

BILL ANALYSIS

Senate Research Center

S.B. 266
By: Perry
Finance
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, the refund bypass procedure does not apply to tax assessments from the results of managed audits. The Tax Code currently provides that a taxpayer may protest a tax assessment by: (1) paying the entire amount under protest and filing suit within 90 days or (2) 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 (comptroller) nevertheless may file liens against the taxpayer while the suit is pending. Maneuvering a protest through administrative review and obtaining a hearing at the State Office of Administrative Hearings (SOAH) is a lengthy and expensive process for taxpayers.

S.B. 266 allows a taxpayer to challenge the results of a managed audit (for sales/use or natural gas production tax) by filing suit after completing a bypass conference with the comptroller. It makes conforming changes to Chapter 112. With respect to a managed audit that results in a net liability, it enjoins all collection action by the comptroller or attorney general while the suit is pending but the comptroller may require a bond or other security while the suit is pending.

S.B. 266 further builds upon the changes made by S.B. 903 from the 87th session, which provided a mechanism for taxpayers to bypass the administrative hearings process at SOAH and appeal the denial of a refund claim directly to a district court. S.B. 266 makes the same bypass mechanism available for taxpayers undergoing a managed audit at the comptroller's office.

Additionally, S.B. 266 permits the comptroller to utilize other alternatives in lieu of asserting tax liens in order to protect the state's fiscal interests in a disputed tax matter that is the subject of a lawsuit. These alternatives include requiring the taxpayer to provide security 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 other form of guarantee sufficient to secure payment of the disputed amount should the court rule in the state's favor.

S.B. 266 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. Makes conforming and nonsubstantive changes.

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).

(d) Provides that the penalty provided by Subsection (c) 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 (Taxpayers' Suits). Requires that a penalty of 10 percent of the amount due, exclusive of penalties and interest, 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, 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 (Suit for Tax Refund), Chapter 112, if 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 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 who filed the notice of intent, if the comptroller and the person 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, on or before the 120th day after the date the notice of intent was filed, rescind the notice of intent and petition the comptroller for a redetermination under Section 111.009.

(f) Provides that, except as provided by Subsection (e), a person who files a notice of intent under Subsection (a) 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 has been issued a letter by the comptroller notifying the person of the results of the managed audit and 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 requires that it 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, including the amounts of the disputed underpayments or overpayments contained in the report of the managed audit results.

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

(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 asserting tax liens or as an alternative to asserting tax liens, requiring the person to provide security 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 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, as follows:

Sec. 112.152. ISSUES IN SUIT. (a) Provides that only certain issues, as applicable, are authorized to be raised in a suit under Subchapter D, including material facts and legal bases contained in the notice of intent filed under certain sections, including Section 111.0091(a).

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

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

(c) Makes no changes to this subsection.

(c-1) Creates this subsection from existing text. Provides that, after the comptroller has been timely served in a suit that complies with this subchapter, the comptroller and the attorney general are not enjoined from asserting tax liens or as an alternative to asserting tax liens, requiring the person to provide security 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 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, to make a conforming change.

SECTION 11. Repealer: Section 111.105(e) (relating to requiring a person claiming a refund to submit documentation to enable the comptroller to verify the claim), 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, 2025.