

By: Perry

S.B. No. 952

A BILL TO BE ENTITLED

AN ACT

relating to certain tax and fee collection procedures and taxpayer suits.

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

SECTION 1. Section 111.0041(c), Tax Code, is amended to read as follows:

(c) A taxpayer shall produce sufficient ~~[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. Sufficient ~~[Contemporaneous]~~ records and supporting documentation appropriate to the tax or fee may include ~~[, for example,]~~ 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.

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

(c) The amount of a determination made under this code is due and payable 20 days after a comptroller's decision in a redetermination hearing becomes final. Except as provided by Subsection (d), if ~~[if]~~ the amount of the determination is not paid

1 within 20 days after the day the decision became final, a penalty of
2 10 percent of the amount of the determination, exclusive of
3 penalties and interest, shall be added.

4 (d) The penalty provided by Subsection (c) is abated with
5 respect to the disputed amount that is the subject of a timely filed
6 suit under Subchapter E, Chapter 112. If the amount determined to
7 be due in a final judgment in the suit is not paid within 20 days
8 after the day the judgment became final, a penalty of 10 percent of
9 the amount due, exclusive of penalties and interest, shall be
10 added.

11 SECTION 3. Subchapter A, Chapter 111, Tax Code, is amended
12 by adding Section 111.0091 to read as follows:

13 Sec. 111.0091. DISPUTING RESULTS OF MANAGED AUDITS: NOTICE
14 OF INTENT TO BYPASS REDETERMINATION PROCESS. (a) A person who
15 conducts a managed audit authorized by Section 151.0231 or 201.3021
16 may file with the comptroller a notice of intent to bypass the
17 redetermination process under Section 111.009. The notice of
18 intent must:

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

22 (2) be in writing;

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

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

1 (b) A person who files a notice of intent under Subsection
2 (a) may bypass the redetermination process under Section 111.009
3 and bring a suit under Subchapter D, Chapter 112, if:

4 (1) the person participated in a conference under
5 Subsection (c), in which case the suit must be filed on or before
6 the 60th day after the date the conference concludes or a later date
7 agreed to by the comptroller; or

8 (2) the comptroller does not provide notice in the
9 time required by Subsection (d) that a conference is required, in
10 which case the suit must be filed on or before the 90th day after the
11 date the notice of intent was filed.

12 (c) The comptroller may require a conference between a
13 person who files a notice of intent under Subsection (a) and a
14 designated officer or employee of the comptroller to clarify any
15 fact or legal issue in dispute regarding the results of the managed
16 audit and to discuss the availability of additional documentation
17 that may assist in resolving outstanding issues regarding the
18 managed audit. The person who filed the notice of intent may amend
19 a material fact or legal basis described by Subsection (a)(3)
20 following the conference if the comptroller agrees in writing to
21 the amendment.

22 (d) If the comptroller requires a conference under
23 Subsection (c), the comptroller shall notify the person of the
24 conference requirement not later than the 30th day after the date
25 the notice of intent under Subsection (a) was filed. The notice of
26 the conference requirement must be in writing and include a date and
27 time for the conference. The conference date provided in the notice

1 must be not later than the 90th day after the date the notice of
2 intent was filed.

3 (e) The person who filed the notice of intent under
4 Subsection (a) may request to reschedule the conference date
5 provided in the notice under Subsection (d). The comptroller shall
6 make a good faith effort to accommodate the request. If the
7 comptroller and the person who filed the notice of intent do not
8 agree on or before the 90th day after the date the notice of intent
9 was filed to a rescheduled date for the conference, the person may
10 on or before the 120th day after the date the notice of intent was
11 filed rescind the notice of intent and petition the comptroller for
12 a redetermination under Section 111.009.

13 (f) Except as provided by Subsection (e), a person who files
14 a notice of intent under Subsection (a) waives the person's right to
15 a redetermination under Section 111.009.

16 SECTION 4. Section 112.052(d), Tax Code, is amended to read
17 as follows:

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

24 SECTION 5. The heading to Subchapter D, Chapter 112, Tax
25 Code, is amended to read as follows:

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

1 SECTION 6. Section [112.151](#)(f), Tax Code, is amended to read
2 as follows:

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

9 SECTION 7. Subchapter [D](#), Chapter [112](#), Tax Code, is amended
10 by adding Section [112.1511](#) to read as follows:

11 Sec. 112.1511. SUIT TO DISPUTE RESULTS OF MANAGED AUDIT.

12 (a) A person may sue the comptroller to dispute the results of a
13 managed audit conducted under Section [151.0231](#) or [201.3021](#) if the
14 person:

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

17 (2) is authorized to bring the suit under Section
18 [111.0091](#)(b).

19 (b) The suit must be brought against both the comptroller
20 and the attorney general and must be filed in a district court.

21 (c) The suit must be filed during the time provided by
22 Section [111.0091](#)(b) or it is barred.

23 (d) The amounts of the disputed underpayments or
24 overpayments contained in the report of the managed audit results
25 must be set out in the original petition. A copy of the notice of
26 intent filed under Section [111.0091](#)(a) must be attached to the
27 original petition filed with the court and to the copies of the

1 original petition served on the comptroller and the attorney
2 general.

3 (e) A person may not intervene in the suit.

4 (f) A taxpayer shall produce sufficient records and
5 supporting documentation appropriate to the tax or fee for the
6 transactions in question to substantiate and enable verification of
7 a taxpayer's claim relating to the amount of the tax, penalty, or
8 interest to be assessed, collected, or refunded, as required by
9 Section 111.0041, including the amounts of the disputed
10 underpayments or overpayments contained in the report of the
11 managed audit results.

12 (g) After the comptroller has been timely served in a suit
13 that complies with this section, the comptroller and the attorney
14 general:

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

18 (2) are not enjoined from:

19 (A) asserting tax liens; or

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

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

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

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

5 SECTION 8. Section 112.152, Tax Code, is amended to read as
6 follows:

7 Sec. 112.152. ISSUES IN SUIT. (a) The only issues that may
8 be raised in a suit under this subchapter are, as applicable, the:

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

11 (2) material facts and legal bases contained in the
12 notice of intent filed under Section 111.0091(a) or 111.106(a).

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

16 SECTION 9. Section 112.201, Tax Code, is amended by
17 amending Subsection (c) and adding Subsections (c-1) and (c-2) to
18 read as follows:

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.

24 (c-1) After the comptroller has been timely served in a suit
25 that complies with this subchapter, the comptroller and the
26 attorney general:

27 (1) are enjoined from collecting disputed amounts from

1 the person bringing the suit during the pendency of the suit; and

2 (2) [~~but~~] are not enjoined from:

3 (A) asserting tax liens; or

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

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

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

12 (c-2) Damages may be awarded under Chapter 65, Civil
13 Practice and Remedies Code, if the court determines that all or part
14 of the enjoined collection amounts under Subsection (c-1) were
15 disputed solely for delay.

16 SECTION 10. Section 112.202, Tax Code, is amended to read as
17 follows:

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

25 SECTION 11. Section 111.105(e), Tax Code, is repealed.

26 SECTION 12. This Act applies to a managed audit that is in
27 progress and an administrative or judicial proceeding that is

1 pending or filed on or after the effective date of this Act, without
2 regard to whether the taxes that are the subject of the managed
3 audit or proceeding were due before, on, or after that date.

4 SECTION 13. This Act takes effect immediately if it
5 receives a vote of two-thirds of all the members elected to each
6 house, as provided by Section 39, Article III, Texas Constitution.
7 If this Act does not receive the vote necessary for immediate
8 effect, this Act takes effect September 1, 2023.