

1-1 By: Perry S.B. No. 952  
 1-2 (In the Senate - Filed February 15, 2023; March 3, 2023,  
 1-3 read first time and referred to Committee on Finance;  
 1-4 April 6, 2023, reported adversely, with favorable Committee  
 1-5 Substitute by the following vote: Yeas 17, Nays 0; April 6, 2023,  
 1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16	X			
1-17	X			
1-18	X			
1-19	X			
1-20	X			
1-21	X			
1-22	X			
1-23	X			
1-24	X			
1-25	X			

1-26 COMMITTEE SUBSTITUTE FOR S.B. No. 952 By: Perry

1-27 A BILL TO BE ENTITLED  
 1-28 AN ACT

1-29 relating to certain tax and fee collection procedures and taxpayer  
 1-30 suits.

1-31 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-32 SECTION 1. Section 111.0041(c), Tax Code, is amended to  
 1-33 read as follows:

1-34 (c) A taxpayer shall produce sufficient ~~[contemporaneous]~~  
 1-35 records and supporting documentation appropriate to the tax or fee  
 1-36 for the transactions in question to substantiate and enable  
 1-37 verification of the taxpayer's claim related to the amount of tax,  
 1-38 penalty, or interest to be assessed, collected, or refunded in an  
 1-39 administrative or judicial proceeding. Sufficient  
 1-40 ~~[Contemporaneous]~~ records and supporting documentation appropriate  
 1-41 to the tax or fee may include ~~[, for example,]~~ invoices, vouchers,  
 1-42 checks, shipping records, contracts, or other equivalent records,  
 1-43 such as electronically stored images of such documents, reflecting  
 1-44 legal relationships and taxes collected or paid.

1-45 SECTION 2. Section 111.0081, Tax Code, is amended by  
 1-46 amending Subsection (c) and adding Subsection (d) to read as  
 1-47 follows:

1-48 (c) The amount of a determination made under this code is  
 1-49 due and payable 20 days after a comptroller's decision in a  
 1-50 redetermination hearing becomes final. Except as provided by  
 1-51 Subsection (d), if ~~[if]~~ the amount of the determination is not paid  
 1-52 within 20 days after the day the decision became final, a penalty of  
 1-53 10 percent of the amount of the determination, exclusive of  
 1-54 penalties and interest, shall be added.

1-55 (d) The penalty provided by Subsection (c) is abated with  
 1-56 respect to the disputed amount that is the subject of a timely filed  
 1-57 suit under Subchapter E, Chapter 112. If the amount determined to  
 1-58 be due in a final judgment in the suit is not paid within 20 days  
 1-59 after the day the judgment became final, a penalty of 10 percent of  
 1-60 the amount due, exclusive of penalties and interest, shall be

2-1 added.

2-2 SECTION 3. Subchapter A, Chapter 111, Tax Code, is amended  
2-3 by adding Section 111.0091 to read as follows:

2-4 Sec. 111.0091. DISPUTING RESULTS OF MANAGED AUDITS: NOTICE  
2-5 OF INTENT TO BYPASS REDETERMINATION PROCESS. (a) A person who  
2-6 conducts a managed audit authorized by Section 151.0231 or 201.3021  
2-7 may file with the comptroller a notice of intent to bypass the  
2-8 redetermination process under Section 111.009. The notice of  
2-9 intent must:

2-10 (1) be filed on or before the 60th day after the date  
2-11 the comptroller issues a letter notifying the person of the results  
2-12 of the managed audit;

2-13 (2) be in writing;

2-14 (3) assert the material facts and each specific legal  
2-15 basis for disputing the results of the managed audit; and

2-16 (4) specify the amounts of the disputed underpayments  
2-17 or overpayments contained in the report of the managed audit  
2-18 results.

2-19 (b) A person who files a notice of intent under Subsection  
2-20 (a) may bypass the redetermination process under Section 111.009  
2-21 and bring a suit under Subchapter D, Chapter 112, if:

2-22 (1) the person participated in a conference under  
2-23 Subsection (c), in which case the suit must be filed on or before  
2-24 the 60th day after the date the conference concludes or a later date  
2-25 agreed to by the comptroller; or

2-26 (2) the comptroller does not provide notice in the  
2-27 time required by Subsection (d) that a conference is required, in  
2-28 which case the suit must be filed on or before the 90th day after the  
2-29 date the notice of intent was filed.

2-30 (c) The comptroller may require a conference between a  
2-31 person who files a notice of intent under Subsection (a) and a  
2-32 designated officer or employee of the comptroller to clarify any  
2-33 fact or legal issue in dispute regarding the results of the managed  
2-34 audit and to discuss the availability of additional documentation  
2-35 that may assist in resolving outstanding issues regarding the  
2-36 managed audit. The person who filed the notice of intent may amend  
2-37 a material fact or legal basis described by Subsection (a)(3)  
2-38 following the conference if the comptroller agrees in writing to  
2-39 the amendment.

2-40 (d) If the comptroller requires a conference under  
2-41 Subsection (c), the comptroller shall notify the person of the  
2-42 conference requirement not later than the 30th day after the date  
2-43 the notice of intent under Subsection (a) was filed. The notice of  
2-44 the conference requirement must be in writing and include a date and  
2-45 time for the conference. The conference date provided in the notice  
2-46 must be not later than the 90th day after the date the notice of  
2-47 intent was filed.

2-48 (e) The person who filed the notice of intent under  
2-49 Subsection (a) may request to reschedule the conference date  
2-50 provided in the notice under Subsection (d). The comptroller shall  
2-51 make a good faith effort to accommodate the request. If the  
2-52 comptroller and the person who filed the notice of intent do not  
2-53 agree on or before the 90th day after the date the notice of intent  
2-54 was filed to a rescheduled date for the conference, the person may  
2-55 on or before the 120th day after the date the notice of intent was  
2-56 filed rescind the notice of intent and petition the comptroller for  
2-57 a redetermination under Section 111.009.

2-58 (f) Except as provided by Subsection (e), a person who files  
2-59 a notice of intent under Subsection (a) waives the person's right to  
2-60 a redetermination under Section 111.009.

2-61 SECTION 4. Section 112.052(d), Tax Code, is amended to read  
2-62 as follows:

2-63 (d) A taxpayer shall produce sufficient [~~contemporaneous~~]  
2-64 records and supporting documentation appropriate to the tax for the  
2-65 transactions in question to substantiate and enable verification of  
2-66 a taxpayer's claim relating to the amount of the tax, penalty, or  
2-67 interest that has been assessed or collected or will be refunded, as  
2-68 required by Section 111.0041.

2-69 SECTION 5. The heading to Subchapter D, Chapter 112, Tax

3-1 Code, is amended to read as follows:

3-2 SUBCHAPTER D. SUIT FOR TAX REFUND OR TO DISPUTE RESULTS OF MANAGED  
3-3 AUDIT

3-4 SECTION 6. Section 112.151(f), Tax Code, is amended to read  
3-5 as follows:

3-6 (f) A taxpayer shall produce sufficient [~~contemporaneous~~]  
3-7 records and supporting documentation appropriate to the tax or fee  
3-8 for the transactions in question to substantiate and enable  
3-9 verification of a taxpayer's claim relating to the amount of the  
3-10 tax, penalty, or interest that has been assessed or collected or  
3-11 will be refunded, as required by Section 111.0041.

3-12 SECTION 7. Subchapter D, Chapter 112, Tax Code, is amended  
3-13 by adding Section 112.1511 to read as follows:

3-14 Sec. 112.1511. SUIT TO DISPUTE RESULTS OF MANAGED AUDIT.

3-15 (a) A person may sue the comptroller to dispute the results of a  
3-16 managed audit conducted under Section 151.0231 or 201.3021 if the  
3-17 person:

3-18 (1) has been issued a letter by the comptroller  
3-19 notifying the person of the results of the managed audit; and

3-20 (2) is authorized to bring the suit under Section  
3-21 111.0091(b).

3-22 (b) The suit must be brought against both the comptroller  
3-23 and the attorney general and must be filed in a district court.

3-24 (c) The suit must be filed during the time provided by  
3-25 Section 111.0091(b) or it is barred.

3-26 (d) The amounts of the disputed underpayments or  
3-27 overpayments contained in the report of the managed audit results  
3-28 must be set out in the original petition. A copy of the notice of  
3-29 intent filed under Section 111.0091(a) must be attached to the  
3-30 original petition filed with the court and to the copies of the  
3-31 original petition served on the comptroller and the attorney  
3-32 general.

3-33 (e) A person may not intervene in the suit.

3-34 (f) A taxpayer shall produce sufficient records and  
3-35 supporting documentation appropriate to the tax or fee for the  
3-36 transactions in question to substantiate and enable verification of  
3-37 a taxpayer's claim relating to the amount of the tax, penalty, or  
3-38 interest to be assessed, collected, or refunded, as required by  
3-39 Section 111.0041, including the amounts of the disputed  
3-40 underpayments or overpayments contained in the report of the  
3-41 managed audit results.

3-42 (g) After the comptroller has been timely served in a suit  
3-43 that complies with this section, the comptroller and the attorney  
3-44 general:

3-45 (1) are enjoined from collecting disputed  
3-46 underpayments identified in Section 111.0091(a)(4) from the person  
3-47 bringing the suit during the pendency of the suit; and

3-48 (2) are not enjoined from:

3-49 (A) asserting tax liens; or

3-50 (B) as an alternative to asserting tax liens,  
3-51 requiring the person to provide security:

3-52 (i) in an amount sufficient to secure  
3-53 payment of the entire disputed amount, including penalties and  
3-54 accrued interest, that is the subject of the suit; and

3-55 (ii) in the form of a cash deposit filed  
3-56 with the comptroller or paid into the registry of the court, a  
3-57 surety bond, a letter of credit, or another form of guarantee.

3-58 (h) Damages may be awarded under Chapter 65, Civil Practice  
3-59 and Remedies Code, if the court determines that all or part of the  
3-60 enjoined collection amounts under Subsection (g) were disputed  
3-61 solely for delay.

3-62 SECTION 8. Section 112.152, Tax Code, is amended to read as  
3-63 follows:

3-64 Sec. 112.152. ISSUES IN SUIT. (a) The only issues that may  
3-65 be raised in a suit under this subchapter are, as applicable, the:

3-66 (1) grounds of error contained in the motion for  
3-67 rehearing; or

3-68 (2) material facts and legal bases contained in the  
3-69 notice of intent filed under Section 111.0091(a) or 111.106(a).

4-1 (b) The suit applies only to a tax liability period  
4-2 considered in the comptroller's decision or covered by the notice  
4-3 of intent filed under Section 111.0091 or 111.106, as applicable.

4-4 SECTION 9. Section 112.201, Tax Code, is amended by  
4-5 amending Subsection (c) and adding Subsections (c-1) and (c-2) to  
4-6 read as follows:

4-7 (c) A person bringing a suit under this subchapter may pay  
4-8 the disputed amounts as provided by Chapter 111. A disputed amount  
4-9 that is not paid as provided by Chapter 111 and that is determined  
4-10 to be due in a final judgment accrues penalties and interest as  
4-11 provided by Chapter 111.

4-12 (c-1) After the comptroller has been timely served in a suit  
4-13 that complies with this subchapter, the comptroller and the  
4-14 attorney general:

4-15 (1) are enjoined from collecting disputed amounts from  
4-16 the person bringing the suit during the pendency of the suit; and

4-17 (2) [~~but~~] are not enjoined from:

4-18 (A) asserting tax liens; or

4-19 (B) as an alternative to asserting tax liens,  
4-20 requiring the person to provide security:

4-21 (i) in an amount sufficient to secure  
4-22 payment of the entire disputed amount, including penalties and  
4-23 accrued interest, that is the subject of the suit; and

4-24 (ii) in the form of a cash deposit filed  
4-25 with the comptroller or paid into the registry of the court, a  
4-26 surety bond, a letter of credit, or another form of guarantee.

4-27 (c-2) Damages may be awarded under Chapter 65, Civil  
4-28 Practice and Remedies Code, if the court determines that all or part  
4-29 of the enjoined collection amounts under Subsection (c-1) were  
4-30 disputed solely for delay.

4-31 SECTION 10. Section 112.202, Tax Code, is amended to read as  
4-32 follows:

4-33 Sec. 112.202. RECORDS. A person shall produce, in  
4-34 connection with a suit under this subchapter, sufficient  
4-35 [~~contemporaneous~~] records and supporting documentation appropriate  
4-36 to the tax for the transactions in question to substantiate and  
4-37 enable verification of the person's claim relating to the amount of  
4-38 the tax, penalty, or interest that has been assessed or collected,  
4-39 as required by Section 111.0041.

4-40 SECTION 11. Section 111.105(e), Tax Code, is repealed.

4-41 SECTION 12. This Act applies to a managed audit that is in  
4-42 progress and an administrative or judicial proceeding that is  
4-43 pending or filed on or after the effective date of this Act, without  
4-44 regard to whether the taxes that are the subject of the managed  
4-45 audit or proceeding were due before, on, or after that date.

4-46 SECTION 13. This Act takes effect immediately if it  
4-47 receives a vote of two-thirds of all the members elected to each  
4-48 house, as provided by Section 39, Article III, Texas Constitution.  
4-49 If this Act does not receive the vote necessary for immediate  
4-50 effect, this Act takes effect September 1, 2023.

4-51 \* \* \* \* \*