

House Bill 2080
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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 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.

SENATE VERSION (CS)

SECTION 1. Same as House version.

SECTION 2. Same as House version.

SECTION 3. Same as House version.

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

Sec. 112.051. PROTEST PAYMENT REQUIRED.

(a) A person may bring a suit as authorized by Section 112.052 to dispute an amount of tax, penalty, or interest assessed in a deficiency determination under Chapter 111 only if the person has:

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

(2) submitted with the payment a written protest stating fully and in detail each reason for recovering the amount paid

~~[If a person who is required to pay a tax or fee imposed by this title or collected by the comptroller under any law, including a local tax collected by the comptroller, contends that the tax or fee is unlawful or that the public official charged with the duty of collecting the tax or fee 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].~~

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

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

(a) If a person who is required to pay a tax [or fee] imposed by this title or collected by the comptroller under any law, including a local tax collected by the comptroller, contends that the tax [or fee] is unlawful or that the public official charged with the duty of collecting the tax [or fee] 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.

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

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

Sec. 112.052. TAXPAYER SUIT AFTER PAYMENT UNDER PROTEST.

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

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

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

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

Sec. 112.052. TAXPAYER SUIT AFTER PAYMENT UNDER PROTEST.

(a) A person may bring suit against the state to recover a [an occupation, excise, gross receipts, franchise, license, or privilege] tax [or fee] required to be paid to the state if the

person has first paid the tax under protest as required by Section 112.051 [of this code].

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

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~~filed with the report applies only to the amount of tax, if any, paid when the report is filed].~~

(c) The state may bring a counterclaim in a suit brought under this section if 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 if the counterclaim is filed not later than the 30th day before the date set for trial on the merits of the suit. 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 subsection.

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

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

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

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

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~~filed with the report applies only to the amount of tax, if any, paid when the report is filed].~~

(c) The state may bring a counterclaim in a suit brought under this section if 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 if the counterclaim is filed not later than the 30th day before the date set for trial on the merits of the suit. 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 subsection.

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

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

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

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

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

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

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

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

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

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

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

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

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

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the public official charged with the duty of collecting the tax ~~[or fee]~~.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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SECTION 8. Same as House version.

SECTION 9. Same as House version.

SECTION 10. Same as House version.

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SUBCHAPTER E. SUIT AFTER REDETERMINATION

Sec. 112.201. 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 from the person bringing the suit 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

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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 90 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. 112.202. RECORDS. A person shall produce, in connection with a suit under this subchapter, contemporaneous records and supporting documentation appropriate to the tax 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. 112.203. COUNTERCLAIM. (a) The state may bring a counterclaim in a suit under this subchapter if:

(1) the counterclaim relates to taxes imposed under the same statute and during the same period as the taxes 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 subject to the counterclaim under any other statute, and the period of limitation applicable to an assessment of the

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taxes does not apply to a counterclaim brought under this section.

Sec. 112.204. 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. 112.205. ATTORNEY GENERAL TO REPRESENT COMPTROLLER. The attorney general shall represent the comptroller in a suit under this subchapter.

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

Sec. 112.207. 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. 112.208. RES JUDICATA. The rule of res judicata applies in a suit under this subchapter only if the issues and

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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 11. The following provisions are repealed:

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

SECTION 12. 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 13. This Act takes effect September 1, 2021.

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SECTION 11. The following provisions are repealed:

- (1) Section 403.212(e), Government Code;
- (2) Sections 112.058(d) and (e), Tax Code; and
- (3) Subchapter C, Chapter 112, Tax Code.

SECTION 12. Same as House version.

SECTION 13. Same as House version.

CONFERENCE