

BILL ANALYSIS

S.B. 266
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Ways & Means
Committee Report (Unamended)

BACKGROUND AND PURPOSE

The bill sponsor has informed the committee that certain taxpayers who conduct a managed audit currently have limited options when it comes to protesting the results of the managed audit, which include paying the tax under protest and bringing suit against the state to recover the tax or filing a petition for a redetermination of taxes and requesting an administrative hearing on the redetermination. The bill sponsor has also informed the committee that, although collection actions are generally suspended when these actions are taken, the comptroller of public accounts may file liens against the taxpayer while a lawsuit to recover the tax is pending. Furthermore, the bill sponsor has informed the committee that the administrative hearing process can be lengthy and expensive for taxpayers. S.B. 266 seeks to address these issues and expand options for taxpayers by allowing certain taxpayers to file a notice of intent to bypass the process of petitioning the comptroller for a redetermination of taxes and bring a suit to dispute the results of a managed audit.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

S.B. 266 amends the Tax Code to authorize a person to bypass the redetermination process and sue the comptroller of public accounts to dispute the results of a managed audit and to revise changes to certain tax and fee collection procedures.

Notice of Intent to Bypass

S.B. 266 authorizes a person who conducts a managed audit authorized by statutory provisions relating to the sales and use tax or the gas production tax to file with the comptroller a notice of intent to bypass the process of petitioning the comptroller for a redetermination of taxes. The notice of intent must be filed in writing on or before the 60th day after the date the comptroller issues a letter notifying the person of the results of the managed audit and do the following:

- assert the material facts and each specific legal basis for disputing the results of the managed audit; and
- specify the amounts of the disputed underpayments or overpayments contained in the report of the managed audit results.

S.B. 266 authorizes the comptroller to require a conference between a person who files a notice of intent 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. The bill authorizes the person who filed the notice of intent to amend a material fact or legal basis following the conference if the comptroller agrees in writing to the amendment. The bill requires the comptroller, if the comptroller requires such a conference, to notify the person of the conference requirement not later than the 30th day after the date the notice of intent was filed. The notice of the conference requirement must be in writing and include a date and time for the conference, which must be not later than the 90th day after the date the notice of intent was filed. The bill authorizes the person who filed the notice of intent to request to reschedule the conference date provided in the comptroller's notice and requires the comptroller to make a good faith effort to accommodate that request. 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, the bill authorizes the person, on or before the 120th day after the date the notice was filed, to rescind the notice of intent and petition the comptroller for a redetermination. Otherwise, a person who files a notice of intent waives the person's right to a redetermination.

S.B. 266 authorizes a person who files a notice of intent to bypass the redetermination process and bring a suit to dispute the results of a managed audit if either of the following conditions are met:

- the person participated in the conference under the bill's provisions, in which case the suit must 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 timely provide notice that such a conference is required, in which case the suit must be filed on or before the 90th day after the date the notice of intent was filed.

Suit to Dispute the Results of a Managed Audit

S.B. 266 authorizes a person to sue the comptroller to dispute the results of a managed audit conducted under statutory provisions relating to the sales and use tax or the gas production tax 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 bypass the redetermination process and bring the suit under the bill's provisions. The bill requires the suit to be filed in a district court and brought against both the comptroller and the attorney general. The bill also requires the suit to be filed during the time provided by the bill's provisions or it is barred.

S.B. 266 requires the amounts of the disputed underpayments or overpayments contained in the report of the managed audit results to be set out in the original petition and requires a copy of the notice of intent to bypass the redetermination process to 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. The bill prohibits any person from intervening in the suit. The bill 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 statutory provisions relating to tax records and the burden to produce and substantiate claims, including the amounts of the disputed underpayments or overpayments contained in the report of the managed audit results. After the comptroller has been timely served in a suit that complies with these provisions, the comptroller and the attorney general:

- are enjoined from collecting disputed underpayments identified in the notice of intent to bypass the redetermination process from the person bringing the suit during the pendency of the suit; and
- 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.

The bill authorizes damages to be awarded under applicable state law relating to injunctions if the court determines that all or part of those enjoined collection amounts were disputed solely for delay.

S.B. 266 authorizes material facts and legal bases contained in a notice of intent to bypass the redetermination process to be raised as issues in a suit to dispute the results of a managed audit under the bill's provisions. The bill specifies that such a suit applies only to a tax liability period covered by the notice of intent.

Certain Procedures for a Suit After a Redetermination

S.B. 266 establishes that, after the comptroller has been timely served in a suit to dispute an amount of a tax, penalty, or interest assessed in a deficiency redetermination or jeopardy redetermination under applicable state law, the comptroller and the attorney general are not enjoined from, as an alternative to asserting tax liens, requiring the person bringing the suit 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.

Burden to Produce and Substantiate Claims

S.B. 266 replaces the requirement for a taxpayer to produce 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, as applicable, in an administrative or judicial proceeding with a requirement for a taxpayer to produce sufficient records and supporting documentation appropriate to the tax or fee for the transactions in question for such purposes. This requirement applies with respect to the following suits:

- a suit against the state to recover a tax required to be paid to the state if the person has first paid the tax under protest;
- a suit to recover an amount of a tax, penalty, or interest that has been the subject of a tax refund claim; and
- a suit to dispute an amount of a tax, penalty, or interest assessed in a deficiency redetermination or jeopardy redetermination under applicable state law.

Abatement of Certain Penalties

S.B. 266 provides for the abatement of the penalty assessed for the failure to pay the amount of a tax determination within 20 days after the comptroller's decision in a redetermination hearing becomes final with respect to the disputed amount that is the subject of a timely filed suit to dispute an amount of a tax, penalty, or interest assessed in a deficiency redetermination or jeopardy redetermination under applicable state law. The bill requires a penalty of 10 percent of the amount due, exclusive of penalties and interest, to be added if the amount determined to be due in a final judgment in such a suit is not paid within 20 days after the day the judgment became final.

Procedural Provisions

S.B. 266 applies to a managed audit that is in progress and an administrative or judicial proceeding that is pending or filed on or after the bill's effective date, without regard to whether the taxes that are the subject of the managed audit or proceeding were due before, on, or after that date.

Repealers

S.B. 266 repeals Section 111.105(e), Tax Code, which establishes procedures for the submission of documentation and evidence during the administrative hearing process for a person claiming a tax refund under applicable state law.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2025.