

By: Guerra

H.B. No. 3650

A BILL TO BE ENTITLED

AN ACT

relating to the collection, administration, and enforcement of
state taxes and fees.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 111.009(b), Tax Code, is amended to read
as follows:

(b) A petition for redetermination must be filed before the
expiration of 90 ~~[30]~~ days after the date on which the service of
the notice of determination is completed or the redetermination is
barred. If a petition for redetermination is not filed before the
expiration of the period provided by this subsection, the
determination is final on the expiration of the period.

SECTION 2. Sections 111.064(a) and (c), Tax Code, are
amended to read as follows:

(a) Except as ~~[otherwise]~~ provided by Subsections (b) and
(c) [this section], for a refund under this chapter, interest is at
the rate ~~[that is the lesser of the annual rate of interest earned~~
~~on deposits in the state treasury during December of the previous~~
~~calendar year, as determined by the comptroller, or the rate]~~ set in
Section 111.060, and accrues on the amount found to be erroneously
paid for a period:

(1) beginning on the later of 60 days after the date of
payment or the due date of the tax report; and

(2) ending on, as determined by the comptroller,

1 either the date of allowance of credit on account of the
2 comptroller's final decision or audit or a date not more than 10
3 days before the date of the refund warrant.

4 (c) For a refund claimed after ~~[before]~~ September 1, 2005,
5 and before September 1, 2015, and granted for a report period due on
6 or after January 1, 2000, the rate of interest is the rate that is
7 the lesser of the annual rate of interest earned on deposits in the
8 state treasury during December of the previous calendar year, as
9 determined by the comptroller, or the rate set in Section 111.060.

10 SECTION 3. Section 111.104, Tax Code, is amended by
11 amending Subsections (a), (c), and (d) and adding Subsection (c-1)
12 to read as follows:

13 (a) If the comptroller finds that an amount of tax, penalty,
14 or interest has been unlawfully or erroneously collected, the
15 comptroller shall credit the amount against any other amount when
16 due and payable by the taxpayer from whom the amount was collected.
17 The remainder of the amount, if any, must ~~[may]~~ be promptly refunded
18 to the taxpayer from money appropriated for tax refund purposes.

19 (c) A claim for a refund must:

20 (1) be written;

21 (2) state the ~~[fully and in detail each]~~ reason or
22 ground on which the claim is founded; and

23 (3) be filed before the later of the:

24 (A) expiration of the applicable limitation
25 period as provided by this code; or

26 (B) ~~[before the]~~ expiration of two years ~~[six~~
27 ~~months]~~ after the date a jeopardy or deficiency determination or a

1 notice of audit results indicating that no additional tax is due is
2 issued [~~becomes final, whichever period expires later~~].

3 (c-1) Notwithstanding Subsection (c) or Sections 111.206(d)
4 and 111.207(c), a claim for a refund may not be filed after the
5 eighth anniversary of the date the tax was due.

6 (d) [A refund claim for an amount of tax that has been found
7 due in a jeopardy or deficiency determination is limited to the
8 amount of tax, penalty, and interest and to the tax payment period
9 for which the determination was issued.] The failure to file a
10 timely tax refund claim is a waiver of any demand against the state
11 for an alleged overpayment.

12 SECTION 4. Section 111.1042(b), Tax Code, is amended to
13 read as follows:

14 (b) An informal review under this section is not a hearing
15 or contested case under Chapter 2001, Government Code, provided
16 that an informal review of a refund claim is an administrative
17 proceeding for purposes of this title.

18 SECTION 5. Section 111.105(e), Tax Code, is amended to read
19 as follows:

20 (e) During the administrative hearing process, a person
21 claiming a refund under Section 111.104 must submit documentation
22 to enable the comptroller to verify the claim for refund. After
23 discovery has been completed, the [~~The~~] comptroller may issue a
24 notice of demand that all evidence to support the claim for refund
25 must be produced before the expiration of a specified date in the
26 notice. The specified date in the notice may not be earlier than
27 180 days after the date of the notice [~~refund is claimed~~]. The

1 comptroller may not consider evidence produced after the specified
2 date in the notice in an administrative hearing. The limitation
3 provided by this subsection does not apply to a judicial proceeding
4 filed in accordance with Chapter 112.

5 SECTION 6. Section 111.107(a), Tax Code, is amended to read
6 as follows:

7 (a) Except as otherwise expressly provided, a person may
8 request a refund or a credit or the comptroller may make a refund or
9 issue a credit for the overpayment of a tax imposed by this title at
10 any time before the expiration of the period during which the
11 comptroller may assess a deficiency for the tax and not thereafter
12 unless the refund or credit is requested:

13 (1) under Subchapter B-1, ~~[B-1]~~ Chapter 112, and the
14 refund is made or the credit is issued under a court order;

15 (2) under the provision of Section 111.104(c)(3)
16 applicable to a refund claim filed after a jeopardy or deficiency
17 determination becomes final; ~~[or]~~

18 (3) under Chapter 162, except Section 162.126(f),
19 162.128(d), 162.228(f), or 162.230(d); or

20 (4) without regard to the expiration of any period of
21 limitation, at any time on or before the second anniversary of the
22 date the comptroller issues a deficiency or jeopardy determination
23 or the eighth anniversary of the date the tax was due, whichever is
24 later, and the refund or credit is limited to the reporting periods
25 for which the deficiency or jeopardy determination was issued.

26 SECTION 7. Section 111.206, Tax Code, is amended by adding
27 Subsection (c-1) and amending Subsection (d) to read as follows:

1 (c-1) The comptroller's assessment or suit for collection
2 authorized under this section shall be limited to the items and
3 periods for which the final determination was issued.

4 (d) If a final determination results in the taxpayer having
5 overpaid the amount of tax due the state, the taxpayer may file a
6 claim for refund with the comptroller for the amount of the
7 overpayment before the first anniversary of the date the final
8 determination becomes final. If the comptroller assesses tax by
9 issuing a deficiency determination within the period provided by
10 Subsection (c), the taxpayer may file a claim for refund for an
11 amount of tax that has been found due in a deficiency determination
12 before the 180th day after the deficiency determination becomes
13 final~~[, but the claim is limited to the items and the tax payment~~
14 ~~period for which the determination was issued]~~.

15 SECTION 8. Section 111.207, Tax Code, is amended to read as
16 follows:

17 Sec. 111.207. TOLLING OF LIMITATION PERIOD. (a) In
18 determining the expiration date for a period when a tax imposed by
19 this title may be assessed, collected, or refunded, the following
20 periods are not considered:

21 (1) the period following the date of a tax payment made
22 under protest, but only if a lawsuit is timely filed in accordance
23 with Chapter 112;

24 (2) the period during which a judicial proceeding is
25 pending in a court of competent jurisdiction to determine the
26 amount of the tax due;

27 (3) the period during which an administrative

1 redetermination or refund proceeding ~~[hearing]~~ is pending before
2 the comptroller; and

3 (4) the period during which an indictment or
4 information is pending for a felony offense related to the
5 administration of the Tax Code against any taxpayer or any person
6 personally liable or potentially personally liable for the payment
7 of the tax under Section 111.0611.

8 (b) ~~[The suspension of a period of limitation under~~
9 ~~Subsection (a)(1), (2), or (3) is limited to the issues that were~~
10 ~~contested under those subdivisions.~~

11 ~~[(c)]~~ A bankruptcy case commenced under Title 11 of the
12 United States Code suspends the running of the period prescribed by
13 any section of this title for the assessment or collection of any
14 tax imposed by this title until the bankruptcy case is dismissed or
15 closed. After the case is dismissed or closed, the running of the
16 period resumes until finally expired.

17 (c) In determining the expiration date for filing a refund
18 claim for a tax imposed by this title, the period during which an
19 administrative proceeding is pending before the comptroller or the
20 State Office of Administrative Hearings for the same period and
21 type of tax is not considered.

22 SECTION 9. Chapter 112, Tax Code, is amended by adding
23 Subchapter B-1 to read as follows:

24 SUBCHAPTER B-1. SUITS TO CONTEND PAYMENT OF ANY TAX OR FEE
25 COLLECTED BY COMPTROLLER

26 Sec. 112.071. APPLICABILITY. This subchapter applies to
27 any lawsuit to contend the payment of any tax or fee imposed by this

title or collected by the comptroller under any law, including a local tax collected by the comptroller.

Sec. 112.072. PAYMENT UNDER PROTEST NOT REQUIRED. (a) A person may not be required to pay a disputed tax under protest as a prerequisite to filing a lawsuit contending any tax or fee imposed by this title or collected by the comptroller under any law, including a local tax collected by the comptroller.

(b) A person may not be required to pay a disputed tax as a prerequisite to an appeal.

Sec. 112.073. NOTICE OF TAX ABATEMENT. (a) A person who wishes to file a lawsuit under this subchapter must first file a notice of tax abatement with the comptroller.

(b) Abatement of the tax may not be refused, provided that the taxpayer satisfies the requirements of this subchapter and timely files a lawsuit.

(c) The notice of tax abatement must be in writing on a form approved by the comptroller.

(d) The notice of tax abatement must be filed with the comptroller within the period stated in Section [111.104\(c\)\(3\)](#) for the filing of a refund claim.

(e) A statement of the grounds that states fully and in detail each reason for contending the tax or fee that is the subject of the notice of tax abatement must accompany the notice of tax abatement.

Sec. 112.074. LIMITATIONS. (a) Except as provided by Subsection (b), a suit under this subchapter must be filed before the 91st day after the date the notice of tax abatement was filed,

1 or the suit is barred.

2 (b) For the tax imposed under Chapter 171 for a regular
3 annual period, if an extension is granted to the taxpayer under
4 Section 171.202(c) for filing the report and the taxpayer files the
5 report on or before the last date of the extension period, the
6 notice of abatement of the tax required by this subchapter may be
7 filed with the report to cover the entire amount of tax paid for the
8 period, and the suit for the recovery of the entire amount of tax
9 paid for the period may be filed before the 91st day after the date
10 the report is filed.

11 Sec. 112.075. CLASS ACTIONS. (a) This subchapter applies
12 to a class action.

13 (b) For purposes of this section, a class action includes a
14 suit brought under this subchapter by at least two persons who have
15 filed a notice of tax abatement as required by this subchapter.

16 (c) In a class action brought under this subchapter, all
17 taxpayers who are within the same class as the persons bringing the
18 suit, who are represented in the class action, and who have abated
19 payment of the disputed tax under this section are not required to
20 file separate suits, but are entitled to and are governed by the
21 decision rendered in the class action.

22 Sec. 112.076. SUIT AGAINST PUBLIC OFFICIALS. A suit under
23 this subchapter must be brought against the public officials
24 charged with the duty of collecting the tax or fee, the comptroller,
25 and the attorney general.

26 Sec. 112.077. COPY OF WRITTEN STATEMENT OF GROUNDS. A copy
27 of the written statement of grounds as originally filed with the

1 notice of tax abatement must be attached to the original petition
2 filed by the person contending the tax or fee with the court and to
3 the copies of the original petition served on the comptroller, the
4 attorney general, and the public official charged with the duty of
5 collecting the tax or fee.

6 Sec. 112.078. TRIAL DE NOVO. The trial of the issues in a
7 lawsuit under this subchapter is de novo.

8 SECTION 10. Subchapter C, Chapter 112, Tax Code, is amended
9 by adding Section 112.10101 to read as follows:

10 Sec. 112.10101. REQUIREMENTS BEFORE INJUNCTION. (a) An
11 action for a restraining order or injunction that prohibits the
12 assessment or collection of a tax or fee imposed by this title or
13 collected by the comptroller under any law, including a local tax
14 collected by the comptroller, or a statutory penalty assessed for
15 the failure to pay the tax or fee may not be brought against the
16 public official charged with the duty of collecting the tax or fee
17 or a representative of the public official unless the applicant for
18 the order or injunction first:

19 (1) files with the attorney general not later than the
20 fifth day before the date the action is filed a statement of the
21 grounds on which the order or injunction is sought; and

22 (2) files with the comptroller a written notice of
23 abatement of tax on a form approved by the comptroller.

24 (b) A person may not be required to pay a disputed tax or fee
25 under protest or post a bond to guarantee the payment of any
26 disputed tax or fee as a prerequisite to filing an action under
27 this section.

SECTION 11. Section 112.1011(a), Tax Code, is amended to read as follows:

(a) A court may not issue a restraining order or consider the issuance of an injunction that prohibits the assessment or collection of an amount described by Section 112.10101(a) [112.101(a)] unless the applicant for the order or injunction demonstrates that:

(1) irreparable injury will result to the applicant if the order or injunction is not granted;

(2) no other adequate remedy is available to the applicant; and

(3) the applicant has a reasonable possibility of prevailing on the merits of the claim.

SECTION 12. Section 112.108, Tax Code, is amended to read as follows:

Sec. 112.108. OTHER ACTIONS PROHIBITED. Except for a restraining order or injunction issued as provided by this subchapter, a court may not issue a restraining order, injunction, [declaratory judgment,] writ of mandamus or prohibition, order requiring the payment of taxes or fees into the registry or custody of the court, or other similar legal or equitable relief against the state or a state agency relating to the applicability, assessment, collection, or constitutionality of a tax or fee covered by this subchapter or the amount of the tax or fee due[, provided, however, that after filing an oath of inability to pay the tax, penalties, and interest due, a party may be excused from the requirement of prepayment of tax as a prerequisite to appeal if the court, after

1 ~~notice and hearing, finds that such prepayment would constitute an~~
2 ~~unreasonable restraint on the party's right of access to the~~
3 ~~courts].~~ The court may grant such relief as may be reasonably
4 required by the circumstances. A grant of declaratory relief
5 against the state or a state agency shall not entitle the winning
6 party to recover attorney fees.

7 SECTION 13. Section 151.508, Tax Code, is amended to read as
8 follows:

9 Sec. 151.508. OFFSETS. In making a determination, the
10 comptroller shall ~~may~~ offset an overpayment for one or more
11 periods against an underpayment, penalty, and interest accrued on
12 the underpayment for the same period or one or more other periods,
13 provided the taxpayer may elect not to accept the offset. Any
14 interest accrued on the overpayment shall be included in the
15 offset.

16 SECTION 14. Section 151.511(c), Tax Code, is amended to
17 read as follows:

18 (c) If an additional claim is asserted, the petitioner is
19 entitled to a 90-day ~~30-day~~ continuance of the hearing to permit
20 the petitioner to obtain and present evidence applicable to the
21 items on which the additional claim is based.

22 SECTION 15. Section 403.202(a), Government Code, is amended
23 to read as follows:

24 (a) If a person who is required to pay to any department of
25 the state government an occupation, excise, gross receipts,
26 franchise, license, or privilege tax or fee, other than a tax or fee
27 to which Subchapter B-1 ~~B~~, Chapter 112, Tax Code, applies or a tax

1 or other amount imposed under Subtitle A, Title 4, Labor Code,
2 contends that the tax or fee is unlawful or that the department may
3 not legally demand or collect the tax or fee, the person shall pay
4 the amount claimed by the state, and if the person intends to bring
5 suit under this subchapter, the person must submit with the payment
6 a protest.

7 SECTION 16. The following provisions of the Tax Code are
8 repealed:

- 9 (1) Section 111.1042(d);
- 10 (2) Section 111.107(b);
- 11 (3) Subchapter B, Chapter 112;
- 12 (4) Section 112.101; and
- 13 (5) Section 112.104.

14 SECTION 17. (a) This Act applies only to a claim for a
15 refund made on or after the effective date of this Act, without
16 regard to whether the taxes that are the subject of the claim were
17 due before, on, or after that date.

18 (b) This Act, including Subchapter B-1, Chapter 112, Tax
19 Code, as added by this Act, and Section 112.10101, Tax Code, as
20 added by this Act, applies only to a lawsuit or action filed on or
21 after the effective date of this Act. A lawsuit or action filed
22 before the effective date of this Act is governed by the law
23 applicable to the lawsuit or action immediately before the
24 effective date of this Act, and that law is continued in effect for
25 that purpose.

26 SECTION 18. This Act takes effect September 1, 2015.