

BILL ANALYSIS

Senate Research Center
88R20799 BEF-F

C.S.S.B. 952
By: Perry
Finance
4/3/2023
Committee Report (Substituted)

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.

(Original Author's/Sponsor's Statement of Intent)

C.S.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 Section 111.0041(c), Tax Code, as follows:

(c) Requires a taxpayer to produce sufficient, rather than contemporaneous, records and supporting documentation appropriate to the tax or fee for the transactions in question to substantiate and enable verification of the taxpayer's claim related to the amount of tax, penalty, or interest to be assessed, collected, or refunded in an administrative or judicial proceeding. Provides that sufficient, rather than contemporaneous, records and supporting documentation appropriate to the tax or fee may include invoices, vouchers, checks, shipping records, contracts, or other equivalent records, such as electronically stored images of such documents, reflecting legal relationships and taxes collected or paid. Makes a nonsubstantive change.

SECTION 2. Amends Section 111.0081, Tax Code, by amending Subsection (c) and adding Subsection (d), as follows:

(c) Creates an exception under Subsection (d). Makes a nonsubstantive change.

(d) Provides that the penalty provided by Subsection (c) (relating to requiring that a penalty of 10 percent of the amount of the determination be added if the amount is not paid within 20 days after the day the decision became final) is abated with respect to the disputed amount that is the subject of a timely filed suit under Subchapter E (Suit After Redetermination), Chapter 112. Requires that a penalty of 10 percent of the amount due, if the amount determined to be due in a final judgment in the suit is not paid within 20 days after the day the judgment became final, exclusive of penalties and interest, be added.

SECTION 3. Amends Subchapter A, Chapter 111, Tax Code, by adding Section 111.0091, as follows:

Sec. 111.0091. DISPUTING RESULTS OF MANAGED AUDITS: NOTICE OF INTENT TO BYPASS REDETERMINATION PROCESS. (a) Authorizes a person who conducts a managed audit authorized by Section 151.0231 (Managed Audits) or 201.3021 (Managed Audits) to file with the Comptroller of Public Accounts of the State of Texas (comptroller) a notice of intent to bypass the redetermination process under Section 111.009 (Redetermination). Requires that the notice of intent:

(1) be filed on or before the 60th day after the date the comptroller issues a letter notifying the person of the results of the managed audit;

(2) be in writing;

(3) assert the material facts and each specific legal basis for disputing the results of the managed audit; and

(4) specify the amounts of the disputed underpayments or overpayments contained in the report of the managed audit results.

(b) Authorizes a person who files a notice of intent under Subsection (a) to bypass the redetermination process under Section 111.009 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 is required to 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 is required to be filed on or before the 90th day after the date the notice of intent was filed.

(c) Authorizes the comptroller to 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 results of the managed audit and to discuss the availability of additional documentation that may assist in resolving outstanding issues regarding the managed audit. Authorizes the person who filed the notice of intent to 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) Requires the comptroller, if the comptroller requires a conference under Subsection (c), to 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. Requires that the notice of the conference requirement be in writing and include a date and time for the conference. Requires that the conference date provided in the notice be not later than the 90th day after the date the notice of intent was filed.

(e) Authorizes the person who filed the notice of intent under Subsection (a) to request to reschedule the conference date provided in the notice under Subsection (d). Requires the comptroller to make a good faith effort to accommodate the request. Authorizes the person, 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, to rescind the notice of intent on or before the 120th day after the date the notice of intent was filed and petition the comptroller for a redetermination under Section 111.009.

(f) Provides that a person who files a notice of intent under Subsection (a), except as provided by Subsection (e), waives the person's right to a redetermination under Section 111.009.

SECTION 4. Amends Section 112.052(d), Tax Code, to make a conforming change.

SECTION 5. Amends the heading to Subchapter D, Chapter 112, Tax Code, to read as follows:

SUBCHAPTER D. SUIT FOR TAX REFUND OR TO DISPUTE RESULTS OF MANAGED
AUDIT

SECTION 6. Amends Section 112.151(f), Tax Code, to make a conforming change.

SECTION 7. Amends Subchapter D, Chapter 112, Tax Code, by adding Section 112.1511, as follows:

Sec. 112.1511. SUIT TO DISPUTE RESULTS OF MANAGED AUDIT. (a) Authorizes a person to sue the comptroller to dispute the results of a managed audit conducted under Section 151.0231 or 201.3021 if the person:

(1) has been issued a letter by the comptroller notifying the person of the results of the managed audit; and

(2) is authorized to bring the suit under Section 111.0091(b).

(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 be filed during the time provided by Section 111.0091(b) or it is barred.

(d) Requires that the amounts of the disputed underpayments or overpayments contained in the report of the managed audit results be set out in the original petition. Requires that a copy of the notice of intent filed under Section 111.0091(a) 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.

(e) Prohibits a person from intervening in the suit.

(f) Requires a taxpayer to produce sufficient 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 to be assessed, collected, or refunded, as required by Section 111.0041 (Records; Burden to Produce and Substantiate Claims), including the amounts of the disputed underpayments or overpayments contained in the report of the managed audit results.

(g) Provides that the comptroller and the attorney general, after the comptroller has been timely served in a suit that complies with this section:

(1) are enjoined from collecting disputed underpayments identified in Section 111.0091(a)(4) from the person bringing the suit during the pendency of the suit; and

(2) are not enjoined from:

(A) asserting tax liens; or

(B) as an alternative to asserting tax liens, requiring the person to provide security:

(i) in an amount sufficient to secure payment of the entire disputed amount, including penalties and accrued interest, that is the subject of the suit; and

(ii) in the form of a cash deposit filed with the comptroller or paid into the registry of the court, a surety bond, a letter of credit, or another form of guarantee.

(h) Authorizes damages to be awarded under Chapter 65 (Injunction), Civil Practice and Remedies Code, if the court determines that all or part of the enjoined collection amounts under Subsection (g) were disputed solely for delay.

SECTION 8. Amends Section 112.152, Tax Code, as follows:

Sec. 112.152. ISSUES IN SUIT. (a) Authorizes only certain issues to be raised in a suit under this subchapter, as applicable, including the material facts and legal bases contained in the notice of intent filed under Section 111.0091(a) or 111.106(a) (relating to authorizing a person claiming a refund to file with the comptroller a notice of intent to bypass the hearing).

(b) Provides that the suit, as applicable, applies only to a tax liability period considered in the comptroller's decision or covered by the notice of intent filed under Section 111.0091 or 111.106.

SECTION 9. Amends Section 112.201, Tax Code, by amending Subsection (c) and adding Subsections (c-1) and (c-2), as follows:

(c) Makes no change to this subsection.

(c-1) Creates this subsection from existing text. Provides that the comptroller and the attorney general, after the comptroller has been timely served in a suit that complies with this subchapter:

(1) are enjoined from collecting disputed amounts from the person bringing the suit during the pendency of the suit; and

(2) are not enjoined from:

(A) asserting tax liens; or

(B) as an alternative to asserting tax liens, requiring the person to provide security:

(i) in an amount sufficient to secure payment of the entire disputed amount, including penalties and accrued interest, that is the subject of the suit; and

(ii) in the form of a cash deposit filed with the comptroller or paid into the registry of the court, a surety bond, a letter of credit, or another form of guarantee.

Makes nonsubstantive changes.

(c-2) Creates this subsection from existing text. Authorizes damages to be awarded under Chapter 65, Civil Practice and Remedies Code, if the court determines that all or part of the enjoined collection amounts under Subsection (c-1) were disputed solely for delay.

SECTION 10. Amends Section 112.202, Tax Code, as follows:

Sec. 112.202. RECORDS. Makes a conforming change to this section.

SECTION 11. Repealer: Section 111.105(e) (relating to requiring a person claiming a refund during the administrative hearing process to submit documentation to enable the comptroller's verification of the claim for refund), Tax Code.

SECTION 12. Provides that this Act applies to a managed audit that is in progress and an administrative or judicial proceeding 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 managed audit or proceeding were due before, on, or after that date.

SECTION 13. Effective date: upon passage or September 1, 2023.