

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 88TH LEGISLATIVE REGULAR SESSION

April 2, 2023

TO: Honorable Joan Huffman, Chair, Senate Committee on Finance

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: SB952 by Perry (Relating to certain tax and fee collection procedures and taxpayer suits.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for SB952, As Introduced : a negative impact of (\$150,600,000) through the biennium ending August 31, 2025.

Additionally, the bill will have a direct impact of a revenue loss to the Property Tax Relief Fund of (\$19,600,000) for the 2024-25 biennium. Any loss to the Property Tax Relief Fund must be made up with an equal amount of General Revenue to fund the Foundation School Program.

General Revenue-Related Funds, Five- Year Impact:

<i>Fiscal Year</i>	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2024	\$0
2025	(\$150,600,000)
2026	(\$540,700,000)
2027	(\$757,000,000)
2028	(\$1,059,800,000)

All Funds, Five-Year Impact:

<i>Fiscal Year</i>	Probable Revenue (Loss) from General Revenue Fund 1	Probable Revenue (Loss) from Property Tax Relief Fund 304	Probable Revenue (Loss) from Cities	Probable Revenue (Loss) from Transit Authorities
2024	\$0	\$0	\$0	\$0
2025	(\$150,600,000)	(\$19,600,000)	(\$23,400,000)	(\$7,800,000)
2026	(\$540,700,000)	(\$70,500,000)	(\$84,100,000)	(\$27,900,000)
2027	(\$757,000,000)	(\$98,700,000)	(\$117,800,000)	(\$39,100,000)
2028	(\$1,059,800,000)	(\$138,200,000)	(\$164,900,000)	(\$54,700,000)

<i>Fiscal Year</i>	Probable Revenue (Loss) from Counties & Special Districts
2024	\$0
2025	(\$5,300,000)
2026	(\$19,100,000)
2027	(\$26,700,000)
2028	(\$37,400,000)

Fiscal Analysis

The bill would make several changes to to the Texas Tax Code.

Section 111.008(a) would be amended to provide that the comptroller if not satisfied with a tax report may compute an amount of overpayment of tax to be credited or refunded.

Section 111.104(c) would be amended to strike the requirement that the reason or ground for a claim for refund be stated fully and in detail.

Section 112.051 would be amended to strike the requirement that if a taxpayer contends that a tax is unlawful, the taxpayer pay the amount claimed by the state and submit with the payment a protest stating each reason for recovery of the payment fully and in detail.

Section 111.0041(c), providing that a taxpayer shall produce contemporaneous records and supporting documentation, including 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, as appropriate to substantiate and enable verification of the taxpayer's claim in an administrative or judicial proceeding, would be repealed.

Section 111.105(e), providing that during the administrative hearing process, a taxpayer claiming a refund must provide documentation to support the claim, would be repealed.

Section 112.052(d), providing that a taxpayer who has filed suit in district court shall provide documentation to prove its claims in a protest or refund suit, would be repealed.

Subchapter E of Chapter 112, providing for suits following completion of the redetermination hearing process without requiring payment by taxpayer of disputed amounts, in which the comptroller is enjoined from all collection actions apart from asserting tax liens, would be repealed.

Subchapter F of Chapter 112, providing for suits directly after issuance of a tax deficiency notice without requiring payment of any amount, with no requirement to complete the redetermination hearing process and enjoining all collection actions including liens, and providing for tax refund suits with no requirement to complete the refund hearing process or participate in a Hearings Bypass Conference, would be added.

The bill would take effect September 1, 2023, and would apply to a claim for refund, a determination, or an administrative proceeding that is pending or in progress on or after the effective date of the bill, without regard to whether the taxes that are the subject of the claim, determination, or proceeding were due before, on, or after that date.

Methodology

Sections 1, 2, and 9 shift the burden to substantiate a claim from a taxpayer to the Comptroller and eliminate the requirement that a taxpayer maintain and produce records necessary to substantiate a claim. According to the Comptroller, this would effectively eliminate the agency's ability to review taxpayer claims at the agency level. By depriving the agency of the opportunity to review contested refund denials and determinations through the administrative process, the bill effectively pushes the work of the agency onto a district court.

Section 5 deletes the requirement that a refund claim state the grounds for a refund “fully and in detail.” According to the Comptroller, together with the provisions allowing a taxpayer to file suit in court immediately after a refund denial, this would effectively eliminate any meaningful review by the agency of refund claims and shift the burden of claim review to the district court.

Section 6 eliminates the requirement that a protest letter state the grounds for refund claim “fully and in detail.” According to the Comptroller, this section would also undermine any possibility of meaningful agency review and shift the burden of review to the district court.

According to the Comptroller deleting the requirement to state each reason or ground “fully and in detail” has

broad consequences. Per Sec 111.107(b), A person may not refile a refund claim for the same transaction or item, tax type, period, and ground or reason that was previously denied by the comptroller. To enforce this, Audit requires that each reason or ground requested in a given claim be identified and recorded.

Broad reasons such as “tax paid in error” would keep refund claims open to all potential overpayment situations and exemptions within the tax code. Providing vague, unidentifiable, and untraceable reasons would open the possibility for taxpayers to repeatedly request refunds for the same transactions, even if the transactions had been previously denied.

Added Subchapter F of Chapter 112 would enjoin the comptroller and attorney general from collection actions after the comptroller is served in a suit, during pendency of the suit. This would preclude the filing of notice of tax liens, a significant deterrent to nonpayment of audit assessments.

According to the Comptroller, for fiscal years 2019 – 2022 and fiscal year-to-date 2023, refund requests have been in total amount \$4,443,971,888.37, of which \$2,171,263,310.77 has been approved and \$2,272,708,577.60 denied. Absent requirement that taxpayers keep and provide contemporaneous records and supporting documentation to substantiate claims, it would be expected that the number and amounts of refund requests paid, whether administratively or following determination by district court, would rise significantly.

Increased refunds and decreased audit collections would be expected to occur by fiscal 2025, with the amounts rising sharply in subsequent years.

Local Government Impact

There would be significant reductions in net collections of local sales and use taxes, in addition to decreased net revenue to the state.

Source Agencies: 304 Comptroller of Public Accounts

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