

BILL ANALYSIS

Senate Research Center
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H.B. 2080
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Finance
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Under current law, a taxpayer can only challenge a tax assessment in district court if the taxpayer has paid the assessment in full. This practice is often referred to as "pay to play" and is onerous for both taxpayers and the state.

H.B. 2080 seeks to restructure the current processes and procedures surrounding taxpayer suits in the State of Texas to provide clarity for all parties.

This legislation removes the barriers in place for taxpayers to dispute their assessment. The bill requires a taxpayer who is disputing their assessment to only pay the undisputed amount of the assessment while the suit is still pending. The bill also extends the amount of time that a taxpayer has to bring the suit against the state. Furthermore, the bill includes clarifications of how disputed and undisputed amounts are determined, giving both the taxpayer and the state a better understanding of the taxpayers' obligation. Finally, the bill makes sweeping changes to the procedures surrounding these cases that conform to similar cases handled by the Comptroller of Public Accounts of the State of Texas.

H.B. 2080 amends current law relating to taxpayers' 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 403.202(a), Government Code, as follows:

(a) Deletes existing text providing that a tax or fee to which Subchapter B (Suit After Protest Payment), Chapter 112 (Taxpayers' Suits), Tax Code, applies is an exception to the provisions of this subsection requiring that a person who is bringing a suit in protest of a tax or fee must submit payment of the tax or fee with the protest. Makes nonsubstantive changes.

SECTION 2. Amends Subchapter J, Chapter 403, Government Code, by adding Section 403.222, as follows:

Sec. 403.222. APPLICABILITY. Provides that Subchapter J does not apply to a suit under Chapter 112, Tax Code.

SECTION 3. Amends Subchapter A, Chapter 112, Tax Code, by adding Section 112.003, as follows:

Sec. 112.003. ATTORNEY'S FEES. Prohibits attorney's fees, except for a sanction under Chapter 10 (Sanctions for Frivolous Pleadings and Motions), Civil Practice and Remedies Code, or the Texas Rules of Civil Procedure, from being 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 Title 2 (State Taxation) or Title 3 (Local Taxation) or collected by the Comptroller of Public Accounts of the State of Texas (comptroller) under any other law.

SECTION 4. Amends Section 112.051, Tax Code, as follows:

Sec. 112.051. PROTEST PAYMENT REQUIRED. (a) Authorizes a person to bring a suit as authorized by Section 112.052 to dispute an amount of tax, penalty, or interest assessed in a deficiency determination under Chapter 111 (Collection Procedures) only if the person has paid the amount assessed in the deficiency determination and submitted with the payment a written protest stating fully and in detail each reason for recovering the amount paid. Deletes existing text providing that if a person who is required to pay a tax or fee imposed by Title 2 or collected by the comptroller under any law, including a local tax collected by the comptroller, contends that the tax or fee is unlawful or that the public official charged with the duty of collecting the tax or fee is prohibited from legally demanding or collecting the tax or fee, the person is required to pay the amount claimed by the state, and if the person intends to bring suit under Subchapter B, the person is required to submit with the payment a protest.

(b) Requires that the written protest be submitted and the payment be made not later than six months after the date the deficiency determination becomes final, rather than that the protest be in writing and state fully and in detail each reason for recovering the payment.

(c) Provides that Sections 112.051 and 112.052 are not severable from the other provisions of Subchapter A (General Provisions). Provides that if Section 112.051 or 112.052 is held invalid for any reason, the entire subchapter is invalid. Deletes existing text requiring that the protest payment be made within the period of time set out in Subdivision (3) (relating to the requirement that a refund be filed by a certain time) of Subsection (c) of Section 111.104 (Refunds) of this code for the filing of refund claims.

SECTION 5. Amends Section 112.052, Tax Code, as follows:

Sec. 112.052. TAXPAYER SUIT AFTER PAYMENT UNDER PROTEST. (a) Authorizes a person to bring suit against the state to recover an amount of tax, penalty, or interest assessed in a deficiency determination under Chapter 111, rather than to recover 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 amount assessed, rather than has first paid the tax, under protest as required by Section 112.051. Makes a nonsubstantive change.

(b) Deletes existing text providing an exception that for the tax imposed by Chapter 171 (Franchise Tax) for a regular annual period, if an extension is granted to the taxpayer under Section 171.202(c) (relating to an extension of time granted by the comptroller to a taxable entity under certain circumstances) for filing the report and the taxpayer files the report on or before the last date of the extension period, the protest required by Section 112.051 is authorized to be filed with the report to cover the entire amount of tax paid for the period, and suit for the recovery of the entire amount of tax paid for the period is authorized to be filed before the 91st day after the date the report is filed to the requirement that a suit under this section be brought before the 91st day after the date the protest payment was made, or the suit is barred. Deletes existing text providing that if the report is not filed on or before the last date of the extension period, a protest filed with the report applies only to the amount of tax, if any, paid when the report is filed.

(c) and (d) Makes conforming changes to these subsections.

SECTION 6. Amends Section 112.053, Tax Code, by amending Subsections (a) and (c) and adding Subsections (d) and (e), as follows:

(a) Deletes existing text requiring that a suit authorized by Subchapter B be brought against the public official charged with the duty of collecting the fee, the comptroller, and the attorney general.

(c) Requires that a copy of the written protest as originally filed be attached to the original petition filed by the person paying the tax, penalty, or interest, rather than by the person paying the tax or fee, with the court and to the copies of the original petition served on the comptroller, the attorney general, and the public official charged with the duty of collecting the tax, rather than collecting the tax or fee.

(d) Requires the attorney general to represent the comptroller in a suit under Subchapter B.

(e) Prohibits a person from intervening in a suit under Subchapter B.

SECTION 7. Amends Section 112.058, Tax Code, by amending Subsection (a) and adding Subsections (b) and (c), as follows:

(a) Requires the comptroller, immediately on receipt of a payment made under protest under Section 112.051, to deposit each portion of the payment to the credit of the account or fund to which the tax, penalty, or interest paid under protest is allocated by law, rather than immediately on receipt credit the payments to each fund to which the tax or fee paid under protest is allocated by law. Deletes existing text providing that payments made under protest are to be handled in certain ways, including requiring an officer who receives payments made under protest as required by Section 112.051 to each day send to the comptroller the payments, a list of the persons making the payments, and a written statement that the payments were made under protest.

(b) Creates this subsection from existing text. Requires the comptroller to maintain detailed records of payments made under protest under Section 112.051, rather than records of payments made under protest.

(c) Creates this subsection from existing text. Provides that an amount paid under protest under Section 112.051, rather than a payment under protest, bears pro rata interest. Provides that the pro rata interest is the amount of interest earned by the amount paid under protest, rather than the amount of interest earned by the protested funds.

SECTION 8. Amends Section 112.059, Tax Code, as follows:

Sec. 112.059. DISPOSITION OF PROTEST PAYMENTS BELONGING TO THE STATE. Requires the comptroller, if a suit authorized by Subchapter B is not brought in the manner or within the time required or if the suit is properly filed and results in a final determination that an amount paid under protest, rather than results in a final determination that a tax payment or a portion of a tax payment made under protest, including the pro rata amount of interest earned on the amount, belongs to the state, to ensure that the proper amount is deposited to the credit of the appropriate state account or fund. Makes nonsubstantive and conforming changes.

SECTION 9. Amends Sections 112.060(c) and (d), Tax Code, as follows:

(c) Requires that each refund warrant be drawn against the accounts or funds to which the amounts paid under protest are allocated by law, rather than each tax refund warrant be drawn against each fund to which the taxes paid under protest are allocated by law. Requires the comptroller, if there are not sufficient funds in an account or fund to pay a refund required to be paid under Subsection (a) (relating to requiring the comptroller to refund a payment made under protest if the suit results in a final determination that all or part of the money belongs to the taxpayer), rather than if there are not sufficient funds in each fund to which the taxes paid under protest are allocated by law, to draw the warrant against the General Revenue Fund or other account or fund from which refunds are

authorized to be made, as the comptroller determines appropriate. Makes nonsubstantive changes.

(d) Requires the comptroller to issue each refund warrant, rather than each tax refund warrant, and to deliver it to the person entitled to receive it.

SECTION 10. Amends Chapter 112, Tax Code, by adding Subchapter E, as follows:

SUBCHAPTER E. SUIT AFTER REDETERMINATION

Sec. 112.201. SUIT AFTER REDETERMINATION. (a) Authorizes a person to sue the comptroller to dispute an amount of tax, penalty, or interest assessed in a deficiency redetermination or jeopardy redetermination under Chapter 111 if the person has:

(1) filed a request for redetermination under Chapter 111;

(2) obtained a redetermination under Chapter 111 that includes a finding by the comptroller of the disputed and undisputed amounts; and

(3) filed a motion for rehearing of the redetermination that complies with Chapter 2001 (Administrative Procedure), Government Code, and that states the specific grounds of error and the disputed amounts associated with the grounds of error.

(b) Requires a person bringing a suit under Subchapter E to pay, as provided by Chapter 111, the redetermination amounts that are not disputed in the motion for rehearing. Provides that the failure to pay an undisputed amount does not affect the jurisdiction of a court to consider a suit that complies with Subsection (a).

(c) Authorizes a person bringing a suit under Subchapter E to pay the disputed amounts as provided by Chapter 111. Provides that a disputed amount that is not paid as provided by Chapter 111 and that is determined to be due in a final judgment accrues penalties and interest as provided by Chapter 111. Provides that after the comptroller has been timely served in a suit that complies with Subchapter E, the comptroller and the attorney general are enjoined from collecting disputed amounts from the person bringing the suit during the pendency of the suit but are not enjoined from asserting tax liens. Authorizes the award of damages under Chapter 65 (Injunction), Civil Practice and Remedies Code, if the court determines that all or part of the enjoined collection amounts were disputed solely for delay.

(d) Requires that a suit under Subchapter E be brought against both the comptroller and the attorney general.

(e) Requires that a suit under Subchapter E be filed before the expiration of 90 days after the issue date of the denial of the motion for rehearing or it is barred.

(f) Requires that the disputed and undisputed amounts of the redetermination be set out in the original petition. Requires that a copy of the motion for rehearing 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.

(g) Prohibits a person from intervening in a suit under Subchapter E.

Sec. 112.202. RECORDS. Requires a person to produce, in connection with a suit under Subchapter E, contemporaneous records and supporting documentation appropriate to the tax for the transactions in question to substantiate and enable verification of the person's claim relating to the amount of the tax, penalty, or interest that has been assessed or collected, as required by Section 111.0041 (Records; Burden to Produce and Substantiate Claims).

Sec. 112.203. COUNTERCLAIM. (a) Authorizes the state to bring a counterclaim in a suit under Subchapter E if:

(1) the counterclaim relates to taxes imposed under the same statute and during the same period as the taxes or fees that are the subject of the suit; and

(2) the counterclaim is filed not later than the 30th day before the date set for trial on the merits of the suit.

(b) Provides that the state is not required to make an assessment of the taxes subject to the counterclaim under any other statute, and the period of limitation applicable to an assessment of the taxes does not apply to a counterclaim brought under this section.

Sec. 112.204. ISSUES IN SUIT. (a) Provides that the grounds of error contained in the motion for rehearing are the only issues that are authorized to be raised in a suit under Subchapter E.

(b) Provides that a suit under Subchapter E applies only to a tax liability period considered in the comptroller's redetermination.

Sec. 112.205. ATTORNEY GENERAL TO REPRESENT COMPTROLLER. Requires the attorney general to represent the comptroller in a suit under Subchapter E.

Sec. 112.206. TRIAL DE NOVO. Requires that the issues in a suit under Subchapter E be tried de novo as are other civil cases.

Sec. 112.207. JUDGMENT. (a) Requires that the amount of a judgment refunding disputed taxes, penalties, or interest paid to the comptroller be credited against any tax, penalty, or interest imposed by Title 2 and due from the plaintiff.

(b) Requires that the remainder of the amount of a judgment not credited against a tax, penalty, or interest be refunded to the plaintiff.

(c) Entitles the plaintiff to interest on the amount of tax refunded in a judgment for the plaintiff equal to the amount of interest that would be due if the tax had been deposited in the suspense account of the comptroller. Provides that the interest accrues beginning from the date that the tax was paid until the date that the amount is credited against the plaintiff's tax liability, or until a date determined by the comptroller that is not sooner than 10 days before the actual date on which a refund warrant is issued.

Sec. 112.208. RES JUDICATA. Provides that the rule of res judicata applies in a suit under Subchapter E only if the issues and the tax liability periods in controversy are the same as were decided in a previous final judgment entered in a Texas court of record in a suit between the same parties.

SECTION 11. Repealer: Section 403.212(e) (relating to the nonapplicability of Section 403.212 (Requirements Before Injunction) under certain circumstances), Government Code.

Repealer: Section 112.056 (Additional Protest Payments Before Hearing), Tax Code.

Repealer: Section 112.057 (Protest Payments During Appeal), Tax Code.

Repealers: Sections 112.058(d) and (e) (relating to certain protest payments being placed in a certain account), Tax Code.

Repealer: Subchapter C (Injunctions), Chapter 112, Tax Code.

SECTION 12. Makes application of this Act prospective.

SECTION 13. Effective date: September 1, 2021.