~~of this code~~].

16          (b) A suit under this section must be brought before the  
17 91st day after the date the protest payment was made, or the suit is  
18 barred[, ~~except that for the tax imposed by Chapter 171 for a~~  
19 ~~regular annual period, if an extension is granted to the taxpayer~~  
20 ~~under Section 171.202(c) for filing the report and the taxpayer~~  
21 ~~files the report on or before the last date of the extension period,~~  
22 ~~the protest required by Section 112.051 may be filed with the report~~  
23 ~~to cover the entire amount of tax paid for the period, and suit for~~  
24 ~~the recovery of the entire amount of tax paid for the period may be~~  
25 ~~filed before the 91st day after the date the report is filed. If the~~  
26 ~~report is not filed on or before the last date of the extension~~  
27 ~~period, a protest filed with the report applies only to the amount~~

1 ~~of tax, if any, paid when the report is filed].~~

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

12 (d) A taxpayer shall produce contemporaneous records and  
13 supporting documentation appropriate to the tax [~~or fee~~] for the  
14 transactions in question to substantiate and enable verification of  
15 a taxpayer's claim relating to the amount of the tax, penalty, or  
16 interest that has been assessed or collected or will be refunded, as  
17 required by Section 111.0041.

18 SECTION 6. Section 112.053, Tax Code, is amended by  
19 amending Subsections (a) and (c) and adding Subsections (d) and (e)  
20 to read as follows:

21 (a) A suit authorized by this subchapter must be brought  
22 against the public official charged with the duty of collecting the  
23 tax [~~or fee~~], the comptroller, and the attorney general.

24 (c) A copy of the written protest as originally filed must  
25 be attached to the original petition filed by the person paying the  
26 tax, penalty, or interest [~~fee~~] with the court and to the copies of  
27 the original petition served on the comptroller, the attorney

1 general, and the public official charged with the duty of  
2 collecting the tax [~~or fee~~].

3 (d) The attorney general shall represent the comptroller in  
4 a suit under this subchapter.

5 (e) A person may not intervene in a suit under this  
6 subchapter.

7 SECTION 7. Section 112.058, Tax Code, is amended by  
8 amending Subsection (a) and adding Subsections (b) and (c) to read  
9 as follows:

10 (a) [~~Payments made under protest are to be handled as~~  
11 ~~follows:~~

12 [~~(1) An officer who receives payments made under~~  
13 ~~protest as required by Section 112.051 shall each day send to the~~  
14 ~~comptroller the payments, a list of the persons making the~~  
15 ~~payments, and a written statement that the payments were made under~~  
16 ~~protest.~~

17 [~~(2)~~] The comptroller shall, immediately on receipt of  
18 a payment made under protest under Section 112.051, deposit each  
19 portion of the payment to the credit of the account or fund  
20 [payments to each fund] to which the tax, penalty, or interest [~~or~~  
21 fee] paid under protest is allocated by law.

22 (b) [~~(3)~~] The comptroller shall maintain detailed records  
23 of payments made under protest under Section 112.051.

24 (c) An amount paid [~~(4) A payment]~~ under protest under  
25 Section 112.051 bears pro rata interest. The pro rata interest is  
26 the amount of interest earned by the amount paid under protest  
27 [~~protested funds~~].

1 SECTION 8. Section 112.059, Tax Code, is amended to read as  
2 follows:

3 Sec. 112.059. DISPOSITION OF PROTEST PAYMENTS BELONGING TO  
4 THE STATE. If a suit authorized by this subchapter is not brought  
5 in the manner or within the time required or if the suit is properly  
6 filed and results in a final determination that an amount paid under  
7 protest [~~a tax payment or a portion of a tax payment made under~~  
8 ~~protest~~], including the pro rata amount of interest earned on the  
9 amount [~~payment~~], belongs to the state, the comptroller shall  
10 ensure that the proper amount is [~~has been~~] deposited to the credit  
11 of the appropriate state account or fund.

12 SECTION 9. Sections 112.060(c) and (d), Tax Code, are  
13 amended to read as follows:

14 (c) Each [~~tax~~] refund warrant shall be drawn against the  
15 accounts or funds [~~each fund~~] to which the amounts [~~taxes~~] paid  
16 under protest are allocated by law. If there are not sufficient  
17 funds in an account or fund [~~each fund to which the taxes paid under~~  
18 ~~protest are allocated by law~~] to pay a refund required to be paid  
19 under Subsection (a) [~~of this section~~], [~~then~~] the comptroller  
20 shall draw the warrant against the General Revenue Fund or other  
21 account or fund [~~funds~~] from which refunds [~~refund appropriations~~]  
22 may be made, as the comptroller determines appropriate.

23 (d) The comptroller shall issue each [~~tax~~] refund warrant  
24 and shall deliver it to the person entitled to receive it.

25 SECTION 10. Chapter 112, Tax Code, is amended by adding  
26 Subchapter E to read as follows:

27 SUBCHAPTER E. SUIT AFTER REDETERMINATION

1       Sec. 112.201. SUIT AFTER REDETERMINATION. (a) A person may  
2 sue the comptroller to dispute an amount of tax, penalty, or  
3 interest assessed in a deficiency redetermination or jeopardy  
4 redetermination under Chapter 111 if the person has:

5           (1) filed a request for redetermination under Chapter  
6 111;

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

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

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

19       (c) A person bringing a suit under this subchapter may pay  
20 the disputed amounts as provided by Chapter 111. A disputed amount  
21 that is not paid as provided by Chapter 111 and that is determined  
22 to be due in a final judgment accrues penalties and interest as  
23 provided by Chapter 111. After the comptroller has been timely  
24 served in a suit that complies with this subchapter, the  
25 comptroller and the attorney general are enjoined from collecting  
26 disputed amounts from the person bringing the suit during the  
27 pendency of the suit but are not enjoined from asserting tax liens.

1 Damages may be awarded under Chapter 65, Civil Practice and  
2 Remedies Code, if the court determines that all or part of the  
3 enjoined collection amounts were disputed solely for delay.

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

6 (e) A suit under this subchapter must be filed before the  
7 expiration of 90 days after the issue date of the denial of the  
8 motion for rehearing or it is barred.

9 (f) The disputed and undisputed amounts of the  
10 redetermination must be set out in the original petition. A copy of  
11 the motion for rehearing must be attached to the original petition  
12 filed with the court and to the copies of the original petition  
13 served on the comptroller and the attorney general.

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

16 Sec. 112.202. RECORDS. A person shall produce, in  
17 connection with a suit under this subchapter, contemporaneous  
18 records and supporting documentation appropriate to the tax for the  
19 transactions in question to substantiate and enable verification of  
20 the person's claim relating to the amount of the tax, penalty, or  
21 interest that has been assessed or collected, as required by  
22 Section 111.0041.

23 Sec. 112.203. COUNTERCLAIM. (a) The state may bring a  
24 counterclaim in a suit under this subchapter if:

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



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

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

7           Sec. 112.204. ISSUES IN SUIT. (a) The grounds of error  
8 contained in the motion for rehearing are the only issues that may  
9 be raised in a suit under this subchapter.

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

12           Sec. 112.205. ATTORNEY GENERAL TO REPRESENT COMPTROLLER.  
13 The attorney general shall represent the comptroller in a suit  
14 under this subchapter.

15           Sec. 112.206. TRIAL DE NOVO. In a suit under this  
16 subchapter, the issues shall be tried de novo as are other civil  
17 cases.

18           Sec. 112.207. JUDGMENT. (a) The amount of a judgment  
19 refunding disputed taxes, penalties, or interest paid to the  
20 comptroller shall be credited against any tax, penalty, or interest  
21 imposed by this title and due from the plaintiff.

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

25           (c) The plaintiff is entitled to interest on the amount of  
26 tax refunded in a judgment for the plaintiff equal to the amount of  
27 interest that would be due if the tax had been deposited in the

1 suspense account of the comptroller. The interest accrues beginning  
2 from the date that the tax was paid until:

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

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

8 Sec. 112.208. RES JUDICATA. The rule of res judicata  
9 applies in a suit under this subchapter only if the issues and the  
10 tax liability periods in controversy are the same as were decided in  
11 a previous final judgment entered in a Texas court of record in a  
12 suit between the same parties.

13 SECTION 11. The following provisions are repealed:

- 14 (1) Section 403.212(e), Government Code;
- 15 (2) Sections 112.056 and 112.057, Tax Code;
- 16 (3) Sections 112.058(d) and (e), Tax Code; and
- 17 (4) Subchapter C, Chapter 112, Tax Code.

18 SECTION 12. The changes in law made by this Act apply only  
19 to a suit to dispute an amount of tax, penalty, or interest that  
20 becomes due and payable on or after the effective date of this Act.  
21 A suit to dispute an amount of tax, penalty, or interest that became  
22 due and payable before the effective date of this Act is governed by  
23 the law as it existed immediately before the effective date of this  
24 Act, and the former law is continued in effect for that purpose.

25 SECTION 13. This Act takes effect September 1, 2021.

**ADOPTED**

**MAY 19 2021**

*Latey Shaw*  
Secretary of the Senate

By: Leman / Huffman

H.B. No. 2080

Substitute the following for \_\_.B. No. \_\_\_\_\_:

By: *Jane Huffman*

C.S. \_\_.B. No. \_\_\_\_\_

A BILL TO BE ENTITLED

AN ACT

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

Sec. 112.003. ATTORNEY'S 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

1 seeking legal or equitable relief against the state, a state  
2 agency, or an officer of the state relating to the applicability,  
3 assessment, collection, constitutionality, or amount of a tax, fee,  
4 or penalty imposed by this title or Title 3 or collected by the  
5 comptroller under any other law.

6 SECTION 4. Section 112.051, Tax Code, is amended by  
7 amending Subsection (a) and adding Subsection (d) to read as  
8 follows:

9 (a) If a person who is required to pay a tax [~~or fee~~] imposed  
10 by this title or collected by the comptroller under any law,  
11 including a local tax collected by the comptroller, contends that  
12 the tax [~~or fee~~] is unlawful or that the public official charged  
13 with the duty of collecting the tax [~~or fee~~] may not legally demand  
14 or collect the tax [~~or fee~~], the person shall pay the amount claimed  
15 by the state, and if the person intends to bring suit under this  
16 subchapter, the person must submit with the payment a protest.

17 (d) This section and Section 112.052 are not severable from  
18 the other provisions of this subchapter. If this section or Section  
19 112.052 is held invalid for any reason, the entire subchapter is  
20 invalid.

21 SECTION 5. Section 112.052, Tax Code, is amended to read as  
22 follows:

23 Sec. 112.052. TAXPAYER SUIT AFTER PAYMENT UNDER PROTEST.

24 (a) A person may bring suit against the state to recover a [~~an~~  
25 ~~occupation, excise, gross receipts, franchise, license, or~~  
26 ~~privilege~~] tax [~~or fee~~] required to be paid to the state if the  
27 person has first paid the tax under protest as required by Section

1 112.051 [~~of this code~~].

2 (b) A suit under this section must be brought before the  
3 91st day after the date the protest payment was made, or the suit is  
4 barred[~~, except that for the tax imposed by Chapter 171 for a~~  
5 ~~regular annual period, if an extension is granted to the taxpayer~~  
6 ~~under Section 171.202(c) for filing the report and the taxpayer~~  
7 ~~files the report on or before the last date of the extension period,~~  
8 ~~the protest required by Section 112.051 may be filed with the report~~  
9 ~~to cover the entire amount of tax paid for the period, and suit for~~  
10 ~~the recovery of the entire amount of tax paid for the period may be~~  
11 ~~filed before the 91st day after the date the report is filed. If the~~  
12 ~~report is not filed on or before the last date of the extension~~  
13 ~~period, a protest filed with the report applies only to the amount~~  
14 ~~of tax, if any, paid when the report is filed].~~

15 (c) The state may bring a counterclaim in a suit brought  
16 under this section if the counterclaim relates to taxes [~~or fees~~]  
17 imposed under the same statute and during the same period as the  
18 taxes [~~or fees~~] that are the subject of the suit and if the  
19 counterclaim is filed not later than the 30th day before the date  
20 set for trial on the merits of the suit. The state is not required to  
21 make an assessment of the taxes [~~or fees~~] subject to the  
22 counterclaim under any other statute, and the period of limitation  
23 applicable to an assessment of the taxes [~~or fees~~] does not apply to  
24 a counterclaim brought under this subsection.

25 (d) A taxpayer shall produce contemporaneous records and  
26 supporting documentation appropriate to the tax [~~or fee~~] for the  
27 transactions in question to substantiate and enable verification of

1 a taxpayer's claim relating to the amount of the tax, penalty, or  
2 interest that has been assessed or collected or will be refunded, as  
3 required by Section 111.0041.

4 SECTION 6. Section 112.053, Tax Code, is amended by  
5 amending Subsections (a) and (c) and adding Subsections (d) and (e)  
6 to read as follows:

7 (a) A suit authorized by this subchapter must be brought  
8 against the public official charged with the duty of collecting the  
9 tax [~~or fee~~], the comptroller, and the attorney general.

10 (c) A copy of the written protest as originally filed must  
11 be attached to the original petition filed by the person paying the  
12 tax [~~or fee~~] with the court and to the copies of the original  
13 petition served on the comptroller, the attorney general, and the  
14 public official charged with the duty of collecting the tax [~~or~~  
15 ~~fee~~].

16 (d) The attorney general shall represent the comptroller in  
17 a suit under this subchapter.

18 (e) A person may not intervene in a suit under this  
19 subchapter.

20 SECTION 7. Section 112.058, Tax Code, is amended by  
21 amending Subsection (a) and adding Subsections (b) and (c) to read  
22 as follows:

23 (a) [~~Payments made under protest are to be handled as~~  
24 ~~follows:~~

25 [~~(1) An officer who receives payments made under~~  
26 ~~protest as required by Section 112.051 shall each day send to the~~  
27 ~~comptroller the payments, a list of the persons making the~~

1 ~~payments, and a written statement that the payments were made under~~  
2 ~~protest.~~

3           ~~(2)~~ The comptroller shall, immediately on receipt of  
4 a payment made under protest under Section 112.051, deposit each  
5 portion of the payment to the credit of the account or fund  
6 ~~[payments to each fund]~~ to which the tax ~~[or fee]~~ paid under protest  
7 is allocated by law.

8           **(b)** ~~(3)~~ The comptroller shall maintain detailed records  
9 of payments made under protest under Section 112.051.

10           **(c)** An amount paid ~~(4) A payment~~ under protest under  
11 Section 112.051 bears pro rata interest. The pro rata interest is  
12 the amount of interest earned by the amount paid under protest  
13 ~~[protested funds]~~.

14           SECTION 8. Section 112.059, Tax Code, is amended to read as  
15 follows:

16           Sec. 112.059. DISPOSITION OF PROTEST PAYMENTS BELONGING TO  
17 THE STATE. If a suit authorized by this subchapter is not brought  
18 in the manner or within the time required or if the suit is properly  
19 filed and results in a final determination that an amount paid under  
20 protest ~~[a tax payment or a portion of a tax payment made under~~  
21 ~~protest]~~, including the pro rata amount of interest earned on the  
22 amount ~~[payment]~~, belongs to the state, the comptroller shall  
23 ensure that the proper amount is ~~[has been]~~ deposited to the credit  
24 of the appropriate state account or fund.

25           SECTION 9. Sections 112.060(c) and (d), Tax Code, are  
26 amended to read as follows:

27           **(c)** Each ~~[tax]~~ refund warrant shall be drawn against the

1 accounts or funds [~~each fund~~] to which the amounts [~~taxes~~] paid  
2 under protest are allocated by law. If there are not sufficient  
3 funds in an account or fund [~~each fund to which the taxes paid under~~  
4 ~~protest are allocated by law~~] to pay a refund required to be paid  
5 under Subsection (a) [~~of this section~~], [~~then~~] the comptroller  
6 shall draw the warrant against the General Revenue Fund or other  
7 account or fund [~~funds~~] from which refunds [~~refund appropriations~~]  
8 may be made, as the comptroller determines appropriate.

9 (d) The comptroller shall issue each [~~tax~~] refund warrant  
10 and shall deliver it to the person entitled to receive it.

11 SECTION 10. Chapter 112, Tax Code, is amended by adding  
12 Subchapter E to read as follows:

13 SUBCHAPTER E. SUIT AFTER REDETERMINATION

14 Sec. 112.201. SUIT AFTER REDETERMINATION. (a) A person may  
15 sue the comptroller to dispute an amount of tax, penalty, or  
16 interest assessed in a deficiency redetermination or jeopardy  
17 redetermination under Chapter 111 if the person has:

18 (1) filed a request for redetermination under Chapter  
19 111;

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

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

27 (b) A person bringing a suit under this subchapter shall



1 pay, as provided by Chapter 111, the redetermination amounts that  
2 are not disputed in the motion for rehearing. The failure to pay an  
3 undisputed amount does not affect the jurisdiction of a court to  
4 consider a suit that complies with Subsection (a).

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

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

19 (e) A suit under this subchapter must be filed before the  
20 expiration of 90 days after the issue date of the denial of the  
21 motion for rehearing or it is barred.

22 (f) The disputed and undisputed amounts of the  
23 redetermination must be set out in the original petition. A copy of  
24 the motion for rehearing must be attached to the original petition  
25 filed with the court and to the copies of the original petition  
26 served on the comptroller and the attorney general.

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

1 subchapter.

2 Sec. 112.202. RECORDS. A person shall produce, in  
3 connection with a suit under this subchapter, contemporaneous  
4 records and supporting documentation appropriate to the tax for the  
5 transactions in question to substantiate and enable verification of  
6 the person's claim relating to the amount of the tax, penalty, or  
7 interest that has been assessed or collected, as required by  
8 Section 111.0041.

9 Sec. 112.203. COUNTERCLAIM. (a) The state may bring a  
10 counterclaim in a suit under this subchapter if:

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

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

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

20 Sec. 112.204. ISSUES IN SUIT. (a) The grounds of error  
21 contained in the motion for rehearing are the only issues that may  
22 be raised in a suit under this subchapter.

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

25 Sec. 112.205. ATTORNEY GENERAL TO REPRESENT COMPTROLLER.  
26 The attorney general shall represent the comptroller in a suit  
27 under this subchapter.

1       Sec. 112.206. TRIAL DE NOVO. In a suit under this  
2 subchapter, the issues shall be tried de novo as are other civil  
3 cases.

4       Sec. 112.207. JUDGMENT. (a) The amount of a judgment  
5 refunding disputed taxes, penalties, or interest paid to the  
6 comptroller shall be credited against any tax, penalty, or interest  
7 imposed by this title and due from the plaintiff.

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

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

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

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

21       Sec. 112.208. RES JUDICATA. The rule of res judicata  
22 applies in a suit under this subchapter only if the issues and the  
23 tax liability periods in controversy are the same as were decided in  
24 a previous final judgment entered in a Texas court of record in a  
25 suit between the same parties.

26       SECTION 11. The following provisions are repealed:

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

1           (2) Sections 112.058(d) and (e), Tax Code; and

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

3           SECTION 12. The changes in law made by this Act apply only  
4 to a suit to dispute an amount of tax, penalty, or interest that  
5 becomes due and payable on or after the effective date of this Act.  
6 A suit to dispute an amount of tax, penalty, or interest that became  
7 due and payable before the effective date of this Act is governed by  
8 the law as it existed immediately before the effective date of this  
9 Act, and the former law is continued in effect for that purpose.

10          SECTION 13. This Act takes effect September 1, 2021.

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 87TH LEGISLATIVE REGULAR SESSION**

**May 20, 2021**

**TO:** Honorable Dade Phelan, Speaker of the House, House of Representatives

**FROM:** Jerry McGinty, Director, Legislative Budget Board

**IN RE: HB2080** by Leman (Relating to taxpayers' suits.), **As Passed 2nd House**

<b>No significant fiscal implication to the State is anticipated.</b>
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The bill would amend Chapter 112, Tax Code (Taxpayers' Suits) by adding Subchapter E (Suit after Redetermination) to provide for a taxpayer to bring suit in district court without having first paid a disputed amount in protest.

Provisions governing procedures for taxpayer suits would be restructured and clarified, including provisions regarding determination of disputed and undisputed amounts, payment of undisputed amounts, assertion of tax liens and enjoinder from collection of disputed amounts during pendency of suit, period for filing suit, records and documentation requirements, period for filing counterclaim by state, limitation of issues in suit to specific grounds of error asserted, evidentiary basis of trial, and applicability of penalty and interest to amounts due from a plaintiff and of interest to amounts due to a plaintiff after final judgement. The bill would only apply to suits disputing an amount of tax, penalty, or interest that becomes due and payable after the bill's effective date.

The bill would make conforming amendments of Chapter 403, Government Code and of pertinent sections of Chapter 112, Tax Code.

The provisions of the bill would have no effect on the amounts of tax ultimately determined due. Elimination of the requirement of payments in protest of disputed amounts could have a negative effect on the state's cash flow during pendency of suits; however, such effect is expected to be negligible, as nonpayment may result in attachment of tax liens to a plaintiff's property and liability for penalty and interest on disputed amounts when final judgement is against the plaintiff.

The bill would take effect September 1, 2021.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 304 Comptroller of Public Accounts

**LBB Staff:** JMc, LBO, SD, KK

**LEGISLATIVE BUDGET BOARD**

Austin, Texas

**FISCAL NOTE, 87TH LEGISLATIVE REGULAR SESSION**

May 12, 2021

**TO:** Honorable Jane Nelson, Chair, Senate Committee on Finance

**FROM:** Jerry McGinty, Director, Legislative Budget Board

**IN RE: HB2080** by Leman (relating to taxpayers' suits.), **Committee Report 2nd House, Substituted**

**No significant fiscal implication to the State is anticipated.**

The bill would amend Chapter 112, Tax Code (Taxpayers' Suits) by adding Subchapter E (Suit after Redetermination) to provide for a taxpayer to bring suit in district court without having first paid a disputed amount in protest.

Provisions governing procedures for taxpayer suits would be restructured and clarified, including provisions regarding determination of disputed and undisputed amounts, payment of undisputed amounts, assertion of tax liens and enjoinder from collection of disputed amounts during pendency of suit, period for filing suit, records and documentation requirements, period for filing counterclaim by state, limitation of issues in suit to specific grounds of error asserted, evidentiary basis of trial, and applicability of penalty and interest to amounts due from a plaintiff and of interest to amounts due to a plaintiff after final judgement. The bill would only apply to suits disputing an amount of tax, penalty, or interest that becomes due and payable after the bill's effective date.

The bill would make conforming amendments of Chapter 403, Government Code and of pertinent sections of Chapter 112, Tax Code.

The provisions of the bill would have no effect on the amounts of tax ultimately determined due. Elimination of the requirement of payments in protest of disputed amounts could have a negative effect on the state's cash flow during pendency of suits; however, such effect is expected to be negligible, as nonpayment may result in attachment of tax liens to a plaintiff's property and liability for penalty and interest on disputed amounts when final judgement is against the plaintiff.

The bill would take effect September 1, 2021.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 304 Comptroller of Public Accounts

**LBB Staff:** JMc, KK, SD

**LEGISLATIVE BUDGET BOARD**

Austin, Texas

**FISCAL NOTE, 87TH LEGISLATIVE REGULAR SESSION**

April 23, 2021

**TO:** Honorable Jane Nelson, Chair, Senate Committee on Finance

**FROM:** Jerry McGinty, Director, Legislative Budget Board

**IN RE: HB2080** by Leman (Relating to taxpayers' suits.), **As Engrossed**

**No significant fiscal implication to the State is anticipated.**

The bill would amend Chapter 112 of the Tax Code (Taxpayers' Suits) by adding Subchapter E (Suit after Redetermination) to provide for a taxpayer to bring suit in district court without having first paid a disputed amount in protest.

Provisions governing procedures for taxpayer suits would be restructured and clarified, including provisions regarding determination of disputed and undisputed amounts, payment of undisputed amounts, assertion of tax liens and enjoinder from collection of disputed amounts during pendency of suit, period for filing suit, records and documentation requirements, period for filing counterclaim by state, limitation of issues in suit to specific grounds of error asserted, evidentiary basis of trial, and applicability of penalty and interest to amounts due from a plaintiff and of interest to amounts due to a plaintiff after final judgement. The bill would only apply to suits disputing an amount of tax, penalty, or interest that becomes due and payable after the bill's effective date.

The bill would make conforming amendments of Chapter 403, Government Code and of pertinent sections of Chapter 112, Tax Code.

The provisions of the bill would have no effect on the amounts of tax ultimately determined due. Elimination of the requirement of payments in protest of disputed amounts could have a negative effect on the state's cash flow during pendency of suits; however, such effect is expected to be negligible, as nonpayment may result in attachment of tax liens to a plaintiff's property and liability for penalty and interest on disputed amounts when final judgement is against the plaintiff.

The bill would take effect September 1, 2021.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 304 Comptroller of Public Accounts

**LBB Staff:** JMc, KK, SD

**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 87TH LEGISLATIVE REGULAR SESSION**

**March 26, 2021**

**TO:** Honorable Morgan Meyer, Chair, House Committee on Ways & Means

**FROM:** Jerry McGinty, Director, Legislative Budget Board

**IN RE: HB2080** by Leman (relating to taxpayers' suits.), **Committee Report 1st House, Substituted**

**No significant fiscal implication to the State is anticipated.**

The bill would amend Chapter 112 of the Tax Code (Taxpayers' Suits) by adding Subchapter E (Suit after Redetermination) to provide for a taxpayer to bring suit in district court without having first paid a disputed amount in protest.

Provisions governing procedures for taxpayer suits would be restructured and clarified, including provisions regarding determination of disputed and undisputed amounts, payment of undisputed amounts, assertion of tax liens and enjoinder from collection of disputed amounts during pendency of suit, period for filing suit, records and documentation requirements, period for filing counterclaim by state, limitation of issues in suit to specific grounds of error asserted, evidentiary basis of trial, and applicability of penalty and interest to amounts due from a plaintiff and of interest to amounts due to a plaintiff after final judgement. The bill would only apply to suits disputing an amount of tax, penalty, or interest that becomes due and payable after the bill's effective date.

The bill would make conforming amendments of Chapter 403, Government Code and of pertinent sections of Chapter 112, Tax Code.

The provisions of the bill would have no effect on the amounts of tax ultimately determined due. Elimination of the requirement of payments in protest of disputed amounts could have a negative effect on the state's cash flow during pendency of suits; however, such effect is expected to be negligible, as nonpayment may result in attachment of tax liens to a plaintiff's property and liability for penalty and interest on disputed amounts when final judgement is against the plaintiff.

The bill would take effect September 1, 2021.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 304 Comptroller of Public Accounts

**LBB Staff:** JMc, KK, SD



**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 87TH LEGISLATIVE REGULAR SESSION**

**March 19, 2021**

**TO:** Honorable Morgan Meyer, Chair, House Committee on Ways & Means

**FROM:** Jerry McGinty, Director, Legislative Budget Board

**IN RE: HB2080** by Leman (Relating to taxpayers' suits.), **As Introduced**

**No significant fiscal implication to the State is anticipated.**

The bill would amend Chapter 112 of the Tax Code (Taxpayers' Suits) to eliminate the requirement that a taxpayer pay a disputed amount in protest as a condition for bringing suit in district court.

Provisions governing procedures for taxpayer suits would be restructured and clarified, including provisions regarding determination of disputed and undisputed amounts, payment of undisputed amounts, assertion of tax liens and injunction from collection of disputed amounts during pendency of suit, period for filing suit, records and documentation requirements, period for filing counterclaim by state, limitation of issues in suit to specific grounds of error asserted, evidentiary basis of trial, and applicability of penalty and interest to amounts due from a plaintiff and of interest to amounts due to a plaintiff after final judgement. The bill would only apply to suits disputing an amount of tax, penalty, or interest that becomes due and payable after the bill's effective date.

The provisions of the bill would have no effect on the amounts of tax ultimately determined due. Elimination of the requirement of payments in protest of disputed amounts could have a negative effect on the state's cash flow during pendency of suits; however, such effect is expected to be negligible, as nonpayment may result in attachment of tax liens to a plaintiff's property and liability for penalty and interest on disputed amounts when final judgement is against the plaintiff.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 304 Comptroller of Public Accounts

**LBB Staff:** JMc, KK, SD

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**TAX/FEE EQUITY NOTE**

**87TH LEGISLATIVE REGULAR SESSION**

**March 26, 2021**

**TO:** Honorable Morgan Meyer, Chair, House Committee on Ways & Means

**FROM:** Jerry McGinty, Director, Legislative Budget Board

**IN RE: HB2080** by Leman (relating to taxpayers ' suits.), **Committee Report 1st House, Substituted**

No statistically significant impact on the overall distribution of a state tax or fee burden among individuals and businesses is anticipated from the provisions of this bill.

**Source**

**Agencies:**

**LBB Staff:** JMc, KK

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**TAX/FEE EQUITY NOTE**

**87TH LEGISLATIVE REGULAR SESSION**

**April 5, 2021**

**TO:** Honorable Morgan Meyer, Chair, House Committee on Ways & Means

**FROM:** Jerry McGinty, Director, Legislative Budget Board

**IN RE: HB2080** by Leman (Relating to taxpayers' suits.), **As Introduced**

No statistically significant impact on the overall distribution of a state tax or fee burden among individuals and businesses is anticipated from the provisions of this bill.

**Source**

**Agencies:**

**LBB Staff:** JMc, KK