

1-1 By: Leman, et al. (Senate Sponsor - Huffman) H.B. No. 2080  
 1-2 (In the Senate - Received from the House April 19, 2021;  
 1-3 April 19, 2021, read first time and referred to Committee on  
 1-4 Finance; May 12, 2021, reported adversely, with favorable  
 1-5 Committee Substitute by the following vote: Yeas 12, Nays 0;  
 1-6 May 12, 2021, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14			X	
1-15	X			
1-16	X			
1-17	X			
1-18			X	
1-19	X			
1-20	X			
1-21	X			
1-22	X			
1-23			X	

1-24 COMMITTEE SUBSTITUTE FOR H.B. No. 2080 By: Huffman

1-25 A BILL TO BE ENTITLED  
 1-26 AN ACT

1-27 relating to taxpayers' suits.  
 1-28 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:  
 1-29 SECTION 1. Section 403.202(a), Government Code, is amended  
 1-30 to read as follows:  
 1-31 (a) If a person who is required to pay to any department of  
 1-32 the state government an occupation, excise, gross receipts,  
 1-33 franchise, license, or privilege tax or fee, ~~[other than a tax or~~  
 1-34 ~~fee to which Subchapter B, Chapter 112, Tax Code, applies]~~ or  
 1-35 another [a] tax or ~~[other]~~ amount imposed under Subtitle A, Title 4,  
 1-36 Labor Code, contends that the tax or fee is unlawful or that the  
 1-37 department may not legally demand or collect the tax or fee, the  
 1-38 person shall pay the amount claimed by the state, and if the person  
 1-39 intends to bring suit under this subchapter, the person must submit  
 1-40 with the payment a protest.  
 1-41 SECTION 2. Subchapter J, Chapter 403, Government Code, is  
 1-42 amended by adding Section 403.222 to read as follows:  
 1-43 Sec. 403.222. APPLICABILITY. This subchapter does not  
 1-44 apply to a suit under Chapter 112, Tax Code.  
 1-45 SECTION 3. Subchapter A, Chapter 112, Tax Code, is amended  
 1-46 by adding Section 112.003 to read as follows:  
 1-47 Sec. 112.003. ATTORNEY'S FEES. Except for a sanction under  
 1-48 Chapter 10, Civil Practice and Remedies Code, or the Texas Rules of  
 1-49 Civil Procedure, attorney's fees may not be awarded in a suit  
 1-50 seeking legal or equitable relief against the state, a state  
 1-51 agency, or an officer of the state relating to the applicability,  
 1-52 assessment, collection, constitutionality, or amount of a tax, fee,  
 1-53 or penalty imposed by this title or Title 3 or collected by the  
 1-54 comptroller under any other law.  
 1-55 SECTION 4. Section 112.051, Tax Code, is amended by  
 1-56 amending Subsection (a) and adding Subsection (d) to read as  
 1-57 follows:  
 1-58 (a) If a person who is required to pay a tax ~~[or fee]~~ imposed  
 1-59 by this title or collected by the comptroller under any law,  
 1-60 including a local tax collected by the comptroller, contends that

2-1 the tax [~~or fee~~] is unlawful or that the public official charged  
 2-2 with the duty of collecting the tax [~~or fee~~] may not legally demand  
 2-3 or collect the tax [~~or fee~~], the person shall pay the amount claimed  
 2-4 by the state, and if the person intends to bring suit under this  
 2-5 subchapter, the person must submit with the payment a protest.

2-6 (d) This section and Section 112.052 are not severable from  
 2-7 the other provisions of this subchapter. If this section or Section  
 2-8 112.052 is held invalid for any reason, the entire subchapter is  
 2-9 invalid.

2-10 SECTION 5. Section 112.052, Tax Code, is amended to read as  
 2-11 follows:

2-12 Sec. 112.052. TAXPAYER SUIT AFTER PAYMENT UNDER PROTEST.

2-13 (a) A person may bring suit against the state to recover a [~~an~~  
 2-14 ~~occupation, excise, gross receipts, franchise, license, or~~  
 2-15 ~~privilege~~] tax [~~or fee~~] required to be paid to the state if the  
 2-16 person has first paid the tax under protest as required by Section  
 2-17 112.051 [~~of this code~~].

2-18 (b) A suit under this section must be brought before the  
 2-19 91st day after the date the protest payment was made, or the suit is  
 2-20 barred [~~, except that for the tax imposed by Chapter 171 for a~~  
 2-21 ~~regular annual period, if an extension is granted to the taxpayer~~  
 2-22 ~~under Section 171.202(c) for filing the report and the taxpayer~~  
 2-23 ~~files the report on or before the last date of the extension period,~~  
 2-24 ~~the protest required by Section 112.051 may be filed with the report~~  
 2-25 ~~to cover the entire amount of tax paid for the period, and suit for~~  
 2-26 ~~the recovery of the entire amount of tax paid for the period may be~~  
 2-27 ~~filed before the 91st day after the date the report is filed. If the~~  
 2-28 ~~report is not filed on or before the last date of the extension~~  
 2-29 ~~period, a protest filed with the report applies only to the amount~~  
 2-30 ~~of tax, if any, paid when the report is filed].~~

2-31 (c) The state may bring a counterclaim in a suit brought  
 2-32 under this section if the counterclaim relates to taxes [~~or fees~~]  
 2-33 imposed under the same statute and during the same period as the  
 2-34 taxes [~~or fees~~] that are the subject of the suit and if the  
 2-35 counterclaim is filed not later than the 30th day before the date  
 2-36 set for trial on the merits of the suit. The state is not required to  
 2-37 make an assessment of the taxes [~~or fees~~] subject to the  
 2-38 counterclaim under any other statute, and the period of limitation  
 2-39 applicable to an assessment of the taxes [~~or fees~~] does not apply to  
 2-40 a counterclaim brought under this subsection.

2-41 (d) A taxpayer shall produce contemporaneous records and  
 2-42 supporting documentation appropriate to the tax [~~or fee~~] for the  
 2-43 transactions in question to substantiate and enable verification of  
 2-44 a taxpayer's claim relating to the amount of the tax, penalty, or  
 2-45 interest that has been assessed or collected or will be refunded, as  
 2-46 required by Section 111.0041.

2-47 SECTION 6. Section 112.053, Tax Code, is amended by  
 2-48 amending Subsections (a) and (c) and adding Subsections (d) and (e)  
 2-49 to read as follows:

2-50 (a) A suit authorized by this subchapter must be brought  
 2-51 against the public official charged with the duty of collecting the  
 2-52 tax [~~or fee~~], the comptroller, and the attorney general.

2-53 (c) A copy of the written protest as originally filed must  
 2-54 be attached to the original petition filed by the person paying the  
 2-55 tax [~~or fee~~] with the court and to the copies of the original  
 2-56 petition served on the comptroller, the attorney general, and the  
 2-57 public official charged with the duty of collecting the tax [~~or~~  
 2-58 ~~fee~~].

2-59 (d) The attorney general shall represent the comptroller in  
 2-60 a suit under this subchapter.

2-61 (e) A person may not intervene in a suit under this  
 2-62 subchapter.

2-63 SECTION 7. Section 112.058, Tax Code, is amended by  
 2-64 amending Subsection (a) and adding Subsections (b) and (c) to read  
 2-65 as follows:

2-66 (a) [~~Payments made under protest are to be handled as~~  
 2-67 ~~follows:~~

2-68 [~~(1) An officer who receives payments made under~~  
 2-69 ~~protest as required by Section 112.051 shall each day send to the~~

3-1 ~~comptroller the payments, a list of the persons making the~~  
 3-2 ~~payments, and a written statement that the payments were made under~~  
 3-3 ~~protest.~~

3-4 ~~[(2)]~~ The comptroller shall, immediately on receipt of  
 3-5 a payment made under protest under Section 112.051, deposit each  
 3-6 portion of the payment to the credit of the account or fund  
 3-7 ~~[payments to each fund]~~ to which the tax ~~[or fee]~~ paid under protest  
 3-8 is allocated by law.

3-9 (b) ~~[(3)]~~ The comptroller shall maintain detailed records  
 3-10 of payments made under protest under Section 112.051.

3-11 (c) An amount paid ~~[(4) A payment]~~ under protest under  
 3-12 Section 112.051 bears pro rata interest. The pro rata interest is  
 3-13 the amount of interest earned by the amount paid under protest  
 3-14 ~~[protested funds]~~.

3-15 SECTION 8. Section 112.059, Tax Code, is amended to read as  
 3-16 follows:

3-17 Sec. 112.059. DISPOSITION OF PROTEST PAYMENTS BELONGING TO  
 3-18 THE STATE. If a suit authorized by this subchapter is not brought  
 3-19 in the manner or within the time required or if the suit is properly  
 3-20 filed and results in a final determination that an amount paid under  
 3-21 protest ~~[a tax payment or a portion of a tax payment made under~~  
 3-22 ~~protest]~~, including the pro rata amount of interest earned on the  
 3-23 amount ~~[payment]~~, belongs to the state, the comptroller shall  
 3-24 ensure that the proper amount is ~~[has been]~~ deposited to the credit  
 3-25 of the appropriate state account or fund.

3-26 SECTION 9. Sections 112.060(c) and (d), Tax Code, are  
 3-27 amended to read as follows:

3-28 (c) Each ~~[tax]~~ refund warrant shall be drawn against the  
 3-29 accounts or funds ~~[each fund]~~ to which the amounts ~~[taxes]~~ paid  
 3-30 under protest are allocated by law. If there are not sufficient  
 3-31 funds in an account or fund ~~[each fund to which the taxes paid under~~  
 3-32 ~~protest are allocated by law]~~ to pay a refund required to be paid  
 3-33 under Subsection (a) ~~[of this section]~~, ~~[then]~~ the comptroller  
 3-34 shall draw the warrant against the General Revenue Fund or other  
 3-35 account or fund ~~[funds]~~ from which refunds ~~[refund appropriations]~~  
 3-36 may be made, as the comptroller determines appropriate.

3-37 (d) The comptroller shall issue each ~~[tax]~~ refund warrant  
 3-38 and shall deliver it to the person entitled to receive it.

3-39 SECTION 10. Chapter 112, Tax Code, is amended by adding  
 3-40 Subchapter E to read as follows:

3-41 SUBCHAPTER E. SUIT AFTER REDETERMINATION

3-42 Sec. 112.201. SUIT AFTER REDETERMINATION. (a) A person may  
 3-43 sue the comptroller to dispute an amount of tax, penalty, or  
 3-44 interest assessed in a deficiency redetermination or jeopardy  
 3-45 redetermination under Chapter 111 if the person has:

3-46 (1) filed a request for redetermination under Chapter  
 3-47 111;

3-48 (2) obtained a redetermination under Chapter 111 that  
 3-49 includes a finding by the comptroller of the disputed and  
 3-50 undisputed amounts; and

3-51 (3) filed a motion for rehearing of the  
 3-52 redetermination that complies with Chapter 2001, Government Code,  
 3-53 and that states the specific grounds of error and the disputed  
 3-54 amounts associated with the grounds of error.

3-55 (b) A person bringing a suit under this subchapter shall  
 3-56 pay, as provided by Chapter 111, the redetermination amounts that  
 3-57 are not disputed in the motion for rehearing. The failure to pay an  
 3-58 undisputed amount does not affect the jurisdiction of a court to  
 3-59 consider a suit that complies with Subsection (a).

3-60 (c) A person bringing a suit under this subchapter may pay  
 3-61 the disputed amounts as provided by Chapter 111. A disputed amount  
 3-62 that is not paid as provided by Chapter 111 and that is determined  
 3-63 to be due in a final judgment accrues penalties and interest as  
 3-64 provided by Chapter 111. After the comptroller has been timely  
 3-65 served in a suit that complies with this subchapter, the  
 3-66 comptroller and the attorney general are enjoined from collecting  
 3-67 disputed amounts from the person bringing the suit during the  
 3-68 pendency of the suit but are not enjoined from asserting tax liens.  
 3-69 Damages may be awarded under Chapter 65, Civil Practice and

4-1 Remedies Code, if the court determines that all or part of the  
4-2 enjoined collection amounts were disputed solely for delay.

4-3 (d) A suit under this subchapter must be brought against  
4-4 both the comptroller and the attorney general.

4-5 (e) A suit under this subchapter must be filed before the  
4-6 expiration of 90 days after the issue date of the denial of the  
4-7 motion for rehearing or it is barred.

4-8 (f) The disputed and undisputed amounts of the  
4-9 redetermination must be set out in the original petition. A copy of  
4-10 the motion for rehearing must be attached to the original petition  
4-11 filed with the court and to the copies of the original petition  
4-12 served on the comptroller and the attorney general.

4-13 (g) A person may not intervene in a suit under this  
4-14 subchapter.

4-15 Sec. 112.202. RECORDS. A person shall produce, in  
4-16 connection with a suit under this subchapter, contemporaneous  
4-17 records and supporting documentation appropriate to the tax for the  
4-18 transactions in question to substantiate and enable verification of  
4-19 the person's claim relating to the amount of the tax, penalty, or  
4-20 interest that has been assessed or collected, as required by  
4-21 Section 111.0041.

4-22 Sec. 112.203. COUNTERCLAIM. (a) The state may bring a  
4-23 counterclaim in a suit under this subchapter if:

4-24 (1) the counterclaim relates to taxes imposed under  
4-25 the same statute and during the same period as the taxes that are  
4-26 the subject of the suit; and

4-27 (2) the counterclaim is filed not later than the 30th  
4-28 day before the date set for trial on the merits of the suit.

4-29 (b) The state is not required to make an assessment of the  
4-30 taxes subject to the counterclaim under any other statute, and the  
4-31 period of limitation applicable to an assessment of the taxes does  
4-32 not apply to a counterclaim brought under this section.

4-33 Sec. 112.204. ISSUES IN SUIT. (a) The grounds of error  
4-34 contained in the motion for rehearing are the only issues that may  
4-35 be raised in a suit under this subchapter.

4-36 (b) A suit under this subchapter applies only to a tax  
4-37 liability period considered in the comptroller's redetermination.

4-38 Sec. 112.205. ATTORNEY GENERAL TO REPRESENT COMPTROLLER.  
4-39 The attorney general shall represent the comptroller in a suit  
4-40 under this subchapter.

4-41 Sec. 112.206. TRIAL DE NOVO. In a suit under this  
4-42 subchapter, the issues shall be tried de novo as are other civil  
4-43 cases.

4-44 Sec. 112.207. JUDGMENT. (a) The amount of a judgment  
4-45 refunding disputed taxes, penalties, or interest paid to the  
4-46 comptroller shall be credited against any tax, penalty, or interest  
4-47 imposed by this title and due from the plaintiff.

4-48 (b) The remainder of the amount of a judgment not credited  
4-49 against a tax, penalty, or interest shall be refunded to the  
4-50 plaintiff.

4-51 (c) The plaintiff is entitled to interest on the amount of  
4-52 tax refunded in a judgment for the plaintiff equal to the amount of  
4-53 interest that would be due if the tax had been deposited in the  
4-54 suspense account of the comptroller. The interest accrues beginning  
4-55 from the date that the tax was paid until:

4-56 (1) the date that the amount is credited against the  
4-57 plaintiff's tax liability; or

4-58 (2) a date determined by the comptroller that is not  
4-59 sooner than 10 days before the actual date on which a refund warrant  
4-60 is issued.

4-61 Sec. 112.208. RES JUDICATA. The rule of res judicata  
4-62 applies in a suit under this subchapter only if the issues and the  
4-63 tax liability periods in controversy are the same as were decided in  
4-64 a previous final judgment entered in a Texas court of record in a  
4-65 suit between the same parties.

4-66 SECTION 11. The following provisions are repealed:

- 4-67 (1) Section 403.212(e), Government Code;  
4-68 (2) Sections 112.058(d) and (e), Tax Code; and  
4-69 (3) Subchapter C, Chapter 112, Tax Code.

5-1 SECTION 12. The changes in law made by this Act apply only  
5-2 to a suit to dispute an amount of tax, penalty, or interest that  
5-3 becomes due and payable on or after the effective date of this Act.  
5-4 A suit to dispute an amount of tax, penalty, or interest that became  
5-5 due and payable before the effective date of this Act is governed by  
5-6 the law as it existed immediately before the effective date of this  
5-7 Act, and the former law is continued in effect for that purpose.  
5-8 SECTION 13. This Act takes effect September 1, 2021.

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