

SUBJECT: Amending taxpayers' suits to recover disputed taxes or penalties

COMMITTEE: Ways and Means — committee substitute recommended

VOTE: 10 ayes — Meyer, Thierry, Button, Cole, Guerra, Martinez Fischer, Murphy, Noble, Sanford, Shine

0 nays

1 absent — Rodriguez

WITNESSES: For — Dale Craymer, Texas Taxpayers and Research Association;
(*Registered, but did not testify:* Daniel Womack, Dow, Inc.; Joy Davis, Texas Farm Bureau)

Against — None

On — (*Registered, but did not testify:* Karey Barton, Comptroller of Public Accounts)

BACKGROUND: Tax Code ch. 111 governs state tax collection procedures. Under sec. 111.008, if the comptroller makes a deficiency determination and is not satisfied with the amount of tax required to be paid to the state by a person, the comptroller may determine the amount to be paid. Sec. 111.009 allows a person to petition the comptroller for a redetermination, if they meet certain filing requirements.

Under sec. 111.022, if the comptroller believes that the collection of a tax is jeopardized by delay, the comptroller must issue such determination and the amount is due and payable immediately.

Ch. 112 governs taxpayers' suits. Under subch. B, a person may bring suit against the state to recover an occupation, excise, gross receipts, franchise, license, or privilege tax or fee required to be paid to the state, if the person has first paid the tax under protest.

Under subch. D, a person may sue the comptroller to recover an amount of tax, penalty, or interest that was the subject of a tax refund claim that was denied by the comptroller. The person would have to pay any additional tax found due in a jeopardy or deficiency determination that applies to the tax liability period covered in the tax refund claim.

DIGEST:

CSHB 2080 would revise the process by which a person could sue the state to recover taxes paid under protest and establish a process to dispute taxes after a redetermination.

Suit after redetermination. CSHB 2080 would establish procedures by which a person could sue the comptroller to dispute an amount of tax, penalty, or interest assessed in a deficiency redetermination or jeopardy determination if the person had:

- filed a request for redetermination;
- obtained a redetermination that included a finding by the comptroller of the disputed and undisputed amounts; and
- filed a motion for rehearing of the redetermination that stated the specific grounds of error and the disputed amounts and otherwise complied with state law.

A suit after redetermination would have to be filed against both the comptroller and the attorney general. The suit also would have to be filed within 90 days of the issue date of the denial of the motion for rehearing or it would be barred.

Payments. The bill would require the person bringing suit to pay the redetermination amounts that were not disputed in the motion for rehearing. The failure to pay an undisputed amount would not affect the jurisdiction of a court to consider the suit.

The person bringing a suit could pay the disputed amounts as provided by current law. A disputed amount that was not paid according to law and that was determined to be due in a final judgment would accrue penalties and interest.

After the comptroller had been timely served in such a suit, the comptroller and the attorney general would be enjoined from collecting disputed amounts from the person bringing the suit during the pendency of the suit but would not be enjoined from asserting tax liens. Damages could be awarded if the court determined that all or part of the enjoined collection amounts were disputed solely for delay.

Judgment. CSHB 2080 would require the amount of a judgment refunding disputed taxes, penalties, or interest to be credited against the amount imposed and due from the plaintiff. The remainder of the amount not credited would have to be refunded to the plaintiff.

The plaintiff would be entitled to interest on the tax refunded in a judgment equal to the amount of interest that would be due if the tax had been deposited in the comptroller's suspense account. The interest would accrue beginning from the date that the tax was paid until:

- the date the amount was credited against the plaintiff's tax liability; or
- a date determined by the comptroller that was not sooner than 10 days before the actual date on which a refund warrant was issued.

Other provisions. CSHB 2080 would allow the state to counterclaim in a suit if it related to taxes imposed under the same statute and during the same period as the taxes subject to suit. The counterclaim would have to be filed by 30 days before the date set for trial on the merits of the suit.

The attorney general would be required to represent the comptroller in a suit after redetermination.

The bill also would establish provisions for suits after redetermination similar to those governing other taxpayers' suits, including provisions regarding required records, issues in the suit, requiring trial de novo, and applying the rule of res judicata.

Suit after protest payment. CSHB 2080 would revise certain provisions

governing taxpayers' suits against the state to recover taxes paid under protest.

The bill would specify that a person could bring a suit to recover any tax, penalty, or interest assessed in a deficiency determination. The bill would specify that to bring such a suit, the person would have to pay the amount assessed in the deficiency determination and submit the written protest within six months after the deficiency determination became final.

The bill would provide that provisions requiring the payment of protested taxes before bringing suit and provisions establishing certain procedural requirements in bringing the suit were not severable from other laws governing such a suit. If the provisions were held invalid, the entire subchapter governing suits after protest payment would be invalid.

The bill would remove a provision exempting certain suits for protests against the franchise tax from the requirement that they be brought within 91 days after the date the protest payment was made.

The attorney general would represent the comptroller in a suit after protest payment. A person would be prohibited from intervening in such a suit.

The bill would remove the requirement for the officer who received a payment made under protest to send daily to the comptroller the payments received, a list of the persons making the payments, and a written statement that the payments were made under protest.

Attorney's fees. Except in certain sanctions, attorney's fees could not be awarded in a suit seeking legal or equitable relief against the state, a state agency, or an officer of the state relating to the applicability, assessment, collection, constitutionality, or amount of a tax, fee, or penalty imposed by the state or a local government or collected by the comptroller.

Repealed statutes. The bill would repeal the following statutes:

- Government Code sec. 403.212(e), which exempts taxes or fees

- under protest from certain requirements before injunction;
- Tax Code secs. 112.056 and 112.057, which require a petitioner to pay additional taxes when due under protest after filing a suit and during an appeal;
 - Tax Code secs. 112.058(d) and (e), which prohibit the protest payments of certain taxes from being placed in a suspense account; and
 - Tax Code ch. 112, subch. C, which governs the process by which an injunction prohibiting the assessment or collection of a tax could be brought against a public official.

Applicability, effective date. The bill would exempt a redetermination suit or a suit for a tax refund from the applicability of certain statutes in the Government Code governing suits brought by persons owing taxes or fees.

The bill would take effect September 1, 2021, and apply only to a suit to dispute an amount of tax, penalty, or interest that became due and payable on or after that date.

**SUPPORTERS
SAY:**

CSHB 2080 would reform the law governing taxpayers' suits by expanding taxpayers' ability to file a suit challenging a tax assessment by the comptroller. The bill would provide that a taxpayer who filed a suit challenging a tax assessment did not have to first pay the disputed amounts. The bill would allow all taxpayers, regardless of income status, the ability to challenge a tax and align state law more closely with the Texas Constitution, which provides that all courts be open and all injured persons have remedy by due course of law. There has been significant litigation in the state in recent years regarding the limited access taxpayers have to courts if they do not prepay a contested tax or penalty. The bill would correct this oversight by making state courts more accessible.

**CRITICS
SAY:**

No concerns identified.