**BILL ANALYSIS**

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| Senate Research Center | S.B. 952 |
| 88R4487 BEF-F | By: Perry |
|  | Finance |
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**AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Currently, the refund bypass procedure does not apply to tax assessments. The Tax Code currently provides that a taxpayer may protest a tax assessment by: (i) paying the entire amount under protest and filing suit within 90 days; or (ii) going to the State Office of Administrative Hearings (SOAH), paying the "undisputed" amount, and then filing suit to challenge the "disputed" amount. Although collection actions are generally suspended, the Comptroller of Public Accounts of the State of Texas (comptroller) nevertheless may file liens against the taxpayer while the suit is pending. Maneuvering a protest through administrative review and obtaining a hearing at SOAH is a lengthy and expensive process for taxpayers.

S.B. 952 provides taxpayers with a prompt and fair alternative for resolving tax protests.

It adds a new Subchapter F to Chapter 112, relating to "Suit After Determination." This allows a taxpayer to challenge a "determination" by filing suit within 60 days after the determination is issued or 60 days after denial of motion for rehearing (if the taxpayer requested a redetermination hearing). It enjoins all collection action by the comptroller or attorney general while the suit is pending. A "determination" includes denied credits proposed on a report or during an audit, including a managed audit, and eliminating ambiguity in the current code.

As proposed, S.B. 952 amends current law relating to certain tax and fee collection procedures and taxpayer suits.

**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 the heading to Section 111.0041, Tax Code, to read as follows:

Sec. 111.0041. RECORDS.

SECTION 2. Amends Section 111.0041(b), Tax Code, as follows:

(b) Deletes existing text requiring a taxpayer to keep records, as provided by Subsection (c) (relating to requiring a taxpayer to produce contemporaneous records and supporting documentation appropriate to the tax or fee for the transactions in question) with respect to the taxpayer's claim, open for inspection under Subsection (a) (relating to requiring certain taxpayers to keep records open to inspection) for more than four years throughout any period in certain instances.

SECTION 3. Amends Section 111.008(a), Tax Code, as follows:

(a) Authorizes the Comptroller of Public Accounts of the State of Texas (comptroller), if the comptroller is not satisfied with a tax report, the amount of the tax required to be paid to the state by a person, or the amount of an overpayment of tax identified in a tax report or an audit, including a managed audit, to compute and determine the amount of tax to be paid or the amount to be credited or refunded from information contained in the report or from any other information available to the comptroller. Makes a nonsubstantive change.

SECTION 4. Amends Section 111.009, Tax Code, by amending Subsection (b) and adding Subsection (b-1), as follows:

(b) Requires that a petition for redetermination be filed before the expiration of 60 days after the date the notice of determination is issued or the redetermination is barred.

(b-1) Creates this subsection from existing text. Provides that a determination is final, if a petition for redetermination is not filed before the expiration of the period provided by Subsection (b) and a suit is not filed before the expiration of the period provided by Section 112.251, on the expiration of the later of those periods. Makes nonsubstantive changes.

SECTION 5. Amends Section 111.104(c), Tax Code, as follows:

(c) Deletes existing text requiring that a claim for a refund state fully and in detail each reason or ground on which the claim is founded.

SECTION 6. Amends Sections 112.051(a) and (b), Tax Code, as follows:

(a) Requires a person, if a person contends that a tax imposed by Title 2 (State Taxation) or collected by the comptroller under any law, including a local tax collected by the comptroller, is unlawful, that the public official charged with the duty of collecting the tax is prohibited from legally demanding or collecting the tax, or that an order, rule, or policy unlawfully or erroneously establishes or implies an obligation to pay or collect the tax, to pay the amount, and if the person intends to bring suit under Subchapter B (Suit After Protest), the person is required to submit with the payment a protest.

Deletes existing text requiring a person, if a person who is required to pay a tax imposed by this title or collected by the comptroller under any law, including a local tax collected by the comptroller, contends that the tax is unlawful or that the public official charged with the duty of collecting the tax is prohibited from legally demanding or collecting the tax, to pay the amount claimed by the state, and if the person intends to bring suit under this subchapter, the person is required to submit with the payment a protest. Makes a nonsubstantive change.

(b) Requires that the protest be in writing and state each reason or ground for recovering the payment. Deletes text requiring that the protest be in writing and state fully and in detail each reason for recovering the payment.

SECTION 7. Amends Section 112.052(a), Tax Code, as follows:

(a) Authorizes a person to sue the state to recover a tax that the person has first paid under protest as required by Section 112.051.

Deletes existing text authorizing a person to sue the state to recover a tax required to be paid to the state if the person has first paid the tax under protest as required by Section 112.051.

SECTION 8. Amends Chapter 112, Tax Code, by adding Subchapter F, as follows:

SUBCHAPTER F. SUIT AFTER DETERMINATION

Sec. 112.251. SUIT TO CHALLENGE DETERMINATION. (a) Authorizes a person to sue the comptroller to challenge the amount of an underpayment or overpayment of tax, penalty, or interest that has been the subject of a jeopardy or deficiency determination.

(b) Requires that the suit be brought against both the comptroller and the attorney general and be filed in a district court.

(c) Requires that the suit, except as provided by Subsection (d), be filed not later than the 60th day after the issue date of the determination or it is barred.

(d) Requires that the suit, if the person filed a petition for redetermination under Section 111.009 (Redetermination), be filed not later than the 60th day after the issue date of the denial of the motion for rehearing or it is barred.

Sec. 112.252. APPLICABLE PERIOD. Provides that the suit applies only to a tax liability period that is the subject of the determination.

Sec. 112.253. COLLECTION ACTIONS ENJOINED. Provides that 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.

Sec. 112.254. ATTORNEY GENERAL TO REPRESENT COMPTROLLER. Requires the attorney general to represent the comptroller in a suit under this subchapter.

Sec. 112.255. TRIAL DE NOVO. Requires that the issues, in a suit under this subchapter, be tried de novo as are other civil cases.

Sec. 112.256. JUDGMENT. (a) Requires that the amount of a judgment for the plaintiff be credited against any tax, penalty, or interest imposed by this title and due from the plaintiff.

(b) Requires that the remainder of the amount of a judgment not credited to a tax, penalty, or interest due be refunded to the plaintiff.

(c) Provides that the plaintiff is entitled to interest on the amount of tax included 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. Provides that the interest accrues beginning from the date that the tax was paid until the date that the amount is credited against the plaintiff's tax liability or a date determined by the comptroller that is not sooner than 10 days before the actual date on which a refund warrant is issued.

SECTION 9. Repealers: Sections 111.0041(c) (relating to requiring a taxpayer to produce contemporaneous records and supporting documentation appropriate to the tax or fee for the transactions in question) and 111.0041(d) (relating to Section 111.0041 prevailing over any other conflicting provision of this title), Tax Code.

Repealer: Section 111.105(e) (relating to requiring a person claiming a tax refund, during the administrative hearing process, to submit documentation to enable the comptroller to verify the claim for refund), Tax Code.

Repealer: Section 112.003 (Attorney's Fees), Tax Code.

Repealer: Section 112.052(d) (relating to requiring a taxpayer to produce contemporaneous records and supporting documentation appropriate to the tax or fee for the transactions in question), Tax Code.

Repealer: Section 112.151(f) (relating to requiring a taxpayer to produce contemporaneous records and supporting documentation appropriate to the tax or fee for the transactions in question), Tax Code.

Repealer: Subchapter E (Suit After Redetermination), Chapter 112, Tax Code.

SECTION 10. Provides that this Act applies to a claim for refund, a determination, or an administrative proceeding that is pending or in progress on or after the effective date of this Act, without regard to whether the taxes that are the subject of the claim, determination, or proceeding were due before, on, or after that date.

SECTION 11. Makes application of this Act prospective.

SECTION 12. Effective date: September 1, 2023.