

- SUBJECT:** Allowing taxpayers to bypass tax refund hearing to bring suit
- COMMITTEE:** Ways and Means — favorable, without amendment
- VOTE:** 11 ayes — Meyer, Thierry, Button, Cole, Guerra, Martinez Fischer, Murphy, Noble, Rodriguez, Sanford, Shine
- 0 nays
- SENATE VOTE:** On final passage, April 19 — 31-0, on Local and Uncontested Calendar
- WITNESSES:** No public hearing.
- BACKGROUND:** Under Tax Code sec. 111.105, a person claiming a tax refund from the comptroller is entitled to a hearing on the claim if the person requests a hearing on or before the 60th day after the date the comptroller issues a letter denying the refund claim. Under sec. 111.00455, such a hearing is conducted by the State Office of Administrative Hearings.
- Sec. 112.151 allows a person to sue the comptroller to recover the tax refund claimed if the person has filed a claim, filed a motion for rehearing that was denied by the comptroller, and paid any additional tax due in jeopardy or deficiency determination.
- DIGEST:** SB 903 would allow a person claiming a tax refund to file with the comptroller a notice of intent to bypass a tax refund hearing. The notice of intent would have to:
- be filed within 60 days after the comptroller denied the claim;
 - be in writing;
 - assert the material facts and each specific legal basis on which a refund was claimed; and
 - specify the amount of the refund claimed.

The comptroller could require a conference between a person who filed a

notice of intent and a designated officer or employee of the comptroller to clarify any fact or legal issue in dispute regarding the refund claim and to discuss the availability of additional documentation that could assist in resolving outstanding issues regarding the claim. The person who filed the notice could amend a material fact or legal basis following the conference if the comptroller agreed in writing to the amendment.

The comptroller would have to notify the person that a conference was required within 30 days after the notice of intent to bypass the hearing was filed. The notice would have to include a date and time for the conference, which could not be later than 90 days after the notice of intent was filed. The person who filed the notice could request to reschedule the conference, and the comptroller would have to make a good faith effort to accommodate the request. If the comptroller and person did not agree to a rescheduled date within 90 days after the date the notice was filed, the person could rescind the notice of intent within 120 days of filing the notice and request a tax refund hearing. Except as provided by this provision, a person who filed a notice of intent would waive their right to a refund hearing.

A person who filed a notice could bypass the hearing and bring a suit for a tax refund if the person participated in a conference or the comptroller did not provide notice that a conference was required within the required timeframe. If the person participated in a conference, the suit would have to be filed within 60 days after the date the conference concluded or a later date agreed to by the comptroller. If the comptroller did not provide required notice, the suit would have to be filed on or before 90 days after the date the notice of intent was filed.

The bill also would extend the deadline for a person to file a tax refund suit. If the person did not file a notice of intent to bypass a hearing, they would have to file the suit within 60 days, rather than 30, after the date the denial of the motion for rehearing was issued or the suit would be barred. If the person did file such a notice, they would have to file the suit as provided by this bill or it would be barred. The bill would allow material facts and legal bases contained in the notice of intent to bypass a hearing

to be raised in a refund suit.

The bill would take effect September 1, 2021, and apply only to a claim for a refund that was pending or filed on or after that date.

**SUPPORTERS
SAY:**

SB 903 would give taxpayers the option to bring their tax refund claims directly to a district court, allowing taxpayers to resolve their tax cases more expeditiously. Currently, after the comptroller denies a tax refund claim, a taxpayer has to request a refund hearing, complete the hearing process at the State Office of Administrative Hearings (SOAH), and file a motion for rehearing before filing a suit to claim the refund. This process can be needlessly expensive and delay the taxpayer's opportunity to resolve the case. SOAH hearings may deal with issues that ultimately must be dealt with by the court anyway, such as constitutional issues, and so the hearings often are unnecessary. Additionally, SOAH usually finds in favor of the state in these hearings. By providing taxpayers a process to bypass a tax refund hearing after providing certain notice to the comptroller, SB 903 would allow taxpayers to bring their claim directly to court, saving them and the state time and money.

**CRITICS
SAY:**

No concerns identified.

NOTES:

The House companion bill, HB 2623 by Sanford, was considered by the House Ways and Means Committee in a public hearing on April 12 and left pending.